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

1993–94 Regular Session
1993–94 First Extraordinary Session



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and expulsion policy of the school and the governing board of the school district or the county superintendent of schools, as appropriate.

SEC. 13. It is the intent of the Legislature that federal funds appropriated to school districts for school safety purposes be used to offset any costs to school districts imposed by Section 5 of this bill.

SEC. 14. Section 6.5 of this bill incorporates amendments to Section 48915 of the Education Code proposed by both this bill and SB 1645. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 48915 of the Education Code, and (3) this bill is enacted after SB 1645, in which case Section 6 of this bill shall not become operative.

SEC. 15. This act shall not become operative unless Senate Bill 1645 of the 1993-94 Regular Session is enacted and becomes operative, in which case this act shall become operative on August 1, 1995.

SEC. 16. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1015

An act to amend Section 626.9 of the Penal Code, relating to gun-free school zones.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 626.9 of the Penal Code is amended to read:
626.9. (a) This section shall be known, and may be cited, as the Gun-Free School Zone Act of 1995.

(b) Any person who possesses a firearm in a place that the person knows, or reasonably should know, is a school zone, as defined in paragraph (1) of subdivision (e), unless it is with the written permission of the school district superintendent, his or her designee, or equivalent school authority, shall be punished as specified in

subdivision (f).

(c) Subdivision (b) shall not apply to the possession of a firearm under any of the following circumstances:

(1) Within a place of residence or place of business or on private property, if the place of residence, place of business, or private property is not part of the school grounds and the possession of the firearm is otherwise lawful.

(2) The firearm is an unloaded pistol, revolver, or other firearm capable of being concealed on the person and is in a locked container or within the locked trunk of a motor vehicle.

This section shall not prohibit or limit the otherwise lawful transportation of any other firearm, other than a pistol, revolver, or other firearm capable of being concealed on the person, in a motor vehicle in accordance with state law.

(3) When the person possessing the firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person or persons who has or have been found to pose a threat to his or her life or safety. This subdivision may not apply when the circumstances involve a mutual restraining order issued pursuant to Division 10 (commencing with Section 6200) of the Family Code absent a factual finding of a specific threat to the person's life or safety. Upon a trial for violating subdivision (b), the trier of a fact shall determine whether the defendant was acting out of a reasonable belief that he or she was in grave danger.

(d) Except as provided in subdivision (b), it shall be unlawful for any person with reckless disregard for the safety of another, to discharge, or attempt to discharge, a firearm in a school zone, as defined in paragraph (1) of subdivision (e).

The prohibition of this subdivision shall not apply to the discharge of a firearm to the extent that the conditions of paragraph (1) of subdivision (c) are satisfied.

(e) As used in this section, the following definitions shall apply:

(1) "School zone" means an area in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, and within a distance of 1,000 feet from the grounds of the public or private school.

(2) "Firearm" has the same meaning as that term is given in Section 12001.

(3) "Locked container" has the same meaning as that term is given in subdivision (c) of Section 12026.1.

(4) "Concealed firearm" has the same meaning as that term is given in Sections 12025 and 12026.1.

(f) Any person who violates subdivision (b) shall be punished by imprisonment in the state prison for two, three, or five years.

(g) Any person who violates subdivision (d) shall be punished by imprisonment in the state prison for three, five, or seven years.

(h) Any person who brings or possesses a loaded firearm upon the grounds of any university or college campus, including the

University of California, the California State University, the California Community Colleges, or any private university or college, unless it is with the written permission of the university or college president, his or her designee, or equivalent university or college authority, shall be punished by imprisonment in the state prison for two, three, or four years.

(i) Any person who brings or possesses a firearm upon the grounds of any university or college campus, including the University of California, the California State University, the California Community Colleges, or any private university or college, unless it is with the written permission of the university or college president, his or her designee, or equivalent university or college authority, shall be punished by imprisonment in the state prison for one, two, or three years.

(j) For purposes of this section, a firearm shall be deemed to be loaded when there is an unexpended cartridge or shell, consisting of a case which holds a charge of powder and a bullet or shot, in, or attached in any manner to, the firearm, including, but not limited to, in the firing chamber, magazine, or clip thereof attached to the firearm. A muzzle-loader firearm shall be deemed to be loaded when it is capped or primed and has a powder charge and ball or shot in the barrel or cylinder.

(k) This section shall not require that notice be posted regarding the proscribed conduct.

(l) This section shall not apply to a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in California, any person summoned by any of these officers to assist in making arrests or preserving the peace while he or she is actually engaged in assisting the officer, a member of the military forces of this state or of the United States who is engaged in the performance of his or her duties, a person holding a valid license to carry the firearm pursuant to Article 3 (commencing with Section 12050) of Chapter 1 of Title 2 of Part 4, or an armored vehicle guard, engaged in the performance of his or her duties, as defined in subdivision (e) of Section 7521 of the Business and Professions Code.

(m) This section shall not apply to a retired peace officer or security guard authorized to carry a loaded firearm pursuant to Section 12031.

(n) This section shall not apply to an existing shooting range at a public or private school or university or college campus.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless

otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1016

An act to add Sections 48911.1 and 48911.2 to the Education Code, relating to pupils.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. It is the intent of the Legislature that school districts and county offices of education may establish in-house suspension programs pursuant to Section 48911.1 of the Education Code as an educational and disciplinary alternative to off-campus suspensions.

In-house suspension programs may be funded by school districts and county offices of education as part of a School Safety Incentive Program implemented pursuant to Chapter 3.5 (commencing with Section 48460) of Part 27 of the Education Code.

SEC. 2. Section 48911.1 is added to the Education Code, to read:

48911.1. (a) A pupil suspended from a school for any of the reasons enumerated in Sections 48900 and 48900.2 may be assigned, by the principal or the principal's designee, to a supervised suspension classroom for the entire period of suspension if the pupil poses no imminent danger or threat to the campus, pupils, or staff, or if an action to expel the pupil has not been initiated.

(b) Pupils assigned to a supervised suspension classroom shall be separated from other pupils at the schoolsite for the period of suspension in a separate classroom, building, or site for pupils under suspension.

(c) School districts may continue to claim apportionments for each pupil assigned to and attending a supervised suspension classroom provided as follows:

(1) The supervised suspension classroom is staffed as otherwise provided by law.

(2) Each pupil has access to appropriate counseling services.

(3) The supervised suspension classroom promotes completion of schoolwork and tests missed by the pupil during the suspension.

(4) Each pupil is responsible for contacting his or her teacher or teachers to receive assignments to be completed while the pupil is assigned to the supervised suspension classroom. The teacher shall provide all assignments and tests that the pupil will miss while suspended. If no classroom work is assigned, the person supervising the suspension classroom shall assign schoolwork.

(d) At the time a pupil is assigned to a supervised suspension

classroom, a school employee shall notify, in person or by telephone, the pupil's parent or guardian. Whenever a pupil is assigned to a supervised suspension classroom for longer than one class period, a school employee shall notify, in writing, the pupil's parent or guardian.

(e) This section does not place any limitation on a school district's ability to transfer a pupil to an opportunity school or class or a continuation education school or class.

(f) Apportionments claimed by a school district for pupils assigned to supervised suspension shall be used specifically to mitigate the cost of implementing this section.

SEC. 3. Section 48911.2 is added to the Education Code, to read:

48911.2. (a) If the number of pupils suspended from school during the prior school year exceeded 30 percent of the school's enrollment, the school should consider doing at least one of the following:

(1) Implement the supervised suspension program described in Section 48911.1.

(2) Implement an alternative to the school's off-campus suspension program, which involves a progressive discipline approach that occurs during the schoolday on campus, using any of the following activities:

(A) Conferences between the school staff, parents, and pupils.

(B) Referral to the school counselor, psychologist, child welfare attendance personnel, or other school support service staff.

(C) Detention.

(D) Study teams, guidance teams, resource panel teams, or other assessment-related teams.

(b) At the end of the academic year, the school may report to the district superintendent in charge of school support services, or other comparable administrator if that position does not exist, on the rate of reduction in the school's off-campus suspensions and the plan or activities used to comply with subdivision (a).

(c) It is the intent of the Legislature to encourage schools that choose to implement this section to examine alternatives to off-campus suspensions that lead to resolution of pupil misconduct without sending pupils off campus. Schools that use this section should not be precluded from suspending pupils to an off-campus site.

CHAPTER 1017

An act to add Section 48900.4 to the Education Code, relating to pupils.

[Approved by Governor September 28, 1994. Filed with Secretary of State September 29, 1994.]

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

SECTION 1. Section 48900.4 is added to the Education Code, to read:

48900.4. In addition to the grounds specified in Sections 48900 and 48900.2, a pupil enrolled in any of grades 4 to 12, inclusive, may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has intentionally engaged in harassment, threats, or intimidation, directed against a pupil or group of pupils, that is sufficiently severe or pervasive to have the actual and reasonably expected effect of materially disrupting classwork, creating substantial disorder, and invading the rights of that pupil or group of pupils by creating an intimidating or hostile educational environment.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1018

An act to amend Section 827 of the Welfare and Institutions Code, relating to juveniles.

[Approved by Governor September 28, 1994. Filed with Secretary of State September 29, 1994.]

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

SECTION 1. Section 827 of the Welfare and Institutions Code is amended to read:

827. (a) Except as provided in Section 828, a petition filed in any juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer, may be inspected only by court personnel, the district attorney, a city attorney or city prosecutor authorized to prosecute criminal or juvenile cases under state law, the minor who is the subject of the proceeding, his or her parents or guardian, the attorneys for the parties, and any other person who may be designated by court order of the judge of the juvenile court upon filing a petition therefor. Child protective agencies, as defined in Section 11165.9 of the Penal Code, also shall be entitled to inspect these documents upon the filing of a declaration under penalty of perjury stating that access to these documents is necessary and relevant in connection with and in the course of a criminal investigation or a proceeding brought to declare a person a dependent child or ward of the juvenile court.

Any records or reports relating to a matter within the jurisdiction of the juvenile court prepared by or released by the court, a probation department, or the county department of social services, any portion of those records or reports, and information relating to the contents of those records or reports, shall not be disseminated by the receiving agencies to any persons or agencies, other than those persons or agencies authorized to receive documents pursuant to this section. Further, any of those records or reports, any portion of those records or reports, and information relating to the contents of those records or reports, shall not be made attachments to any other documents without the prior approval of the presiding judge of the juvenile court, unless they are used in connection with and in the course of a criminal investigation or a proceeding brought to declare a person a dependent child or ward of the juvenile court.

(b) (1) While the Legislature reaffirms its belief that juvenile court records, in general, should be confidential, it is the intent of the Legislature in enacting this subdivision to provide for a limited exception to juvenile court record confidentiality to promote more effective communication among juvenile courts, law enforcement agencies, and schools to ensure the rehabilitation of juvenile criminal offenders as well as to lessen the potential for drug use, violence, and other forms of delinquency.

(2) Notwithstanding subdivision (a), written notice that a minor enrolled in a public school, kindergarten to grade 12, inclusive, has been found by a court of competent jurisdiction to have committed any felony, or any misdemeanor involving curfew, gambling, alcohol, drugs, tobacco products, carrying of weapons, assault or battery, larceny, vandalism, or graffiti shall be provided by the court, within seven days, to the superintendent of the school district of attendance. Written notice shall include only the offense found to have been committed by the minor and the disposition of the minor's case. This

notice shall be expeditiously transmitted by the district superintendent to the principal at the school of attendance. The principal shall expeditiously disseminate the information to those counselors directly supervising or reporting on the behavior or progress of the minor. In addition, the principal may disseminate the information to any teacher or administrator directly supervising or reporting on the behavior or progress of the minor whom the principal believes needs the information to work with the pupil in an appropriate fashion, to avoid being needlessly vulnerable or to protect other persons from needless vulnerability. Any information received by a teacher, counselor, or administrator under this subdivision shall be received in confidence for the limited purpose of rehabilitating the minor and protecting students and staff, and shall not be further disseminated by the teacher, counselor, or administrator, except insofar as communication with the juvenile, his or her parents or guardians, law enforcement personnel, and the juvenile's probation officer is necessary to effectuate the juvenile's rehabilitation or to protect students and staff. An intentional violation of the confidentiality provisions of this section is a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500).

(3) If a minor is removed from public school as a result of the court's finding described in subdivision (b), the district superintendent shall maintain the information in a confidential file and shall defer transmittal of the information received from the court until the minor is returned to public school. If the minor is returned to a school district other than the one from which the minor came, the parole or probation officer having jurisdiction over the minor shall so notify the superintendent of the last district of attendance, who shall transmit the notice received from the court to the superintendent of the new district of attendance.

(c) Each probation report filed with the court concerning a minor whose record is subject to dissemination pursuant to subdivision (b) shall include on the face sheet the school at which the minor is currently enrolled. The county superintendent shall provide the court with a listing of all of the schools within each school district, within the county, along with the name and mailing address of each district superintendent.

(d) Each notice sent by the court pursuant to subdivision (b) shall be stamped with the instruction: "Unlawful Dissemination of This Information Is A Misdemeanor." Any information received from the court shall be kept in a separate confidential file at the school of attendance and shall be transferred to the minor's subsequent schools of attendance and maintained until the minor graduates from high school, is released from juvenile court jurisdiction, or reaches the age of 18, whichever occurs first. After that time the confidential record shall be destroyed. At any time after the date by which a record required to be destroyed by this section should have been destroyed, the minor or his or her parent or guardian shall have the

right to make a written request to the principal of the school that the minor's school records be reviewed to ensure that the record has been destroyed. Upon completion of any requested review and no later than 30 days after the request for the review was received, the principal or his or her designee shall respond in writing to the written request and either shall confirm that the record has been destroyed or, if the record has not been destroyed, shall explain why destruction has not yet occurred.

(e) Except as provided in paragraph (2) of subdivision (b), no liability shall attach to any person who transmits or fails to transmit any notice or information required under subdivision (b).

SEC. 2. Section 827 of the Welfare and Institutions Code is amended to read:

827. (a) Except as provided in Section 828, a petition filed in any juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer, may be inspected only by court personnel, the district attorney, a city attorney or city prosecutor authorized to prosecute criminal or juvenile cases under state law, the minor who is the subject of the proceeding, his or her parents or guardian, the attorneys for the parties, and judges, referees, other hearing officers, probation officers and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the minor, the superintendent or designee of the school district where the minor is enrolled or attending school, members of the child protective agencies as defined in Section 11165.9 of the Penal Code, members of children's multidisciplinary teams, persons or agencies providing treatment or supervision of the minor, and any other person who may be designated by court order of the judge of the juvenile court upon filing a petition therefor.

Any records or reports relating to a matter within the jurisdiction of the juvenile court prepared by or released by the court, a probation department, or the county department of social services, any portion of those records or reports, and information relating to the contents of those records or reports, shall not be disseminated by the receiving agencies to any persons or agencies, other than those persons or agencies authorized to receive documents pursuant to this section. Further, any of those records or reports, any portion of those records or reports, and information relating to the contents of those records or reports, shall not be made attachments to any other documents without the prior approval of the presiding judge of the juvenile court, unless they are used in connection with and in the course of a criminal investigation or a proceeding brought to declare a person a dependent child or ward of the juvenile court.

(b) (1) While the Legislature reaffirms its belief that juvenile court records, in general, should be confidential, it is the intent of the

Legislature in enacting this subdivision to provide for a limited exception to juvenile court record confidentiality to promote more effective communication among juvenile courts, law enforcement agencies, and schools to ensure the rehabilitation of juvenile criminal offenders as well as to lessen the potential for drug use, violence, and other forms of delinquency.

(2) Notwithstanding subdivision (a), written notice that a minor enrolled in a public school, kindergarten to grade 12, inclusive, has been found by a court of competent jurisdiction to have committed any felony or any misdemeanor involving curfew, gambling, alcohol, drugs, tobacco products, carrying of weapons, assault or battery, larceny, vandalism, or graffiti shall be provided by the court, within seven days, to the superintendent of the school district of attendance. Written notice shall include only the offense found to have been committed by the minor and the disposition of the minor's case. This notice shall be expeditiously transmitted by the district superintendent to the principal at the school of attendance. The principal shall expeditiously disseminate the information to those counselors directly supervising or reporting on the behavior or progress of the minor. In addition, the principal may disseminate the information to any teacher or administrator directly supervising or reporting on the behavior or progress of the minor whom the principal believes needs the information to work with the pupil in an appropriate fashion, to avoid being needlessly vulnerable or to protect other persons from needless vulnerability. Any information received by a teacher, counselor, or administrator under this subdivision shall be received in confidence for the limited purpose of rehabilitating the minor and protecting students and staff, and shall not be further disseminated by the teacher, counselor, or administrator, except insofar as communication with the juvenile, his or her parents or guardians, law enforcement personnel, and the juvenile's probation officer is necessary to effectuate the juvenile's rehabilitation or to protect students and staff. An intentional violation of the confidentiality provisions of this section is a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500).

(3) If a minor is removed from public school as a result of the court's finding described in subdivision (b), the district superintendent shall maintain the information in a confidential file and shall defer transmittal of the information received from the court until the minor is returned to public school. If the minor is returned to a school district other than the one from which the minor came, the parole or probation officer having jurisdiction over the minor shall so notify the superintendent of the last district of attendance, who shall transmit the notice received from the court to the superintendent of the new district of attendance.

(c) Each probation report filed with the court concerning a minor whose record is subject to dissemination pursuant to subdivision (b) shall include on the face sheet the school at which the minor is

currently enrolled. The county superintendent shall provide the court with a listing of all of the schools within each school district, within the county, along with the name and mailing address of each district superintendent.

(d) Each notice sent by the court pursuant to subdivision (b) shall be stamped with the instruction: "Unlawful Dissemination Of This Information Is A Misdemeanor." Any information received from the court shall be kept in a separate confidential file at the school of attendance and shall be transferred to the minor's subsequent schools of attendance and maintained until the minor graduates from high school, is released from juvenile court jurisdiction, or reaches the age of 18, whichever occurs first. After that time the confidential record shall be destroyed. Any information received from the court shall be destroyed by school authorities 12 months after its receipt from the court or 12 months after the minor returns to public school, whichever occurs last. At any time after the date by which a record required to be destroyed by this section should have been destroyed, the minor or his or her parent or guardian shall have the right to make a written request to the principal of the school that the minor's school records be reviewed to ensure that the record has been destroyed. Upon completion of any requested review and no later than 30 days after the request for the review was received, the principal or his or her designee shall respond in writing to the written request and either shall confirm that the record has been destroyed or, if the record has not been destroyed, shall explain why destruction has not yet occurred.

Except as provided in paragraph (2) of subdivision (b), no liability shall attach to any person who transmits or fails to transmit any notice or information required under subdivision (b).

SEC. 3. Section 2 of this bill incorporates amendments to Section 827 of the Welfare and Institutions Code proposed by both this bill and AB 3309. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1995, (2) each bill amends Section 827 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 3309, in which case Section 1 of this bill shall not become operative.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1019

An act to add Section 204.5 to, and to repeal and add Section 827 of, the Welfare and Institutions Code, relating to juveniles.

[Approved by Governor September 28, 1994. Filed with Secretary of State September 29, 1994.]

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

SECTION 1. Section 204.5 is added to the Welfare and Institutions Code, to read:

204.5. Notwithstanding any other provision of law, the name of a minor may be disclosed to the public if the minor is 14 years of age or older and found by the juvenile court to be a person described in Section 602 as a result of a sustained petition for the commission of any of the offenses listed in Section 667.5 of the Penal Code, or in subdivision (c) of Section 1192.7 of the Penal Code.

SEC. 2. Section 827 of the Welfare and Institutions Code is repealed.

SEC. 3. Section 827 is added to the Welfare and Institutions Code, to read:

827. (a) Except as provided in Section 828, a petition filed in any juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer, may be inspected only by court personnel, the district attorney, a city attorney or city prosecutor authorized to prosecute criminal or juvenile cases under state law, the minor who is the subject of the proceeding, his or her parents or guardian, the attorneys for the parties, and judges, referees, other hearing officers, probation officers and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the minor, the superintendent or designee of the school district where the minor is enrolled or attending school, members of the child protective agencies as defined in Section 11165.9 of the Penal Code, members of children's multidisciplinary teams, persons or agencies providing treatment or supervision of the minor, and any other person who may be designated by court order of the judge of the juvenile court upon filing a petition therefor.

Any records or reports relating to a matter within the jurisdiction of the juvenile court prepared by or released by the court, a probation department, or the county department of social services, any portion of those records or reports, and information relating to the contents of those records or reports, shall not be disseminated by the receiving agencies to any persons or agencies, other than those persons or agencies authorized to receive documents pursuant to this

section. Further, any of those records or reports, any portion of those records or reports, and information relating to the contents of those records or reports, shall not be made attachments to any other documents without the prior approval of the presiding judge of the juvenile court, unless they are used in connection with and in the course of a criminal investigation or a proceeding brought to declare a person a dependent child or ward of the juvenile court.

(b) (1) While the Legislature reaffirms its belief that juvenile court records, in general, should be confidential, it is the intent of the Legislature in enacting this subdivision to provide for a limited exception to juvenile court record confidentiality to promote more effective communication among juvenile courts, law enforcement agencies, and schools to ensure the rehabilitation of juvenile criminal offenders as well as to lessen the potential for drug use, violence, and other forms of delinquency.

(2) Notwithstanding subdivision (a), written notice that a minor enrolled in a public school, kindergarten to grade 12, inclusive, has been found by a court of competent jurisdiction to have committed any felony or any misdemeanor involving curfew, gambling, alcohol, drugs, tobacco products, carrying of weapons, assault or battery, larceny, vandalism, or graffiti shall be provided by the court, within seven days, to the superintendent of the school district of attendance. Written notice shall include only the offense found to have been committed by the minor and the disposition of the minor's case. This notice shall be expeditiously transmitted by the district superintendent to the principal at the school of attendance. The principal shall expeditiously disseminate the information to those counselors directly supervising or reporting on the behavior or progress of the minor. In addition, the principal may disseminate the information to any teacher or administrator directly supervising or reporting on the behavior or progress of the minor whom the principal believes needs the information to work with the pupil in an appropriate fashion, to avoid being needlessly vulnerable or to protect other persons from needless vulnerability. Any information received by a teacher, counselor, or administrator under this subdivision shall be received in confidence for the limited purpose of rehabilitating the minor and protecting students and staff, and shall not be further disseminated by the teacher, counselor, or administrator, except insofar as communication with the juvenile, his or her parents or guardians, law enforcement personnel, and the juvenile's probation officer is necessary to effectuate the juvenile's rehabilitation or to protect students and staff. An intentional violation of the confidentiality provisions of this section is a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500).

(3) If a minor is removed from public school as a result of the court's finding described in subdivision (b), the district superintendent shall maintain the information in a confidential file and shall defer transmittal of the information received from the

court until the minor is returned to public school. If the minor is returned to a school district other than the one from which the minor came, the parole or probation officer having jurisdiction over the minor shall so notify the superintendent of the last district of attendance, who shall transmit the notice received from the court to the superintendent of the new district of attendance.

(c) Each probation report filed with the court concerning a minor whose record is subject to dissemination pursuant to subdivision (b) shall include on the face sheet the school at which the minor is currently enrolled. The county superintendent shall provide the court with a listing of all of the schools within each school district, within the county, along with the name and mailing address of each district superintendent.

(d) Each notice sent by the court pursuant to subdivision (b) shall be stamped with the instruction: "Unlawful Dissemination Of This Information Is A Misdemeanor." Any information received from the court shall be kept in a separate confidential file at the school of attendance and shall be transferred to the minor's subsequent schools of attendance and maintained until the minor graduates from high school, is released from juvenile court jurisdiction, or reaches the age of 18, whichever occurs first. After that time the confidential record shall be destroyed. At any time after the date by which a record required to be destroyed by this section should have been destroyed, the minor or his or her parent or guardian shall have the right to make a written request to the principal of the school that the minor's school records be reviewed to ensure that the record has been destroyed. Upon completion of any requested review and no later than 30 days after the request for the review was received, the principal or his or her designee shall respond in writing to the written request and either shall confirm that the record has been destroyed or, if the record has not been destroyed, shall explain why destruction has not yet occurred. Except as provided in paragraph (2) of subdivision (b), no liability shall attach to any person who transmits or fails to transmit any notice or information required under subdivision (b).

SEC. 4. Section 827 of the Welfare and Institutions Code is amended to read:

827. (a) Except as provided in Section 828, a petition filed in any juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer, may be inspected only by court personnel, the district attorney, a city attorney or city prosecutor authorized to prosecute criminal or juvenile cases under state law, the minor who is the subject of the proceeding, his or her parents or guardian, the attorneys for the parties, and judges, referees, other hearing officers, probation officers and law enforcement officers who are actively participating in criminal or

juvenile proceedings involving the minor, the superintendent or designee of the school district where the minor is enrolled or attending school, members of the child protective agencies as defined in Section 11165.9 of the Penal Code, members of children's multidisciplinary teams, persons or agencies providing treatment or supervision of the minor, and any other person who may be designated by court order of the judge of the juvenile court upon filing a petition therefor.

Any records or reports relating to a matter within the jurisdiction of the juvenile court prepared by or released by the court, a probation department, or the county department of social services, any portion of those records or reports, and information relating to the contents of those records or reports, shall not be disseminated by the receiving agencies to any persons or agencies, other than those persons or agencies authorized to receive documents pursuant to this section. Further, any of those records or reports, any portion of those records or reports, and information relating to the contents of those records or reports, shall not be made attachments to any other documents without the prior approval of the presiding judge of the juvenile court, unless they are used in connection with and in the course of a criminal investigation or a proceeding brought to declare a person a dependent child or ward of the juvenile court.

(b) (1) While the Legislature reaffirms its belief that juvenile court records, in general, should be confidential, it is the intent of the Legislature in enacting this subdivision to provide for a limited exception to juvenile court record confidentiality to promote more effective communication among juvenile courts, law enforcement agencies, and schools to ensure the rehabilitation of juvenile criminal offenders as well as to lessen the potential for drug use, violence, and other forms of delinquency.

(2) Notwithstanding subdivision (a), written notice that a minor enrolled in a public school, kindergarten to grade 12, inclusive, has been found by a court of competent jurisdiction to have committed any felony or any misdemeanor involving curfew, gambling, alcohol, drugs, tobacco products, carrying of weapons, assault or battery, larceny, vandalism, or graffiti shall be provided by the court, within seven days, to the superintendent of the school district of attendance. Written notice shall include only the offense found to have been committed by the minor and the disposition of the minor's case. This notice shall be expeditiously transmitted by the district superintendent to the principal at the school of attendance. The principal shall expeditiously disseminate the information to those counselors directly supervising or reporting on the behavior or progress of the minor. In addition, the principal may disseminate the information to any teacher or administrator directly supervising or reporting on the behavior or progress of the minor whom the principal believes needs the information to work with the pupil in an appropriate fashion, to avoid being needlessly vulnerable or to protect other persons from needless vulnerability. Any information

received by a teacher, counselor, or administrator under this subdivision shall be received in confidence for the limited purpose of rehabilitating the minor and protecting students and staff, and shall not be further disseminated by the teacher, counselor, or administrator, except insofar as communication with the juvenile, his or her parents or guardians, law enforcement personnel, and the juvenile's probation officer is necessary to effectuate the juvenile's rehabilitation or to protect students and staff. An intentional violation of the confidentiality provisions of this section is a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500).

(3) If a minor is removed from public school as a result of the court's finding described in subdivision (b), the superintendent shall maintain the information in a confidential file and shall defer transmittal of the information received from the court until the minor is returned to public school. If the minor is returned to a school district other than the one from which the minor came, the parole or probation officer having jurisdiction over the minor shall so notify the superintendent of the last district of attendance, who shall transmit the notice received from the court to the superintendent of the new district of attendance.

(c) Each probation report filed with the court concerning a minor whose record is subject to dissemination pursuant to subdivision (b) shall include on the face sheet the school at which the minor is currently enrolled. The county superintendent shall provide the court with a listing of all of the schools within each school district, within the county, along with the name and mailing address of each district superintendent.

(d) Each notice sent by the court pursuant to subdivision (b) shall be stamped with the instruction: "Unlawful Dissemination Of This Information Is A Misdemeanor." Any information received from the court shall be kept in a separate confidential file at the school of attendance and shall be transferred to the minor's subsequent schools of attendance and maintained until the minor graduates from high school, is released from juvenile court jurisdiction, or reaches the age of 18, whichever occurs first. After that time the confidential record shall be destroyed. Any information received from the court shall be destroyed by school authorities 12 months after its receipt from the court or 12 months after the minor returns to public school, whichever occurs last. At any time after the date by which a record required to be destroyed by this section should have been destroyed, the minor or his or her parent or guardian shall have the right to make a written request to the principal of the school that the minor's school records be reviewed to ensure that the record has been destroyed. Upon completion of any requested review and no later than 30 days after the request for the review was received, the principal or his or her designee shall respond in writing to the written request and either shall confirm that the record has been destroyed or, if the record has not been destroyed, shall explain why

destruction has not yet occurred.

Except as provided in paragraph (2) of subdivision (b), no liability shall attach to any person who transmits or fails to transmit any notice or information required under subdivision (b).

SEC. 5. Section 4 of this bill incorporates amendments to Section 827 of the Welfare and Institutions Code proposed by both this bill and AB 3053. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1995, (2) each bill amends Section 827 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 3053, in which case Sections 2 and 3 of this bill shall not become operative.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1020

An act to add Section 626.85 to the Penal Code, relating to crimes.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 626.85 is added to the Penal Code, to read:
626.85. (a) Any specified drug offender who, at any time, comes into any school building or upon any school ground, or adjacent street, sidewalk, or public way, unless the person is a parent or guardian of a child attending that school and his or her presence is during any school activity, or is a student at the school and his or her presence is during any school activity, or has prior written permission for the entry from the chief administrative officer of that school, is guilty of a misdemeanor if he or she does any of the

following:

(1) Remains there after being asked to leave by the chief administrative officer of that school or his or her designated representative, or by a person employed as a member of a security or police department of a school district pursuant to Section 39670 of the Education Code, or a city police officer, sheriff, California Highway Patrol officer, or California State Police officer.

(2) Reenters or comes upon that place within seven days of being asked to leave by a person specified in paragraph (1) of subdivision (a).

(3) Has otherwise established a continued pattern of unauthorized entry.

The provisions of this section shall not be utilized to impinge upon the lawful exercise of constitutionally protected rights of freedom of speech or assembly, or to prohibit any lawful act, including picketing, strikes, or collective bargaining.

(b) Punishment for violation of this section shall be as follows:

(1) Upon a first conviction by a fine of not exceeding one thousand dollars (\$1,000), by imprisonment in the county jail for a period of not more than six months, or by both fine and imprisonment.

(2) If the defendant has been previously convicted once of a violation of any offense defined in this chapter or Section 415.5, by imprisonment in the county jail for a period of not less than 10 days or more than six months, or by both imprisonment and a fine of not exceeding one thousand dollars (\$1,000), and shall not be released on probation, parole, or any other basis until he or she has served not less than 10 days.

(3) If the defendant has been previously convicted two or more times of a violation of any offense defined in this chapter or Section 415.5, by imprisonment in the county jail for a period of not less than 90 days or more than six months, or by both imprisonment and a fine of not exceeding one thousand dollars (\$1,000), and shall not be released on probation, parole, or any other basis until he or she has served not less than 90 days.

(c) As used in this section:

(1) "Specified drug offender" means any person who, within the immediately preceding three years, has a felony or misdemeanor conviction of either:

(A) Unlawful sale, or possession for sale, of any controlled substance, as defined in Section 11007 of the Health and Safety Code.

(B) Unlawful use, possession, or being under the influence of any controlled substance, as defined in Section 11007 of the Health and Safety Code, where that conviction was based on conduct which occurred, wholly or partly, in any school building or upon any school ground, or adjacent street, sidewalk, or public way.

(2) "Continued pattern of unauthorized entry" means that on at least two prior occasions in the same calendar year the defendant came into any school building or upon any school ground, or adjacent

street, sidewalk, or public way, and the defendant was asked to leave by a person specified in paragraph (1) of subdivision (a).

(3) "School" means any preschool or school having any of grades kindergarten to 12, inclusive.

(4) "School activity" means and includes any school session, any extracurricular activity or event sponsored by or participated in by the school, and the 30-minute periods immediately preceding and following any such session, activity, or event.

(d) When a person is directed to leave pursuant to paragraph (1) of subdivision (a), the person directing him or her to leave shall inform the person that if he or she reenters the place he or she will be guilty of a crime.

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

CHAPTER 1021

An act to add Section 35021.1 to the Education Code, relating to school volunteers.

[Approved by Governor September 28, 1994. Filed with Secretary of State September 29, 1994.]

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

SECTION 1. Section 35021.1 is added to the Education Code, to read:

35021.1. A school district or county office of education may request that a local law enforcement agency conduct an automated records check of a prospective nonteaching volunteer aide in order to ascertain whether the prospective nonteaching volunteer aide has been convicted of any sex offense as defined in Section 44010. A plea or verdict of guilty, a finding of guilt by a court in a trial without jury, or a conviction following a plea of nolo contendere shall be deemed to be a conviction within the meaning of this section. If the local law enforcement agency agrees to provide that automated records check, the results therefrom shall be returned to the requesting district or county office of education within 72 hours of the written request. A local law enforcement agency may charge a fee to the requesting agency not to exceed the actual expense to the law

enforcement agency.

CHAPTER 1022

An act to add and repeal Article 3.5 (commencing with Section 32230) to Chapter 2 of Part 19 of the Education Code, relating to schools, and making an appropriation therefor.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. (a) The Legislature hereby finds the following:

(1) According to the National Crime Study, approximately 3,000,000 crimes occur on or near school campuses each year. This translates into 16,000 crimes per school day or one crime every six seconds.

(2) According to Federal Bureau of Investigation statistics, more than 11,000 people died nationwide between 1980 and 1989 as a result of homicides committed by high school age youths using firearms, cutting instruments, or blunt objects.

(3) On California school campuses in the 1988–89 school year, the number of assaults increased by 16 percent from the previous year to 69,191. Armed assaults increased 25 percent to 1,830. From September 1986 to September 1990, there were 29 gun-related incidents resulting in 16 deaths and 45 injuries.

(4) Gun violence is on the rise in schools all over the United States. According to the Centers for Disease Control, one pupil in five reports carrying a weapon of some type and about one pupil in 20 reports carrying a gun.

(5) According to a study by the National Institute of Education, each month nearly 5,200 of the nation's 1,000,000 secondary school teachers are physically attacked on school grounds. Of these teachers, approximately 1,000 suffer serious injuries which require medical attention. In addition, each month approximately 130,000 teachers are burglarized and approximately 6,000 are robbed.

(b) The Legislature hereby declares the following:

(1) Many schools in California are in need of security and preventive programs in order to provide a safe school environment. School districts have reported an increasing number of serious incidents of violence on school campuses. The violence has adversely affected the educational environment on school campuses so that teachers are unable to teach and pupils are unable to learn.

(2) School districts have been unable to adequately fund their school safety programs and, therefore, are forced to use a greater amount of their general fund to pay for school security.

(3) The Legislature recognizes its responsibility to assist school

districts in correcting safety problems in those schools where they exist and to prevent these problems from arising at all other schools.

SEC. 2. Article 3.5 (commencing with Section 32230) is added to Chapter 2 of Part 19 of the Education Code, to read:

Article 3.5. Conflict Resolution and School Violence Reduction Program

32230. It is the intent of the Legislature that schools receiving grants pursuant to this article accomplish the following goals:

(a) Teach pupils techniques for resolving conflicts without resorting to the use of violence.

(b) Train school staff and administrators to support and promote conflict resolution and mediation techniques for resolving conflicts between or among pupils.

(c) Reduce the incidents of violence at the schoolsite.

(d) Provide pupils with after school programs as positive alternatives to delinquent behavior.

32231. (a) The Conflict Resolution and School Violence Reduction Program is hereby established. This statewide grant program shall be coordinated through county offices of education to provide grants to schools for conflict resolution projects. Each county office of education shall do all of the following:

(1) No later than February 1, 1995, and no later than February 1 of each succeeding year through the 1996-97 school year, notify the Superintendent of Public Instruction of the intent of the county office of education to participate in the grant program.

(2) Notify schools within the jurisdiction of the county office of education of the availability of, and the process to be followed in applying for, grants under the grant program.

(3) Identify successful conflict resolution projects and techniques and incorporate those techniques into the criteria for review and selection of requests for proposals for grants.

(4) Provide information as requested by the Superintendent of Public Instruction for use in the evaluation conducted pursuant to Section 32237.

(b) (1) If a county office of education chooses not to participate individually in the grant program, or if funding available through the grant program to an individual county office of education would be insufficient to conduct a conflict resolution project in accordance with the requirements of this article, several county offices of education may form a consortium to participate in the grant program and shall be subject to this article to the same extent as an individual county office of education.

(2) If a county office of education chooses not to participate in the grant program either individually or as part of a consortium, that portion of funding that the county office would have received for the grant program shall be distributed on a pro rata basis to participating county offices of education.

32233. (a) No later than March 1, 1995, and no later than March 1 of each succeeding year through the 1996–1997 school year, a county office of education that has notified the Superintendent of Public Instruction of its intent to participate in the grant program shall develop requests for proposals, pursuant to which that county office of education shall select grant recipients from schools within the jurisdiction of the county office of education.

(b) A participating county office of education shall give first priority to applicants for grants that submit proposals containing a component to train teams of school staff, administrators, and pupils who will ensure continuation of training in conflict resolution techniques after funding from the grant has ceased. A participating county office of education shall select any school within the jurisdiction of that county office of education to be a grant recipient based upon the following criteria:

(1) It demonstrates that violence at the schoolsite is a substantial and continuing problem for pupils and staff.

(2) It proposes ongoing training for pupils, school staff, and administrators in conflict resolution through the use of mediation.

(3) It proposes to expand existing after school opportunities as an alternative to delinquent behavior.

(4) The school staff and administrators at the school agree to participate in conflict mediation training.

(5) It submits a proposal in which monetary and in-kind support in addition to the funds provided through a grant is identified to promote the success of a conflict resolution project.

(6) It develops a plan, and demonstrates the ability, to share the successful components of its conflict resolution and school violence reduction program with other schools and school districts.

(c) Grant recipients shall be selected and notified no later than May 1, 1995, and no later than May 1 of each succeeding year through the 1996–97 school year.

32234. Conflict resolution projects funded pursuant to grants under this article shall include, but not be limited to, all of the following:

(a) A component to teach pupils the skills necessary to reduce violence, including communication skills, anger management, bias reduction, and mediation skills.

(b) A component to train school staff and administrators to implement and support conflict resolution techniques.

(c) A component to make training in conflict resolution techniques available to parents or guardians of pupils or to community-based organizations that support the school.

32235. (a) There is hereby established in the General Fund a School Safety Account, which is hereby continuously appropriated for purposes of this article. Funds made available pursuant to Section 11489 of the Health and Safety Code, as amended by Chapter 314 of the Statutes of 1994, shall be deposited in the School Safety Account. The Superintendent of Public Instruction shall allocate funds in the

School Safety Account in the following manner:

(1) For the 1995-96 fiscal year, an amount not to exceed five million dollars (\$5,000,000) for distribution in accordance with subdivision (b) to participating county offices of education for purposes of awarding grants pursuant to this article.

(2) For the 1996-97 fiscal year, an amount not to exceed five million dollars (\$5,000,000) for distribution in accordance with subdivision (b) to participating county offices of education for purposes of awarding grants pursuant to this article.

(3) An amount not to exceed one hundred thousand dollars (\$100,000) for the contract for the evaluation to be conducted pursuant to Section 32237.

(b) The superintendent shall retain 2 percent of the money to be allocated to county offices of education for the purposes specified in paragraph (2) of subdivision (d), and shall distribute the funds specified in paragraphs (1) and (2) of subdivision (a) as follows:

(1) Divide the total funds available for distribution pursuant to paragraph (1) and (2) of subdivision (a) in each applicable fiscal year by the total statewide number of units of average daily attendance for kindergarten and grades 1 to 12, inclusive, for the applicable fiscal year.

(2) Multiply the amount specified in paragraph (1) of this subdivision by the total number of units of average daily attendance generated by schools within the jurisdiction of the participating county offices of education for the applicable fiscal year.

(3) Distribute the product specified in paragraph (2) of this subdivision to each participating county office of education.

(c) The superintendent may allocate funds to any consortium of county offices of education participating in the grant program pursuant to subdivision (b) of Section 32230. The amount allocated to the consortium shall be the total amount that would have been distributed to each individual county office of education in the consortium in the applicable fiscal year pursuant to subdivision (b) had that office received a grant on an individual basis.

(d) (1) Any participating county office of education or consortium of county offices of education may utilize no more than 5 percent of the funds received by that county office of education or consortium pursuant to this section for expenses associated with the implementation of the grant program.

(2) The State Department of Education may utilize no more than 2 percent of the funds appropriated from the School Safety Account for the purposes of this article for evaluation of the Conflict Resolution and School Violence Reduction Program and for the dissemination of information regarding successful programs that are developed and implemented by participating county offices of education to other county offices of education.

32237. (a) The Superintendent of Public Instruction shall contract for an ongoing independent evaluation of the effectiveness of conflict resolution projects funded by grants pursuant to this

article. The evaluation shall determine the effectiveness of each project based upon all of the following criteria:

(1) A reduction in incidents of school violence at the schoolsite where the conflict resolution project is conducted.

(2) A reduction in the number of suspensions or expulsions of pupils for violent behavior at the schoolsite where the conflict resolution project is conducted.

(3) A comparison of incidents of school violence with schools of similar size and pupils of similar socioeconomic background as the schoolsite where the conflict resolution project is conducted.

(b) On or before June 1, 1996, the superintendent shall submit to the Legislature an interim evaluation report and on or before June 1, 1997, the superintendent shall submit to the Legislature a final evaluation report, both of which shall be based on the ongoing evaluation made pursuant to subdivision (a).

32239. This article shall remain in effect only until January 1, 1998, and shall have no force or effect on and after that date, unless a later enacted statute, which becomes effective on or before January 1, 1998, deletes or extends that date.

CHAPTER 1023

An act to amend Sections 48260, 48260.5, and 48264 of, and to add Section 48264.5 to, the Education Code, to amend Section 13202.7 of the Vehicle Code, and to amend Sections 601 and 601.2 of, and to repeal Section 601.1 of, the Welfare and Institutions Code, relating to truancy.

[Approved by Governor September 28, 1994. Filed with Secretary of State September 29, 1994.]

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

SECTION 1. Section 48260 of the Education Code is amended to read:

48260. Any pupil subject to compulsory full-time education or to compulsory continuation education who is absent from school without valid excuse three days in one school year or tardy without valid excuse in excess of 30 minutes on each of more than three days in one school year is a truant and shall be reported to the attendance supervisor or to the superintendent of the school district.

SEC. 2. Section 48260.5 of the Education Code is amended to read:

48260.5. Upon a pupil's initial classification as a truant, the school district shall notify the pupil's parent or guardian, by first-class mail or other reasonable means, of the following:

(a) That the pupil is truant.

(b) That the parent or guardian is obligated to compel the

attendance of the pupil at school.

(c) That parents or guardians who fail to meet this obligation may be guilty of an infraction and subject to prosecution pursuant to Article 6 (commencing with Section 48290) of Chapter 2 of Part 27.

(d) That alternative educational programs are available in the district.

(e) That the parent or guardian has the right to meet with appropriate school personnel to discuss solutions to the pupil's truancy.

(f) That the pupil may be subject to prosecution under Section 48264.

(g) That the pupil may be subject to suspension, restriction, or delay of the pupil's driving privilege pursuant to Section 13202.7 of the Vehicle Code.

(h) That it is recommended that the parent or guardian accompany the pupil to school and attend classes with the pupil for one day.

SEC. 3. Section 48264 of the Education Code is amended to read: 48264. The attendance supervisor or his or her designee, a peace officer, a school administrator or his or her designee, or a probation officer may arrest or assume temporary custody, during school hours, of any minor subject to compulsory full-time education or to compulsory continuation education found away from his or her home and who is absent from school without valid excuse within the county, city, or city and county, or school district.

SEC. 4. Section 48264.5 is added to the Education Code, to read: 48264.5. Any minor who is a truant pursuant to Section 48260 is subject to the following:

(a) Upon the first truancy, the pupil may be personally given a written warning by any peace officer specified in Section 830.1 of the Penal Code. A record of the written warning may be kept at the school for a period of not less than two years, or until the pupil graduates, or transfers, from that school. If the pupil transfers, the record may be forwarded to any school receiving the pupil's school records. A record of the written warning may be maintained by the law enforcement agency in accordance with that law enforcement agency's policies and procedures.

(b) Upon the second truancy within the same school year, the pupil may be assigned by the school to an afterschool or weekend study program located within the same county as the pupil's school. If the pupil fails to successfully complete the assigned study program, the pupil shall be subject to subdivision (c).

(c) Upon the third truancy within the same school year, the pupil may be referred to, and required to attend, an attendance review board or a truancy mediation program pursuant to Section 48263 or pursuant to Section 601.3 of the Welfare and Institutions Code. If the district does not have a truancy mediation program, the pupil may be required to attend a comparable program deemed acceptable by the school district's attendance supervisor. If the pupil does not

successfully complete the truancy mediation program or other similar program, the pupil shall be subject to subdivision (d).

(d) Upon the fourth truancy within the same school year, the pupil shall be classified a habitual truant, as defined in Section 48262, and shall be within the jurisdiction of the juvenile court which may adjudge such pupil to be a ward of the court pursuant to Section 601 of the Welfare and Institutions Code. If the pupil is adjudged a ward of the court, the pupil shall be required to do one or more of the following:

(1) Performance at court-approved community services sponsored by either a public or private nonprofit agency for not less than 20 hours but not more than 40 hours over a period not to exceed 90 days, during a time other than the pupil's hours of school attendance or employment. The probation officer shall report to the court the failure of the pupil to comply with this paragraph.

(2) Payment of a fine by the pupil of not more than one hundred dollars (\$100) for which a parent or guardian of the pupil may be jointly liable.

(3) Attendance of a court-approved truancy prevention program.

(4) Suspension or revocation of driving privileges pursuant to Section 13202.7 of the Vehicle Code. This subdivision shall apply only to a pupil who has attended a school attendance review board program, a program operated by a probation department acting as a school attendance review board, or a truancy mediation program pursuant to subdivision (c).

SEC. 5. Section 13202.7 of the Vehicle Code is amended to read:

13202.7. (a) Any minor under the age of 18 years, but 13 years of age or older, who is an habitual truant within the meaning of Section 48262 of the Education Code, or who is adjudged by the juvenile court to be a ward of the court under subdivision (b) of Section 601 of the Welfare and Institutions Code, may have his or her driving privilege suspended for one year by the court. If the minor does not yet have the privilege to drive, the court may order the department to delay issuing the privilege to drive for one year subsequent to the time the person becomes legally eligible to drive. However, if there is no further truancy in the 12-month period, the court, upon petition of the person affected, may modify the order imposing the delay of the driving privilege. For each successive time the minor is found to be an habitual truant, the court may suspend the minor's driving privilege for a minor possessing a driver's license, or delay the eligibility for the driving privilege for those not in possession of a driver's license, for one additional year.

(b) Whenever the juvenile court suspends a minor's driving privilege pursuant to subdivision (a), the court may require all driver's licenses held by the minor to be surrendered to the court. The court shall, within 10 days following the surrender of the license, transmit a certified abstract of the findings, together with any driver's licenses surrendered, to the department.

(c) When the juvenile court is considering suspending or delaying

a minor's driving privilege pursuant to subdivision (a), the court shall consider whether a personal or family hardship exists that requires the minor to have a driver's license for his or her own, or a member of his or her family's, employment or for medically related purposes.

(d) The suspension, restriction, or delay of a minor's driving privilege pursuant to this section shall be in addition to any other penalty imposed by law on the minor.

SEC. 6. Section 601 of the Welfare and Institutions Code is amended to read:

601. (a) Any person under the age of 18 years who persistently or habitually refuses to obey the reasonable and proper orders or directions of his or her parents, guardian, or custodian, or who is beyond the control of that person, or who is under the age of 18 years when he or she violated any ordinance of any city or county of this state establishing a curfew based solely on age is within the jurisdiction of the juvenile court which may adjudge the minor to be a ward of the court.

(b) If a minor has four or more trancies within one school year as defined in Section 48260 of the Education Code or a school attendance review board determines that the available public and private services are insufficient or inappropriate to correct the habitual truancy of the minor, or to correct the minor's persistent or habitual refusal to obey the reasonable and proper orders or directions of school authorities, or if the minor fails to respond to directives of a school attendance review board or to services provided, the minor is then within the jurisdiction of the juvenile court which may adjudge the minor to be a ward of the court. However, it is the intent of the Legislature that no minor who is adjudged a ward of the court pursuant solely to this subdivision shall be removed from the custody of the parent or guardian except during school hours.

(c) To the extent practically feasible, a minor who is adjudged a ward of the court pursuant to this section shall not be permitted to come into or remain in contact with any minor ordered to participate in a truancy program, or the equivalent thereof, pursuant to Section 602.

(d) Any peace officer or school administrator may issue a notice to appear to a minor who is within the jurisdiction of the juvenile court pursuant to this section.

SEC. 7. Section 601.1 of the Welfare and Institutions Code is repealed.

SEC. 8. Section 601.2 of the Welfare and Institutions Code is amended to read:

601.2. In the event that a parent or guardian or person in charge of a minor described in Section 48264.5 of the Education Code fails to respond to directives of the school attendance review board or to services offered on behalf of the minor, the school attendance review board shall direct that the minor be referred to the probation

department or to the county welfare department under Section 300, and the school attendance review board may require the school district to file a complaint against the parent, guardian, or other person in charge of such minor as provided in Section 48291 or Section 48454 of the Education Code.

SEC. 9. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1024

An act to amend Sections 48260.6, 48263, and 48263.5 of the Education Code, and to amend Sections 601 and 601.3 of, and to amend and repeal Section 601.1 of, the Welfare and Institutions Code, relating to juveniles.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 48260.6 of the Education Code is amended to read:

48260.6. (a) In any county which has not established a county school attendance review board pursuant to Section 48321, the school district may notify the district attorney or the probation officer, or both, of the county in which the school district is located, by first-class mail or other reasonable means, of the following if the district attorney or the probation officer has elected to participate in the truancy mediation program described in subdivision (d):

(1) The name of each pupil who has been classified as a truant.
(2) The name and address of the parent or guardian of each pupil who has been classified as a truant.

(b) The school district may also notify the district attorney or the probation officer, or both, as to whether the pupil continues to be classified as a truant after the parents have been notified pursuant to subdivision (a) of Section 48260.5.

(c) In any county which has not established a county school attendance review board, the district attorney or the probation

officer of the county in which the school district is located may notify the parents or guardians of every truant, by first-class mail or other reasonable means, that they may be subject to prosecution pursuant to Article 6 (commencing with Section 48290) of Chapter 2 of Part 27 for failure to compel the attendance of the pupil at school.

(d) If the district attorney or the probation officer, or both, are notified by a school district that a child continues to be classified as a truant after the parents or guardians have been notified pursuant to subdivision (a) of Section 48260.5, the district attorney or the probation officer in any county which has not established a county school attendance review board may request the parents or guardians and the child to attend a meeting in the district attorney's office or at the probation department pursuant to Section 601.3 of the Welfare and Institutions Code to discuss the possible legal consequences of the child's truancy. Notice of the meeting shall be given pursuant to Section 601.3 of the Welfare and Institutions Code.

SEC. 2. Section 48263 of the Education Code is amended to read:

48263. If any minor pupil in any district of a county is an habitual truant, or is irregular in attendance at school, as defined in this article, or is habitually insubordinate or disorderly during attendance at school, the pupil may be referred to a school attendance review board or to the probation department for services if the probation department has elected to receive these referrals. The supervisor of attendance, or any other persons the governing board of the school district or county may designate, making the referral shall notify the minor and parents or guardians of the minor, in writing, of the name and address of the board or probation department to which the matter has been referred and of the reason for the referral. The notice shall indicate that the pupil and parents or guardians of the pupil will be required, along with the referring person, to meet with the school attendance review board or probation officer to consider a proper disposition of the referral.

If the school attendance review board or probation officer determines that available community services can resolve the problem of the truant or insubordinate pupil, then the board or probation officer shall direct the pupil or the pupil's parents or guardians, or both, to make use of those community services. The school attendance review board or probation officer may require, at any time that it determines proper, the pupil or parents or guardians of the pupil, or both, to furnish satisfactory evidence of participation in the available community services.

If the school attendance review board or probation officer determines that available community services cannot resolve the problem of the truant or insubordinate pupil or if the pupil or the parents or guardians of the pupil, or both, have failed to respond to directives of the school attendance review board or probation officer or to services provided, the school attendance review board may, pursuant to Section 48263.5, notify the district attorney or the probation officer, or both, of the county in which the school district

is located, or the probation officer may, pursuant to Section 48263.5, notify the district attorney, if the district attorney or the probation officer has elected to participate in the truancy mediation program described in that section. If the district attorney or the probation officer has not elected to participate in the truancy mediation program described in Section 48263.5, the school attendance review board or probation officer may direct the county superintendent of schools to, and, thereupon, the county superintendent of schools shall, request a petition on behalf of the pupil in the juvenile court of the county. Upon presentation of a petition on behalf of a pupil, the juvenile court of the county shall hear all evidence relating to the petition. The school attendance review board or the probation officer shall submit to the juvenile court documentation of efforts to secure attendance as well as its recommendations on what action the juvenile court shall take in order to bring about a proper disposition of the case.

In any county which has not established a school attendance review board, if the school district determines that available community resources cannot resolve the problem of the truant or insubordinate pupil, or if the pupil or the pupil's parents or guardians, or both, have failed to respond to the directives of the school district or the services provided, the school district, pursuant to Section 48260.6, may notify the district attorney or the probation officer, or both, of the county in which the school district is located, if the district attorney or the probation officer has elected to participate in the truancy mediation program described in Section 48260.6.

SEC. 3. Section 48263.5 of the Education Code is amended to read:

48263.5. (a) In any county which has established a county school attendance review board pursuant to Section 48321, the school attendance review board may notify the district attorney or the probation officer, or both, of the county in which the school district is located, or the probation officer may notify the district attorney, by first-class mail or other reasonable means, of the following if the district attorney or the probation officer has elected to participate in the truancy mediation program described in subdivision (b):

(1) The name of each pupil who has been classified as a truant and concerning whom the school attendance review board or the probation officer has determined:

(A) That available community services cannot resolve the truancy or insubordination problem.

(B) That the pupil or the parents or guardians of the pupil, or both, have failed to respond to directives of the school attendance review board or probation officer or to services provided.

(2) The name and address of the parent or guardian of each pupil described in paragraph (1).

(b) Upon receipt of notification provided pursuant to subdivision (a), the district attorney or the probation officer may notify the

parents or guardians of each pupil concerning whom notification has been received, by first-class mail or other reasonable means, that they may be subject to prosecution pursuant to Article 6 (commencing with Section 48290) of Chapter 2 of Part 27 for failure to compel the attendance of the pupil at school. The district attorney or the probation officer may also request the parents or guardians and the child to attend a meeting in the district attorney's office or at the probation department pursuant to Section 601.3 of the Welfare and Institutions Code to discuss the possible legal consequences of the child's truancy. Notice of the meeting shall be given pursuant to Section 601.3 of the Welfare and Institutions Code.

SEC. 4. Section 601 of the Welfare and Institutions Code is amended to read:

601. (a) Any person under the age of 18 years who persistently or habitually refuses to obey the reasonable and proper orders or directions of his or her parents, guardian, or custodian, or who is beyond the control of that person, or who is under the age of 18 years when he or she violated any ordinance of any city or county of this state establishing a curfew based solely on age is within the jurisdiction of the juvenile court which may adjudge the minor to be a ward of the court.

(b) If a school attendance review board or probation officer determines that the available public and private services are insufficient or inappropriate to correct the habitual truancy of the minor, or to correct the minor's persistent or habitual refusal to obey the reasonable and proper orders or directions of school authorities, or if the minor fails to respond to directives of a school attendance review board or probation officer or to services provided, the minor is then within the jurisdiction of the juvenile court which may adjudge the minor to be a ward of the court; provided, that it is the intent of the Legislature that no minor who is adjudged a ward of the court pursuant solely to this subdivision shall be removed from the custody of the parent or guardian except during school hours.

SEC. 4.1. Section 601 of the Welfare and Institutions Code is amended to read:

601. (a) Any person under the age of 18 years who persistently or habitually refuses to obey the reasonable and proper orders or directions of his or her parents, guardian, or custodian, or who is beyond the control of that person, or who is under the age of 18 years when he or she violated any ordinance of any city or county of this state establishing a curfew based solely on age is within the jurisdiction of the juvenile court which may adjudge the minor to be a ward of the court.

(b) If a minor has four or more trancies within one school year as defined in Section 48260 of the Education Code, and a school attendance review board or probation officer determines that the available public and private services are insufficient or inappropriate to correct the habitual truancy of the minor, or to correct the minor's persistent or habitual refusal to obey the reasonable and proper

orders or directions of school authorities, or if the minor fails to respond to directives of a school attendance review board or probation officer or to services provided, the minor is then within the jurisdiction of the juvenile court which may adjudge the minor to be a ward of the court; provided, that it is the intent of the Legislature that no minor who is adjudged a ward of the court pursuant solely to this subdivision shall be removed from the custody of the parent or guardian except during school hours.

(c) To the extent practically feasible, a minor who is adjudged a ward of the court pursuant to this section shall not be permitted to come into or remain in contact with any minor ordered to participate in a truancy program, or the equivalent thereof, pursuant to Section 602.

(d) Any peace officer or school administrator may issue a notice to appear to a minor who is within the jurisdiction of the juvenile court pursuant to this section.

SEC. 4.2. Section 601 of the Welfare and Institutions Code is amended to read:

601. (a) Any person under the age of 18 years who persistently or habitually refuses to obey the reasonable and proper orders or directions of his or her parents, guardian, or custodian, or who is beyond the control of that person, or who is under the age of 18 years when he or she violated any ordinance of any city or county of this state establishing a curfew based solely on age is within the jurisdiction of the juvenile court which may adjudge the minor to be a ward of the court.

(b) If a minor has four or more truanancies within one school year as defined in Section 48260 of the Education Code or a school attendance review board or probation officer determines that the available public and private services are insufficient or inappropriate to correct the habitual truancy of the minor, or to correct the minor's persistent or habitual refusal to obey the reasonable and proper orders or directions of school authorities, or if the minor fails to respond to directives of a school attendance review board or probation officer or to services provided, the minor is then within the jurisdiction of the juvenile court which may adjudge the minor to be a ward of the court. However, it is the intent of the Legislature that no minor who is adjudged a ward of the court pursuant solely to this subdivision shall be removed from the custody of the parent or guardian except during school hours.

(c) To the extent practically feasible, a minor who is adjudged a ward of the court pursuant to this section shall not be permitted to come into or remain in contact with any minor ordered to participate in a truancy program, or the equivalent thereof, pursuant to Section 602.

(d) Any peace officer or school administrator may issue a notice to appear to a minor who is within the jurisdiction of the juvenile court pursuant to this section.

SEC. 5. Section 601.1 of the Welfare and Institutions Code is

amended to read:

601.1. (a) Any person under the age of 18 years who persistently or habitually refuses to obey the reasonable and proper orders or directions of school authorities, and is thus beyond the control of those authorities, or who is a habitual truant from school within the meaning of any law of this state, shall, prior to any referral to the juvenile court of the county, be referred to a school attendance review board or to the probation department pursuant to Section 48263 of the Education Code, or to a truancy mediation program pursuant to Section 601.3 of this code, or to both a school attendance review board or the probation department and a truancy mediation program if that program has been established in the county.

(b) In addition to any other orders authorized by law, when, after an initial referral as required by subdivision (a), a minor is adjudged a ward of the court on the ground that he or she is a person described in Section 601 by reason of habitual truancy, the court may order the minor to participate in a specified community service or educational program sponsored by either a public or private agency. The minor's participation in the program shall be limited to nonschool hours. The court may order the probation officer to pick up and deliver the minor to the program designated by the court on the days that the minor is ordered to participate in the program.

To the extent practically feasible, such a minor shall not be permitted to come or remain in contact with minors ordered to participate in the program as a result of conduct described in Section 602. In no case may the court order that the minor be detained in any program overnight.

SEC. 5.5. Section 601.1 of the Welfare and Institutions Code is repealed.

SEC. 6. Section 601.3 of the Welfare and Institutions Code is amended to read:

601.3. (a) If the district attorney or the probation officer receives notice from the school district pursuant to subdivision (b) of Section 48260.6 of the Education Code that a minor continues to be classified as a truant after the parents or guardians have been notified pursuant to subdivision (a) of Section 48260.5 of the Education Code, or if the district attorney or the probation officer receives notice from the school attendance review board, or the district attorney receives notice from the probation officer, pursuant to subdivision (a) of Section 48263.5 of the Education Code that a minor continues to be classified as a truant after review and counseling by the school attendance review board or probation officer, the district attorney or the probation officer, or both, may request the parents or guardians and the child to attend a meeting in the district attorney's office or at the probation department to discuss the possible legal consequences of the minor's truancy.

(b) Notice of a meeting to be held pursuant to this section shall contain all of the following:

(1) The name and address of the person to whom the notice is

directed.

- (2) The date, time, and place of the meeting.
- (3) The name of the minor classified as a truant.
- (4) The section pursuant to which the meeting is requested.
- (5) Notice that the district attorney may file a criminal complaint against the parents or guardians pursuant to Section 48293 of the Education Code for failure to compel the attendance of the minor at school.

(c) Notice of a meeting to be held pursuant to this section shall be served at least five days prior to the meeting on each person required to attend the meeting. Service shall be made personally or by certified mail with return receipt requested.

(d) At the commencement of the meeting authorized by this section, the district attorney or the probation officer shall advise the parents or guardians and the child that any statements they make could be used against them in subsequent court proceedings.

(e) Upon completion of the meeting authorized by this section, the probation officer or the district attorney, after consultation with the probation officer, may file a petition pursuant to Section 601 if the district attorney or the probation officer determines that available community resources cannot resolve the truancy problem, or if the pupil or the parents or guardians of the pupil, or both, have failed to respond to services provided or to the directives of the school, the school attendance review board, the probation officer, or the district attorney.

(f) The truancy mediation program authorized by this section may be established by the district attorney or by the probation officer. The district attorney and the probation officer shall coordinate their efforts and shall cooperate in determining which office is best able to operate a truancy mediation program in their county pursuant to this section.

SEC. 7. (a) Section 4.1 of this bill incorporates amendments to Section 601 of the Welfare and Institutions Code proposed by both this bill and AB 55 of the First Extraordinary Session of the Legislature. It shall only become operative if (1) both bills are enacted and become effective, (2) each bill amends Section 601 of the Welfare and Institutions Code, (3) SB 1728 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 55, in which case one of the following alternatives shall be applicable:

(A) If this bill becomes operative before AB 55, Section 4 of this bill shall be operative until the operative date of AB 55, at which time Section 4.1 of this bill shall become operative.

(B) If this bill becomes operative after AB 55, Section 601 of the Welfare and Institutions Code, as amended by AB 55, shall remain operative only until the operative date of this bill, at which time Section 4.1 of this bill shall become operative, and Section 4 of this bill shall not become operative.

(b) Section 4.2 of this bill incorporates amendments to Section 601

of the Welfare and Institutions Code proposed by both this bill and SB 1728. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1995, (2) each bill amends Section 601 of the Welfare and Institutions Code, (3) AB 55 of the First Extraordinary Session of the Legislature is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1728 in which case Sections 4, and 4.1 of this bill shall not become operative.

SEC. 8. Section 5.5 of this bill shall only become operative if this bill and either SB 1728, or AB 55 of the First Extraordinary Session of the Legislature, or all three bills, are enacted and this bill is enacted last, in which case Section 5 of this bill shall not become operative.

SEC. 9. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1025

An act to amend Section 97.09 of the Revenue and Taxation Code, relating to property tax revenue allocations.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 97.09 of the Revenue and Taxation Code is amended to read:

97.09. Notwithstanding any other provision of this chapter, in the County of Santa Cruz, the auditor shall, for the 1993-94, 1994-95, 1995-96, and 1996-97 fiscal years, inclusive, only, deposit those property tax revenues that would otherwise be allocated to enterprise special districts in a Supplemental Allocation Fund. The county board of supervisors shall allocate moneys in the fund for the 1993-94, 1994-95, 1995-96, and 1996-97 fiscal years, inclusive, only to either enterprise special districts or the County Library Fund.

SEC. 2. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within

the meaning of Section 16 of Article IV of the California Constitution because of the unique impacts being suffered by the County of Santa Cruz in providing essential local library services as a result of the application of property tax revenue allocation requirements.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act is in accordance with the request of a local agency or school district which desired legislative authority to carry out the program specified in this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1026

An act to add Title 2.96 (commencing with Section 1812.620) to Part 4 of Division 3 of the Civil Code, relating to sales.

[Approved by Governor September 28, 1994. Filed with Secretary of State September 29, 1994.]

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

SECTION 1. Title 2.96 (commencing with Section 1812.620) is added to Part 4 of Division 3 of the Civil Code, to read:

TITLE 2.96. CALIFORNIA RENTAL-PURCHASE ACT

1812.620. This title shall be known and may be cited as the Karnette Rental-Purchase Act.

1812.621. The Legislature hereby finds and declares that consumers enter into rental-purchase contracts that do not adequately disclose the actual terms and cost of the transaction or the consumer's liability for certain breaches of the contract, and that contain unfair provisions, including unfair terms related to fees and charges, the exercise or the termination of purchase option rights, property loss and damage, and the repair or replacement of improperly functioning rental property.

It is, therefore, the intent of the Legislature in enacting this title to ensure that consumers are protected from misrepresentations and unfair dealings by ensuring that consumers are adequately informed of all relevant terms, including the cash price, periodic payments, total purchase price, and other applicable charges or fees, before they enter into rental-purchase contracts.

It is further the intent of the Legislature to (a) prohibit unfair or unconscionable conduct toward consumers in connection with rental-purchase transactions, (b) prohibit unfair contract terms, including unreasonable charges, (c) prevent the forfeiture of

contract rights by consumers, (d) provide a right of reinstatement and a reasonable formula for the exercise of purchase option rights under a rental-purchase contract, (e) provide reasonable requirements for the servicing, repair, and replacement of improperly functioning rental property, and (f) cover rental-purchase transactions under existing laws, including laws governing debt collection, cosigners, home solicitation contracts, and warranties. This title shall be liberally construed to achieve its remedial objectives.

1812.622. As used in this title:

(a) "Advertisement" means a commercial message in any medium that directly or indirectly solicits or promotes one or more specific rental-purchase transactions, excluding instore merchandising aids. This definition does not limit or alter the application of other laws, including Chapter 5 (commencing with Section 17200) of Part 2 and Chapter 1 (commencing with Section 17500) of Part 3, of Division 7 of the Business and Professions Code, to rental-purchase transactions.

(b) "Consumer" means a natural person or persons who rent or lease personal property from a lessor pursuant to a rental-purchase agreement or to whom a lessor offers personal property for use pursuant to a rental-purchase agreement.

(c) "Lessor" means any person or entity that provides or offers to provide personal property for use by consumers pursuant to a rental-purchase agreement.

(d) "Rental-purchase agreement," except as otherwise provided in this subdivision, means an agreement between a lessor and a consumer pursuant to which the lessor rents or leases, for valuable consideration, personal property for use by a consumer for personal, family, or household purposes for an initial term not exceeding four months that may be renewed or otherwise extended, if under the terms of the agreement the consumer acquires an option or other legally enforceable right to become owner of the property. A rental-purchase agreement is a lease subject to Title 1.5 (commencing with Section 1750) and Title 1.7 (commencing with Section 1790).

"Rental-purchase agreement" shall not be construed to be, nor be governed by, and shall not apply to, any of the following:

- (1) A retail installment sale, as defined in Section 1802.5.
- (2) A retail installment contract, as defined in Section 1802.6.
- (3) A retail installment account, as defined in Section 1802.7.
- (4) A lease or agreement that constitutes a security interest, as defined in Section 1201 of the Commercial Code.
- (5) A consumer credit contract, as defined in Section 1799.90.

(e) "Cash price" means the price at which retail sellers are selling and retail buyers are buying the same or similar property for cash in the same trade area in which the lessor's place of business is located. Cash price may be evidenced as provided in subdivision (b) of Section 1812.644.

(f) "Cost of rental" means the difference between the total of all periodic payments necessary to acquire ownership under the rental-purchase agreement and the cash price of the rental property that is subject to the rental-purchase agreement.

(g) "Fee" means any payment, charge, fee, cost, or expense, however denominated, other than a rental payment.

1812.623. (a) Every rental-purchase agreement shall be contained in a single document which shall set forth all of the agreements of the lessor and the consumer with respect to the rights and obligations of each party. Every rental-purchase agreement shall be written in at least 10-point type in the same language as principally used in any oral sales presentation or negotiations leading to the execution of the agreement, and shall clearly and conspicuously disclose all of the following:

(1) The names of the lessor and the consumer, the lessor's business address and telephone number, the consumer's address, the date on which the agreement is executed, and a description of the property sufficient to identify it.

(2) Whether the property subject to the rental-purchase agreement is new or used. If the property is new, the lessor shall disclose the model year or, if the model year is not known by the lessor, the date of the lessor's acquisition of the property. If the property is used, the age or the model year shall be disclosed if known by the lessor.

(3) The minimum period for which the consumer is obligated under the rental-purchase agreement; the duration of the rental-purchase agreement if all regularly scheduled periodic payments are made, designated as the "rental period"; and the amount of each periodic payment.

(4) The total number and the total amount of periodic payments necessary to acquire ownership of the property if the renter makes all regularly scheduled periodic payments.

(5) The cash price of the property subject to the rental purchase agreement.

(6) The cost of rental.

(7) The amount and purpose of any other payment or fee permitted by this title in addition to those specified pursuant to paragraphs (3) and (4), including any late payment fee.

(8) A statement that the total number and dollar amount of payments necessary to acquire ownership of the rental property disclosed under paragraph (4) does not include other fees permitted by this title, such as late payment fees, and that the consumer should read the rental-purchase agreement for an explanation of any applicable additional fees.

(9) Whether the consumer is liable for loss or damage to the rental property and, if so, the maximum amount for which the consumer may be liable as provided in subdivision (a) of Section 1812.627.

(10) The following notice:

NOTICE

You are renting this property. You will not own it until you make all of the regularly scheduled payments or you use the early purchase option.

You do not have the right to keep the property if you do not make required payments or do not use the early purchase option. If you miss a payment, the lessor can repossess the property, but, you may have the right to the return of the same or similar property.

See the contract for an explanation of your rights.

(11) A description of the consumer's right to acquire ownership of the property before the end of the rental period as provided in subdivision (a) of Section 1812.632.

(12) A description of the consumer's reinstatement rights as provided in Section 1812.631.

(13) If warranty coverage is transferable to a consumer who acquires ownership of the property, a statement that the unexpired portion of all warranties provided by the manufacturer, distributor, or seller of the property that is the subject of the rental-purchase agreement will be transferred by the lessor to the consumer at the time the consumer acquires ownership of the property from the lessor.

(14) A description of the lessor's obligation to maintain the rental property and to repair or replace rental property that is not operating properly, as provided in Section 1812.633.

(b) (1) The disclosures required by paragraphs (3), (4), (9), and (10) of subdivision (a) shall be printed in at least 10-point boldface type or capital letters if typed and shall be grouped together in a box formed by a heavy line in the following form:

<p>TOTAL OF PAYMENTS</p> <p>\$</p> <p>You must pay this amount to own the property if you make all the regular payments.</p> <p>You can buy the property for less under the early purchase option.</p>	<p>COST OF RENTAL</p> <p>\$</p> <p>Amount over cash price you will pay if you make all regular payments.</p>	<p>CASH PRICE</p> <p>\$</p> <p>Property available at this price for cash from retailers in this area.</p>	
	<p>AMOUNT OF EACH PAYMENT</p> <p>\$ per</p> <hr/> <p>(insert period)</p>	<p>NUMBER OF PAYMENTS</p>	<p>RENTAL PERIOD</p>

(2) The box described in paragraph (1) shall appear immediately above the space reserved for the buyer's signature.

(c) The disclosures required by paragraphs (3), (4), (9), and (10) of subdivision (a) shall be grouped together in a box formed by a heavy line in the form prescribed in subdivision (b) and shall be clearly and conspicuously placed on a tag or sticker affixed to the property available for rental-purchase. If the property available for rental-purchase is not displayed at the lessor's place of business but appears in a photograph or catalog shown to consumers, a tag or sticker shall be affixed to the photograph of the property or catalog shown to consumers or shall be given to consumers. The disclosure required by paragraph (2) of subdivision (a) also shall be clearly and conspicuously placed on the tag or sticker.

(d) All disclosures required by this section shall be printed or typed in a color or shade that clearly contrasts with the background.

1812.624. (a) No rental-purchase agreement or any document that the lessor requests the consumer to sign shall contain any provision by which:

(1) A power of attorney is given to confess judgment in this state or to appoint the lessor, its agents, or its successors in interest as the consumer's agent in the collection of payments or the repossession of the rental property.

(2) The consumer authorizes the lessor or its agent to commit any breach of the peace in repossessing the rental property or to enter the consumer's dwelling or other premises without obtaining the consumer's consent at the time of entry.

(3) The consumer agrees to purchase from the lessor insurance or a liability waiver against loss or damage to the rental property.

(4) The consumer waives or agrees to waive any defense, counterclaim, or right the consumer may have against the lessor, its agent, or its successor in interest.

(5) The consumer is required to pay any fee in connection with reinstatement except as provided in Section 1812.631.

(6) The consumer is required to pay a fee in connection with the pickup of the property or the termination or rescission of the rental-purchase agreement.

(7) The consumer is required to pay any fee permitted by the rental-purchase agreement and this title that is not reasonable and actually incurred by the lessor. The lessor has the burden of proof to establish that a fee was reasonable and was an actual cost incurred by the lessor.

(8) The consumer is required to pay a downpayment, more than one advance periodic rental payment, or any other payment except a security deposit permitted under Section 1812.625.

(9) Except to the extent permitted by subdivision (b) of Section 1812.627, the consumer waives any rights under Sections 1928 or 1929.

(10) The consumer grants a security interest in any property.

(11) The consumer's liability for loss or damage to the property which is the subject of the rental-purchase agreement may exceed

the maximum described in subdivision (a) of Section 1812.627.

(12) Except under the circumstances authorized by subdivision (a) of Section 1812.632, the consumer is obligated to make any balloon payment. A "balloon payment" is any payment for the purchase or use of the rental property which is more than the regularly scheduled periodic payment amount.

(13) The consumer is required to pay a late payment fee that is not permitted under Section 1812.626.

(14) The consumer is required to pay both a late payment fee and a fee for the lessor's collection of a past due payment at the consumer's home or other location.

(15) The consumer waives or offers to waive any right or remedy against the lessor, its agents, or its successors in interest for any violation of this title or any other illegal act. This subdivision does not apply to a document executed in connection with the bona fide settlement, compromise, or release of a specific disputed claim.

(16) The lessor, its agents, or its successors in interest may commence any judicial action against the consumer in a county or judicial district other than the county or judicial district in which (1) the rental-purchase agreement was signed or (2) the consumer resides at the time the action is commenced.

(17) The amount stated as the cash price for any item of used personal property exceeds the cash price for the same or similar item of new personal property.

(b) Any provision in a rental-purchase agreement that is prohibited by this title shall be void and unenforceable and a violation of this title. A rental-purchase agreement which contains any provision that is prohibited by this title is voidable by the consumer.

1812.625. (a) The lessor may require the consumer to pay a security deposit, however denominated, in an amount not to exceed the equivalent of one month's rental only for the purpose of satisfying any lawful claim by the lessor, up to the maximum described in subdivision (a) of Section 1812.627, for those amounts reasonably necessary to pay for the loss of the property or the repair of damage, exclusive of reasonable wear and tear.

(b) Within two weeks after the lessor has taken possession of the property from the consumer, the lessor shall deliver to the consumer the amount of the security deposit less the amount, if any, deducted for loss or repair as permitted by this title. If any amount is deducted, the lessor shall also deliver to the consumer at that time a copy of an itemized statement indicating the amount of the security deposit, the amount deducted for loss or repair, and a detailed statement of the basis for the deduction. Delivery may be made by personal delivery or by first-class mail, postage prepaid.

1812.626. (a) The lessor may assess a late payment fee if the late payment fee is specified in the rental-purchase agreement and is permitted by this section.

(b) No fee shall be assessed for a payment which is less than three

days late if the rental-purchase agreement specifies weekly periodic payments.

(c) No fee shall be assessed for a payment which is less than 7 days late if the rental-purchase agreement specifies longer than weekly periodic payments.

(d) The lessor may assess more than one late fee for a particular late payment if the total of all fees assessed for that late payment does not exceed the maximum provided in subdivision (e). If the maximum total late payment fee has been imposed for a particular payment, no additional late payment fee may be imposed for that payment.

(e) The total of all fees for a late payment shall not exceed the lesser of 5 percent of the payment or five dollars (\$5), except that a minimum total fee of two dollars (\$2) may be required.

1812.627. (a) The consumer's liability for loss or damage to the property which is the subject of the rental-purchase agreement shall in no event exceed the lesser of (1) the fair market value at the time of the loss or damage or (2) the amount that would be necessary for the renter to exercise the purchase option provided in subdivision (a) of Section 1812.632.

(b) A lessor and a consumer may agree that the consumer may be liable for loss only up to the maximum amount described in subdivision (a) and only for one of the following:

(1) Loss caused by the consumer's negligent, reckless, or intentional acts.

(2) Loss caused by the theft of the property subject to the rental-purchase agreement unless one of the following is applicable:

(A) There is evidence of a burglary of the premises in which the property is located, such as physical evidence or an official report filed by the consumer with the police or other law enforcement agency.

(B) The consumer establishes by the preponderance of the evidence that the consumer has not committed or aided or abetted in the commission of the theft of the property.

1812.628. (a) In addition to the circumstances described in subdivision (a) of Section 1689.5, a rental-purchase agreement regardless of the amount involved shall be deemed a home solicitation contract or offer if the rental-purchase agreement has an initial term that exceeds one week and was made at other than appropriate trade premises, as defined in subdivision (b) of Section 1689.5.

(b) In addition to any other right of cancellation, a consumer has the right to cancel a rental-purchase agreement, without penalty or obligation if the consumer has not taken possession of the property.

1812.629. (a) Upon the request of the consumer, the lessor shall provide the information as required by subdivision (b) of Section 1812.623 in an exemplar of the rental-purchase agreement covering the property specified by the consumer and shall provide the consumer with a copy of the proposed rental-purchase agreement

prior to its execution. The consumer may take this copy from the lessor's premises.

(b) The lessor shall not obtain the consumer's signature to a rental-purchase agreement if it contains blank spaces to be filled in after it has been signed.

(c) A copy of the fully completed rental-purchase agreement and all other documents which the lessor requests the consumer to sign shall be given to the consumer at the time they are signed. The rental-purchase agreement shall not be enforceable against the consumer until the consumer has received a signed copy.

(d) The lessor shall deliver to the consumer a written receipt for each payment made by the consumer.

1812.630. (a) (1) Any advertisement of a rental-purchase agreement that states the amount of any payment shall clearly and conspicuously disclose all of the following in the same language used in the advertisement:

(A) That the agreement advertised is a rental-purchase agreement.

(B) That the property is used if that is the case.

(C) That ownership is not acquired until all of the payments necessary to acquire ownership have been made.

(D) The total amount and number of periodic payments necessary to acquire ownership.

(2) If more than one item is advertised in one print advertisement, the lessor may comply with paragraph (1) by clearly and conspicuously including in the advertisement a table or schedule sufficient in detail to permit determination of the total amount and number of periodic payments necessary to acquire ownership of the items advertised having the highest and lowest total amount of periodic payments necessary to acquire ownership.

(b) A lessor who advertises "no credit check" or otherwise states or implies that no inquiry will be made of a consumer's credit history or creditworthiness shall not (1) make any inquiry or request a consumer to complete any document concerning the consumer's assets or credit history, (2) obtain a consumer credit report as defined in subdivision (c) of Section 1785.3, or (3) obtain an investigative consumer report as defined in subdivision (c) of Section 1786.2.

1812.631. (a) A consumer may be deemed in default under the rental-purchase agreement if either of the following applies:

(1) The rental-purchase agreement requires weekly periodic rental payments and the consumer has not made a payment by the end of the seventh day after its due date.

(2) The rental-purchase agreement requires rental payments in periodic intervals longer than one week and the consumer has not made a payment by the end of the 10th day after its due date.

(b) A consumer who is in default under a rental-purchase agreement requiring weekly periodic rental payments may reinstate the rental-purchase agreement, without losing any rights or options

under that agreement, by paying all past due payments, including late payment fees, by the end of the seventh day after the due date of the payment in default if the consumer retains possession of the property and within one year after the due date of the payment in default if the consumer returns or tenders the property to the lessor, unless the lessor permits the consumer to retain the property during this period.

(c) A consumer who is in default under a rental-purchase agreement requiring rental payments in periodic intervals longer than one week may reinstate the rental-purchase agreement, without losing any rights or options under that agreement, by paying all past due payments, including late payment fees, by the end of the 10th day after the due date of the payment in default if the consumer retains possession of the property and within one year after the due date of the payment in default if the consumer returns or tenders the property to the lessor, unless the lessor permits the consumer to retain the property during this period.

(d) Upon reinstatement, the lessor shall provide the consumer with the same rental property, if available, or substitute property of the same brand, if available, and comparable quality, age, condition, and warranty coverage. If substitute property is provided, the lessor shall provide the lessee with the disclosures required in paragraph (2) of subdivision (a) of Section 1812.623.

(e) (1) Except as provided in paragraph (2), a lessor shall not deny a consumer the right of reinstatement provided in this section.

(2) This section does not apply to a consumer who has (A) stolen or unlawfully disposed of the property, (B) damaged the property as the result of the consumer's intentional, willful, wanton, or reckless conduct, or (C) defaulted in making payments as described in subdivision (a) on three consecutive occasions.

(3) If the lessor denies a consumer the right to reinstate pursuant to paragraph (2), the lessor has the burden of proof to establish that the denial was in good faith and was permitted under paragraph (2).

(f) Nothing in this subdivision prohibits the lessor from contacting the consumer provided that the lessor does not violate Section 1812.638.

1812.632. (a) The consumer has the right to acquire ownership of the property at any time after the initial payment by tendering to the lessor all past due payments and fees and an amount equal to the cash price stated in the rental-purchase agreement multiplied by a fraction that has as its numerator the number of periodic payments remaining under the agreement and that has as its denominator the total number of periodic payments.

(b) (1) The lessor shall provide the consumer with a written statement in the manner set forth in paragraph (2) below that clearly states (A) the total amount the consumer would have to pay to acquire ownership of the rental property if the consumer makes all regularly scheduled payments remaining under the rental-purchase agreement and (B) the total amount the consumer

would have to pay to acquire ownership of that property pursuant to subdivision (a).

(2) The statement required by paragraph (1) shall be personally delivered or sent by first-class mail to the consumer within seven days after (A) the date the consumer requests information about the amount required to purchase the rental property and (B) the date the consumer has made one-half of the total number of periodic payments required to acquire ownership of the rental property. The statement shall not be accompanied by any other written information including solicitations for other rental-purchase agreements.

(c) (1) Subject to paragraph (2), if any consumer who has signed the rental-purchase agreement has experienced an interruption or reduction of 25 percent or more of income due to involuntary job loss, involuntary reduced employment, illness, pregnancy, or disability after one-half or more of the total amount of the periodic payments necessary to acquire ownership under the agreement has been paid, the lessor shall reduce the amount of each periodic rental payment by (A) the percentage of the reduction in the consumer's income or (B) 50 percent, whichever is less, for the period during which the consumer's income is interrupted or reduced. If payments are reduced, the total dollar amount of payments necessary to acquire ownership shall not be increased, and the rights and duties of the lessor and the consumer shall not otherwise be affected. When the consumer's income is restored, the lessor may increase the amount of rental payments, but in no event shall rental payments exceed the originally scheduled amount of rental payments.

(2) Paragraph (1) applies only after the consumer provides to the lessor some evidence of the amount and cause of the interruption or reduction of income.

1812.633. (a) The lessor shall maintain the property subject to the rental-purchase agreement in good working order while the agreement is in effect without charging any fee to the consumer in addition to the regularly scheduled rental payments set forth in the rental-purchase agreement.

(b) By the end of the second business day following the day on which the lessor received notice from the consumer that the property is not operating properly, the lessor shall repair or replace the property without any fee to the consumer in addition to the regularly scheduled rental payments set forth in the rental-purchase agreement.

(c) If a repair or replacement cannot be immediately effected, the lessor shall temporarily substitute property of comparable quality and condition while repairs are being effected. If repairs cannot be completed to the reasonable satisfaction of the consumer within 30 days after the lessor receives notice from the consumer or within a longer period voluntarily agreed to by the consumer, the lessor shall permanently replace the property.

(d) All replacement property shall be the same brand, if available,

and comparable in quality, age, condition, and warranty coverage to the replaced property. If the same brand is not available, the brand of the replacement property shall be agreeable to the consumer.

(e) All of the consumer's and lessor's rights and obligations under the rental-purchase agreement and this title that applied to the property originally subject to the rental-purchase agreement shall apply to any replacement property.

(f) The consumer shall not be charged, or held liable for, any rental fee for any period of time during which the property that is the subject of the rental-purchase agreement or any property substituted for it pursuant to this section is not in good working order.

(g) This section does not apply to the repair of damage resulting from the consumer's intentional, willful, wanton, reckless, or negligent conduct. If the lessor does not comply with this section because of this subdivision, the lessor has the burden of proof to establish that noncompliance was justified and in good faith.

(h) A lessor shall not deliver to a consumer any property which the lessor knows or has reason to know is defective.

1812.634. When the lessor transfers ownership of the rental property, the lessor shall also transfer to the consumer the unexpired portion of any transferable warranties provided by the manufacturer, distributor, or seller of the rental property, and these warranties shall apply as if the consumer were the original purchaser of the goods.

1812.635. (a) A lessor shall not sell, or offer for sale, a service contract for the rental property if that service contract provides any coverage while the rental-purchase agreement is in effect.

(b) A lessor may sell, or offer for sale, a service contract providing coverage for the rental property after the consumer acquires ownership of that property, if both of the following conditions are satisfied:

(1) The lessor does not sell, or offer to sell, the service contract before (A) the consumer pays at least one-half of the total number of periodic payments necessary to acquire ownership of the property or (B) the consumer acquires ownership of the property, as provided in Section 1812.632, whichever occurs first.

(2) The lessor clearly and conspicuously indicates to the consumer in writing before the consumer's purchase of the service contract that the purchase is optional.

(c) If the consumer chooses to purchase a service contract before the expiration of the rental-purchase agreement and defaults or otherwise does not make all payments necessary to acquire ownership within the rental period specified in the agreement, the lessor shall refund all consideration paid for the service contract to the consumer within two weeks after the lessor has received the consumer's last rental payment. This subdivision does not limit or alter any of the consumer's cancellation or refund rights under the service contract or under other provisions of law.

(d) "Service contract" has the meaning set forth in subdivision (o) of Section 1791.

1812.636. (a) A consumer damaged by a violation of this title by a lessor is entitled to recover all of the following:

(1) Actual damages.
(2) Twenty-five percent of an amount equal to the total amount of payments required to obtain ownership if all payments were made under the rental-purchase agreement, but not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

(3) The consumer's reasonable attorney's fees and court costs.

(4) Exemplary damages, in the amount the court deems proper, for intentional or willful violations of this title.

(5) Equitable relief as the court deems proper.

(b) Where more than one consumer is a party to a rental-purchase agreement, the limitations of subdivision (a) shall apply to all those consumers in the aggregate, and no more than one recovery shall be permitted for each violation.

1812.637. (a) A lessor is not liable for a violation of this title if, before the 30th calendar day after the date the lessor discovers a bona fide error and before an action under this title is filed or written notice of the error is received by the lessor from the consumer, the lessor gives the consumer written notice of the error. "Bona fide error," as used in this section, means a violation that was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid that error. Examples of a bona fide error include clerical errors, calculation errors, errors due to unintentionally improper computer programming or data entry, and printing errors, but does not include an error of legal judgment with respect to a lessor's obligations under this title.

(b) Notwithstanding subdivision (a), if the lessor notifies the consumer of a bona fide error the correction of which would increase the amount of any payment, the lessor may not collect the amount of the increase, and the consumer may enforce the rental-purchase agreement as initially written.

(c) Notwithstanding subdivision (a), if the lessor notifies the consumer of a bona fide error the correction of which would lower the amount of any payment, the lessor shall immediately refund to the consumer the difference between what the consumer paid and what the consumer should have paid if the agreement were correct at the inception of the transaction.

1812.638. (a) A lessor shall not engage in any unfair, unlawful, or deceptive conduct, or make any untrue or misleading statement in connection with the collection of any payment owed by a consumer or the repossession of any property or attempt to collect or collect any payment in a manner that would be unlawful to collect a debt pursuant to Title 1.6C (commencing with Section 1788).

(b) All of the following apply to any communication by a lessor with any person other than the consumer for the purpose of

acquiring information about the location of a consumer or of any rental property:

(1) The lessor shall identify itself and state that the lessor is confirming or correcting location information concerning the consumer.

(2) The lessor shall not communicate with any person more than once unless requested to do so by the person or unless the lessor reasonably believes that the earlier response is erroneous or incomplete and that the person now has correct or complete location information.

(3) The lessor shall not communicate by postcard.

(4) The lessor shall not use any language or symbol on any envelope or in the contents of any communication that indicates that the communication relates to the collection of any payment or the recovery or repossession of rental property.

(5) The lessor shall not communicate with any person other than the consumer's attorney, after the lessor knows the consumer is represented by an attorney with regard to the rental-purchase agreement and has knowledge of, or can readily ascertain, the attorney's name and address, unless the attorney fails to respond within a reasonable period of time to communication from the lessor or unless the attorney consents to direct communication with the consumer.

(c) Without the prior consent of the consumer given directly to the lessor or the express permission of a court of competent jurisdiction, a lessor shall not communicate with a consumer in connection with the collection of any payment or the recovery or repossession of rental property at any of the following:

(1) The consumer's place of employment.

(2) Any unusual time or place or a time or place known or that should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a lessor shall assume that the convenient time for communicating with a consumer is after 8 a.m. and before 9 p.m., local time at the consumer's location.

(d) A lessor shall not communicate, in connection with the rental-purchase agreement, with any person other than the consumer, the consumer's attorney, or the lessor's attorney, except to the extent the communication is any of the following:

(1) Reasonably necessary to acquire location information concerning the consumer or the rental property, as provided in subdivision (b).

(2) Upon the prior consent of the consumer given directly to the lessor.

(3) Upon the express permission of a court of competent jurisdiction.

(4) Reasonably necessary to effectuate a postjudgment judicial remedy.

(e) If a consumer notifies the lessor in writing that the consumer wishes the lessor to cease further communication with the consumer,

the lessor shall not communicate further with the consumer with respect to the rental-purchase agreement, except for any of the following:

(1) To advise the consumer that the lessor's further efforts are being terminated.

(2) To notify the consumer that the lessor may invoke specified remedies allowable by law which are ordinarily invoked by the lessor.

(3) Where necessary to effectuate any postjudgment remedy.

(f) A lessor shall not harass, oppress, or abuse any person in connection with a rental-purchase agreement, including engaging in any of the following conduct:

(1) Using or threatening the use of violence or any criminal means to harm the physical person, reputation, or property of any person.

(2) Using obscene, profane, or abusive language.

(3) Causing a telephone to ring, or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person.

(4) Placing telephone calls without disclosure of the caller's identity.

1812.639. A lessor shall not engage in any unfair, unlawful, or deceptive conduct or make any untrue or misleading statement in connection with a rental-purchase agreement, including any violation of this title.

1812.640. A lessor shall not report any late payment, default, or repossession to a consumer credit reporting agency, as defined in subdivision (d) of Section 1785.3, or to an investigative consumer reporting agency, as defined in subdivision (d) of Section 1786.2 if the lessor (a) advertises "no credit check" or otherwise states or implies that no inquiry will be made of a consumer's credit history or creditworthiness or (b) does not obtain a consumer credit report or investigative consumer report on a consumer before entering into a rental-purchase agreement with that consumer.

1812.641. (a) A lessor shall not send any solicitation or other promotional material to a person identified by the consumer as a reference to verify the consumer's income, assets, credit history, or residence unless all of the following occur:

(1) The lessor clearly discloses in the rental-purchase agreement or application that (A) the lessor may send solicitations or other promotional material to references provided by the consumer unless the consumer objects and (B) the consumer has the right to object without incurring any additional rental charge or fee or any loss of contractual rights.

(2) A space on the rental-purchase agreement or application adjacent to the disclosure described in paragraph (1) is provided for the consumer to indicate the consumer's approval or disapproval of the lessor's sending solicitations or other promotional material.

(3) The consumer affirmatively indicates approval.

(4) The lessor does not vary any term required to be disclosed

pursuant to Section 1812.623 depending on whether the consumer approves or disapproves of the lessor's sending of solicitations or other promotional material to references.

(b) The first solicitation or other promotional material directed to a person whom the consumer has identified as a reference shall clearly offer the reference the opportunity, without cost, to instruct the lessor to refrain from sending further solicitations or other promotional material to the reference. If so instructed, the lessor shall not send any further solicitations or other promotional material to the reference and shall remove the reference's name and address from the lessor's mailing list.

(c) This section shall not apply to solicitations or other promotional material sent generally to people solely on the basis of demographic, geographic, or postal zip code criteria and without regard to whether the people have been identified as references by consumers.

1812.642. A lessor shall not discriminate against a prospective consumer on any ground that would be a prohibited basis for a creditor to discriminate against an applicant for credit as provided in the Equal Credit Opportunity Act (15 U.S.C. Sec. 1691 et seq.) and Regulation B (12 C.F.R. Part 202) as if they applied to a rental-purchase agreement. Nothing in this section shall be construed in any manner to mean that a rental-purchase agreement is a credit transaction.

1812.643. (a) Except as provided in subdivision (b), a lessor who obtains the signature of more than one person on a rental-purchase agreement shall deliver the notice set forth in subdivision (c) to each person before that person signs the agreement.

(b) This section does not apply if the persons signing the agreement are married to each other or in fact receive possession of the property described in the agreement.

(c) The notice required by this section is as follows:

“NOTICE TO COSIGNER

If you sign this contract, you will have the same responsibility for the property and the same obligation to make payments that every renter has.

If any renter does not pay, you may have to pay the full amount owed, including late fees, and you may have to pay for certain loss or damage to the property.

The lessor may collect from you without first trying to collect from any other renter. The lessor can use the same collection methods against you that can be used against any renter, such as suing you or garnishing your wages.

This notice is not the contract that makes you responsible.

Before you sign, be sure you can afford to pay if you have to, and that you want to accept this responsibility.”

(d) The notice required by subdivision (c) shall be printed in at least 10-point boldface type in English and Spanish. If the rental-purchase agreement is required to be written in a language other than English or Spanish, the notice shall be written in English and, in addition or in lieu of Spanish, in that other language.

(e) If the notice set forth in subdivision (c) is included with the text of the rental-purchase agreement, the notice shall appear immediately above or adjacent to the disclosures required by subdivision (b) of Section 1812.623. If the notice is not included with the text of the agreement, the notice shall be on a separate sheet which shall not contain any other text except as is necessary to identify the lessor and agreement to which the notice refers and to provide for the date and the person's acknowledgment of receipt.

(f) The lessor shall give each person entitled to notice under this section a copy of the completed rental-purchase agreement before obtaining that person's signature.

(g) If a person entitled to receive notice and a copy of the rental-purchase agreement under this section does not receive the notice or agreement in the manner required, that person has no liability in connection with the rental-purchase transaction.

1812.644. (a) A lessor shall maintain records that establish that the price disclosed as the cash price in a rental-purchase agreement is the cash price as defined in subdivision (e) of Section 1812.622. A copy of each rental-purchase agreement and of the records required by this subdivision shall be maintained for two years following the termination of the agreement.

(b) Evidence of the cash price of new rental property may include the following:

(1) Published prices or advertisements by retailers of similar products selling in the same trade area in which the lessor's business is located, if the prices were published or disseminated within the 90-day period preceding the date of the rental-purchase agreement.

(2) An amount equal to twice the documented actual cost, including freight charges, of the rental property to the lessor from a wholesaler, distributor, or manufacturer.

(3) The manufacturer's suggested retail price for a home appliance, as defined in subdivision (r) of Section 1791, or a home electronic product, as defined in subdivision (s) of Section 1791. Manufacturer's suggested retail price may not be utilized as evidence of the cash price of any other type of rental property.

(c) Upon the written request of the Attorney General, any district attorney or city attorney, or the Director of the Department of Consumer Affairs, a lessor shall provide copies of the records described in this section.

(d) If a lessor willfully discloses a cash price in a rental-purchase agreement that exceeds the cash price of the property as defined in subdivision (e) of Section 1812.622, the rental purchase agreement is void, the consumer shall retain the property without any obligation, and the lessor shall refund to the consumer all amounts

paid.

1812.645. An action on a rental-purchase agreement shall be tried in the county in which the rental-purchase agreement was signed or the consumer resides at the time the action is commenced.

1812.646. Any waiver or modification of the provisions of this title by the consumer or lessor shall be void and unenforceable as contrary to public policy.

1812.647. Any person who willfully violates any provision of this title is guilty of a misdemeanor.

1812.648. The rights, remedies, and penalties established by this title are cumulative to the rights, remedies, or penalties established under other laws.

1812.649. If any provision of this title or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the title that can be given effect without the invalid provision or application, and to this end the provisions of this title are severable.

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

CHAPTER 1027

An act to amend Sections 19863, 19871, and 19872 of the Government Code, relating to state employees.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 19863 of the Government Code is amended to read:

19863. (a) Except as provided in Article 4 (commencing with Section 19869), a state officer or employee who is or may be entitled to temporary disability indemnity under Division 4 (commencing with Section 3200) or Division 4.5 (commencing with Section 6100) of the Labor Code shall receive any accumulated sick leave, or accumulated compensable overtime, or accumulated vacation, or accumulated annual leave for the absence. The appointing power shall decrease the charge of sick leave, or compensable overtime, or

vacation, or annual leave in the amount of temporary disability payment received so that the state officer or employee shall not receive payment in excess of full salary or wage.

If a state officer or employee does not wish to use his or her accumulated sick leave, or accumulated compensable overtime, or accumulated vacation, or accumulated annual leave, he or she shall notify his or her appointing power within 15 days after the injury is reported to the appointing power. After the 15 days his or her accumulations shall be used until the date he or she notifies the appointing power in writing that he or she no longer wishes to use the accumulations. When computing sick leave, or overtime, or vacation, or annual leave under this section the employee shall be given credit for any holidays that occur during the period of absence hereunder.

He or she is nevertheless entitled to medical, surgical, and hospital treatment as provided in the Labor Code. When his or her accumulated sick leave, or overtime, or vacation, or annual leave, or all, are exhausted, he or she is still entitled to receive disability indemnity.

(b) State officers and employees who are covered by Article 4 (commencing with Section 19869) shall be entitled to industrial and temporary disability benefits only as provided by that article.

(c) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 2. Section 19871 of the Government Code is amended to read:

19871. (a) Except as provided in Section 19871.2, when a state officer or employee is temporarily disabled by illness or injury arising out of and in the course of state employment, he or she shall become entitled, regardless of his or her period of service, to receive industrial disability leave and payments for a period not exceeding 52 weeks within two years from the first day of disability. These payments shall be in the amount of the employees full pay less withholding based on his or her exemptions in effect on the date of his or her disability for federal income taxes, state income taxes, and social security taxes not to exceed 22 working days of disability subject to Section 19875. Thereafter, the payment shall be two-thirds of full pay. Payments will be additionally adjusted to offset disability benefits, excluding those disability benefits payable from the State Teachers' Retirement System, the employee may receive from other employer-subsidized programs, except that no adjustment will be made for benefits to which the employee's family is entitled up to a maximum of three-quarters of full pay. Contributions to the Public Employees' Retirement System or the State Teachers' Retirement

System shall be deducted in the amount based on full pay. Discretionary deductions of the employee including those for coverage under a state health benefits plan in which the employee is enrolled shall continue to be deducted unless canceled by the employee. State employer contribution to the Public Employees' Retirement System and state employer normal retirement contributions to the State Teachers' Retirement System shall be made on the basis of full pay and the state contribution pursuant to Sections 22825.1 and 22826 because of the employee's enrollment in a health benefits plan shall continue.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 3. Section 19872 of the Government Code is amended to read:

19872. (a) The disabled employee shall not receive temporary disability indemnity or sick leave or annual leave with pay for any period for which he or she receives industrial disability leave.

(b) Notwithstanding subdivision (a), an employee may elect to supplement industrial disability leave payments from the 23rd workday with accrued leave credits including annual leave, vacation, sick leave, or compensatory time off (CTO) in an amount necessary to approximate the employee's full net pay. Partial supplementation shall be allowed, but fractions of less than one hour shall not be permitted. Once the level of supplementation is selected, it may be decreased to accommodate a declining leave balance but it may not be increased. Reductions to supplementation amounts shall be made on a prospective basis only. The department may adopt rules for the administration and enforcement of this subdivision.

(c) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

CHAPTER 1028

An act to amend Sections 23954.5, 24044.5, 24048, 24072.2, 24079, and 25503.9 of, to amend and renumber Section 25511 of, to amend, repeal, and add Section 25503.28 of, to repeal Section 25503.20 of, and to repeal Chapter 10 (commencing with Section 24749) of Division 9 of, the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 28, 1994. Filed with Secretary of State September 29, 1994.]

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

SECTION 1. Section 23954.5 of the Business and Professions Code is amended to read:

23954.5. (a) An applicant for an original on-sale general license shall, at the time of filing the application for the license, accompany the application with a fee as determined by the department pursuant to subdivision (b) of this section. At the time of filing an application for a license, an applicant for an original on-sale general license for seasonal business shall accompany the application with a fee as determined by the department pursuant to subdivision (b) of this section. An applicant for an original on-sale beer and wine license shall accompany the application with a fee of three hundred dollars (\$300). An applicant for an original on-sale beer license shall accompany the application with a fee of two hundred dollars (\$200). An applicant for an original off-sale general license shall, at the time of filing the application for the license, accompany the application with a fee as determined by the department pursuant to subdivision (b) of this section. An applicant for an original off-sale beer and wine license or an original license not specified in this section, shall accompany the application with a fee of one hundred dollars (\$100).

“Original on-sale general license,” “original on-sale general license for seasonal business,” “original on-sale beer and wine license,” “original on-sale beer license,” “original off-sale general license,” and “original off-sale beer and wine license,” as used in this division, do not include a license issued upon renewal or transfer of a license.

(b) The fee for an original on-sale general license or an original off-sale general license shall be twelve thousand dollars (\$12,000).

(c) All money collected from the fees provided for in this section shall be in the Alcohol Beverage Control Fund as provided in Section 25761.

SEC. 2. Section 24044.5 of the Business and Professions Code is amended to read:

24044.5. (a) The department, in its discretion, may issue an interim retail permit to an applicant for any retail license to operate the premises during the period an application for a license at the premises is pending and when all of the following conditions exist:

(1) The application has been protested pursuant to Article 3 (commencing with Section 24011).

(2) The department has made a determination based upon its investigation that the license should be issued.

(3) The applicant for the interim retail permit has filed with the department an application for issuance of a license at the premises to himself or herself.

(4) The application for the interim retail permit is accompanied by a fee of one hundred dollars (\$100).

(b) An interim retail permit issued by the department pursuant to this section shall be for a period not to exceed 120 days. An interim retail permit may be extended at the discretion of the department for additional 120-day periods as necessary upon payment of an additional fee of one hundred dollars (\$100) and upon compliance with all conditions required by this section. Any interim retail permit issued by the department shall be automatically canceled when a final determination made by the department regarding the protests becomes effective or when the application for the retail license is withdrawn, whichever occurs first. An interim retail permit is a conditional permit and authorizes the holder thereof to sell alcoholic beverages as would be permitted to be sold under the privileges of the license for which the application has been filed with the department. Any conditions for which the applicant has petitioned pursuant to Article 1.5 (commencing with Section 23800) of Chapter 5 shall apply to any interim retail permit issued by the department.

(c) Purchase of beer and wine by the holder of an interim retail permit shall be made only upon payment before or at the time of delivery in currency or by check. Purchase of distilled spirits by the holder of an interim retail permit shall be made only upon payment before or at the time of delivery in currency or by certified check. However, the holder of an interim retail permit, who also holds one or more retail licenses and is operating under the retail license or licenses in addition to the interim retail permit, and who is not delinquent under the provisions of Section 25509 as to any retail license under which he or she operates, may purchase alcoholic beverages on credit under the interim retail permit.

(d) All checks received by a seller for beer or wine purchased by the holder of an interim retail permit shall be deposited not later than the second business day following the date the beer or wine is delivered.

A check dishonored on presentation shall not be deemed payment. The receipt by the seller or his or her agent in good faith from a holder of a temporary permit of a check dishonored on presentation shall not be cause for disciplinary action against the seller.

(e) Issuance of the license for which the holder of an interim retail permit has filed an application shall not be approved by the department until the holder of the interim retail permit has filed with the department a statement executed under penalty of perjury that all current obligations have been discharged, and that all

outstanding checks issued by him or her in payment for alcoholic beverages will be honored on presentation.

(f) It shall not be a violation of this section or grounds for disciplinary action for any licensee to extend credit to the holder of an interim retail permit or to receive payment from the permittee in a manner other than authorized herein unless the seller has knowledge of the fact that the purchaser was operating under an interim retail permit. Knowledge of the fact may be established by evidence, including, but not limited to, evidence that, at the time of receipt of payment or the extension of credit, the premises operated under an interim retail permit were posted with the notice required by Section 23985, or the holder of the interim retail permit has recorded notice as required by Section 24073, or the holder of the interim retail permit has published notice as required by Section 23986, or the holder of the interim retail permit has recorded and published notice pursuant to Division 6 (commencing with Section 6101) of the Commercial Code.

(g) Refusal by the department to issue or extend an interim retail permit shall not entitle the applicant to petition for the permit pursuant to Section 24011, or to a hearing pursuant to Section 24012. Articles 2 (commencing with Section 23985) and 3 (commencing with Section 24011) shall not apply to interim retail permits.

(h) Notwithstanding any other provision of law, the department may, in its discretion, cancel or suspend summarily at any time an interim retail permit if the department determines that good cause for the cancellation or suspension exists. Chapter 8 (commencing with Section 24300) shall not apply to interim retail permits.

(i) Application for an interim retail permit shall be on any form the department shall prescribe. If an application for an interim retail permit is withdrawn before issuance or is refused by the department, the fee that accompanied the application shall be refunded in full, and Section 23959 shall not apply. Fees received by the department for issuance of interim retail permits shall be deposited in the Alcohol Beverage Control Fund as provided in Section 25761.

SEC. 3. Section 24048 of the Business and Professions Code is amended to read:

24048. Every license, other than a temporary license or a daily on-sale general license issued pursuant to Section 24045.1, is renewable unless the license has been revoked if the renewal application is made and the fee therefor is paid. All licenses expire at 12 midnight on the last day of the month posted on the license. All licenses issued shall be renewed as follows:

(a) On or before the first of the month preceding the month posted on the license, the department shall mail to each licensee at his or her licensed premises, or at any other mailing address that the licensee has designated, an application to renew the license.

(b) The application to renew the license may be filed before the license expires upon payment of the annual fee set forth in Section 23320.

(c) For 60 days after the license expires, the license may be renewed upon payment of the annual renewal fee set forth in Section 23320 plus a penalty fee that shall be equal to 50 percent of the annual fee.

(d) Unless otherwise terminated, or unless renewed pursuant to subdivision (b) or (c) of this section, a license that is in effect on the month posted on the license continues in effect through 2 a.m. of the 60th day following the month posted on the license, at which time it is automatically canceled.

(e) On or before the 10th day preceding the cancellation of a license, the department shall mail a notice of cancellation to each licensee who has not either filed an application to renew his or her license or notified the department of his or her intent not to do so. Failure to mail the renewal application in accordance with subdivision (a) or to mail the notice provided in this subdivision shall not continue the right to a license.

(f) A license that has been canceled pursuant to subdivision (d) of this section may be reinstated during the 30 days immediately following cancellation upon payment by cashier's check or money order of the annual renewal fee set forth in Section 23320 plus a penalty fee that shall be equal to 100 percent of the annual fee. A license that has been canceled pursuant to subdivision (d) of this section and that has not been reinstated within 30 days pursuant to this subdivision is automatically revoked on the 31st day after the license has been canceled.

(g) No renewal application shall be deemed filed within the meaning of this section unless the document itself has been actually delivered to, and the required renewal fee has been paid at, any office of the department during office hours, or unless both the document and fee have been filed and remitted pursuant to Section 11003 of the Government Code.

SEC. 4. Section 24072.2 of the Business and Professions Code is amended to read:

24072.2. Any person who has an on-sale license issued for a bona fide public eating place may exchange his or her license for a similar license for public premises, as defined in Section 23039, and any person who has such a license issued for public premises may exchange his or her license for a similar license for a bona fide public eating place. The exchange may be made at the time of renewal of the license sought to be exchanged, and not more than once between renewal periods, upon the approval of the department, the payment of an exchange fee of one hundred dollars (\$100), and compliance with the provisions of this division relating to the issuance of an original license. All money collected from the fee provided for in this section shall be deposited directly in the Alcohol Beverage Control Fund as provided in Section 25761.

SEC. 5. Section 24079 of the Business and Professions Code is amended to read:

24079. (a) The purchase price or consideration that may be paid

by a transferee or received by a transferor of an on-sale general license or off-sale general license originally issued on or after June 1, 1961, shall not exceed six thousand dollars (\$6,000), except that after a period of five years from the date of the original issuance of the license there shall be no restriction as to the purchase price or consideration that may be paid by a transferee or received by a transferor.

(b) Notwithstanding subdivision (a), any original on-sale general license or any original off-sale general license for which a fee in excess of twelve thousand dollars (\$12,000) has been paid pursuant to subdivision (b) of Section 23954.5 may not be transferred for one year following its initial issuance. After one year, this license may be transferred and there shall be no restriction as to the purchase price or consideration that may be paid by a transferee or received by a transferor.

(c) Any original on-sale general license or any original off-sale general license for which an original fee of twelve thousand dollars (\$12,000) was paid shall not be transferred for a purchase price in excess of twelve thousand dollars (\$12,000) for two years following its initial issuance. After two years, this license may be transferred and there shall be no restriction as to the purchase price or consideration that may be paid by a transferee or received by a transferor.

SEC. 6. Chapter 10 (commencing with Section 24749) of Division 9 of the Business and Professions Code is repealed.

SEC. 7. Section 25503.9 of the Business and Professions Code is amended to read:

25503.9. Nothing in this division prohibits a winegrower from giving or selling wine, a beer manufacturer from giving or selling beer, a distilled spirits manufacturer or a distilled spirits manufacturer's agent from giving or selling distilled spirits, or a licensed importer from giving or selling beer, wine, or distilled spirits at prices other than those contained in schedules filed with the department, to any of the following:

(a) A nonprofit charitable corporation or association exempt from payment of income taxes under the provisions of the Internal Revenue Code of 1954 of the United States and Chapter 4 (commencing with Section 23701) of Part 11 of Division 2 of the Revenue and Taxation Code.

(b) A nonprofit incorporated trade association that is exempt from payment of income taxes under the provisions of the Internal Revenue Code of 1954 of the United States and Chapter 4 (commencing with Section 23701) of Part 11 of Division 2 of the Revenue and Taxation Code, and the members of which trade association are licensed under this division. However, the wine, beer, and distilled spirits shall be used solely for a convention or meeting of the nonprofit incorporated trade association.

(c) A nonprofit corporation or association that is exempt from payment of income taxes under the provisions of the Internal

Revenue Code of 1954 of the United States and is defined as a tax exempt organization under Section 23701a, 23701d, 23701e, 23701f, or 23701r of the Revenue and Taxation Code. Wine, beer, and distilled spirits given or sold by a winegrower, beer manufacturer, distilled spirits manufacturer, distilled spirits manufacturer's agent, or licensed importer pursuant to this subdivision may be furnished only in connection with public service or fundraising activities including picnics, parades, fairs, amateur sporting events, agricultural exhibitions, or similar events.

SEC. 8. Section 25503.20 of the Business and Professions Code is repealed.

SEC. 9. Section 25503.28 of the Business and Professions Code is amended to read:

25503.28. (a) Notwithstanding any other provision of this division, the holder of no more than six on-sale licenses, or any officer, director, employee, or agent of that licensee, or the holder of no more than one on-sale license and one off-sale general license in a county of the 39th class only, or any officer, director, employee, or agent of that licensee, may own a licensed beer manufacturer holding a license pursuant to paragraph (a) of subdivision (1) of Section 23320, and may serve on the board of directors and as an officer or employee of a licensed beer manufacturer.

(b) An on-sale licensee specified in subdivision (a) shall purchase no alcoholic beverages for sale in this state other than from a wholesale or winegrower licensee, except for any alcoholic beverages manufactured by the licensed beer manufacturer at a single location contiguous or adjacent to the premises of the on-sale licensee.

(c) The Legislature finds that it is necessary and proper to require a separation between manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The Legislature further finds that the exception established by this section to the general prohibition against tied interests must be limited to its expressed terms so as not to undermine the general prohibition, and intends that this section be construed accordingly.

(d) This section shall remain in effect only until January 1, 1998, and as of that date is repealed.

SEC. 10. Section 25503.28 is added to the Business and Professions Code, to read:

25503.28. (a) Notwithstanding any other provision of this division, the holder of no more than six on-sale licenses, or any officer, director, employee, or agent of that licensee, may own a licensed beer manufacturer holding a license pursuant to paragraph (a) of subdivision (1) of Section 23320, and may serve on the board of directors and as an officer or employee of a licensed beer

manufacturer.

(b) An on-sale licensee specified in subdivision (a) shall purchase no alcoholic beverages for sale in this state other than from a wholesale or winegrower licensee, except for any alcoholic beverages manufactured by the licensed beer manufacturer at a single location contiguous or adjacent to the premises of the on-sale licensee.

(c) The Legislature finds that it is necessary and proper to require a separation between manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The Legislature further finds that the exception established by this section to the general prohibition against tied interests must be limited to its expressed terms so as not to undermine the general prohibition, and intends that this section be construed accordingly.

(d) This section shall become operative on January 1, 1998.

SEC. 11. Section 25511 of the Business and Professions Code, as added by Section 1 of Chapter 907 of the Statutes of 1993, is amended and renumbered to read:

25512. (a) Notwithstanding any other provision of this division, any licensee or officer, director, employee, or agent of a licensee that holds no more than eight on-sale licenses may also hold not more than 16.67 percent of the stock of a corporation that holds beer manufacturer licenses issued pursuant to paragraph (1) of subdivision (a) of Section 23320 that are located in Sacramento, Placer, El Dorado, Marin, or Napa County, and may serve on the board of directors and as an officer or employee of that corporate licensed beer manufacturer.

(b) An on-sale licensee specified in subdivision (a) shall purchase no alcoholic beverages for sale in this state other than from a licensed wholesaler or winegrower.

(c) In enacting this section, the Legislature finds that it is necessary and proper to require a separation between manufacturing interests, wholesale interests, and retail interests in the production and distribution of alcoholic beverages in order to prevent suppliers from dominating local markets through vertical integration and to prevent excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The Legislature further finds that the exception established by this section to the general prohibition against tied-house interests must be limited to its expressed terms so as not to undermine the general prohibition, and intends that this section be construed accordingly.

CHAPTER 1029

An act to amend Sections 12300 and 12301.6 of the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 28, 1994. Filed with Secretary of State September 29, 1994.]

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

SECTION 1. Section 12300 of the Welfare and Institutions Code is amended to read:

12300. (a) The purpose of this article is to provide in every county in a manner consistent with this chapter and the annual Budget Act those supportive services identified in this section to aged, blind, or disabled persons, as defined under this chapter, who are unable to perform the services themselves and who cannot safely remain in their homes or abodes of their own choosing unless these services are provided.

(b) Supportive services shall include domestic services and services related to domestic services, heavy cleaning, personal care services, accompaniment by a provider when needed during necessary travel to health-related appointments or to alternative resource sites, yard hazard abatement, protective supervision, teaching and demonstration directed at reducing the need for other supportive services, and paramedical services which make it possible for the recipient to establish and maintain an independent living arrangement.

(c) Personal care services shall mean all of the following:

- (1) Assistance with ambulation.
- (2) Bathing, oral hygiene, and grooming.
- (3) Dressing.
- (4) Care and assistance with prosthetic devices.
- (5) Bowel, bladder, and menstrual care.
- (6) Repositioning, skin care, range of motion exercises, and transfers.
- (7) Feeding and assurance of adequate fluid intake.
- (8) Respiration.
- (9) Assistance with self-administration of medications.

(d) Where supportive services are provided by a person having the legal duty pursuant to the Civil Code to provide for the care of his or her child who is the recipient, the provider of supportive services shall receive remuneration for the services only when the provider leaves full-time employment or is prevented from obtaining full-time employment because no other suitable provider is available and where the inability of the provider to provide supportive services may result in inappropriate placement or inadequate care.

These providers shall be paid only for the following:

- (1) Services related to domestic services.
- (2) Personal care services.
- (3) Accompaniment by a provider when needed during necessary travel to health-related appointments or to alternative resource sites.
- (4) Protective supervision only as needed because of the functional limitations of the child.
- (5) Paramedical services.
- (e) To encourage maximum voluntary services, so as to reduce governmental costs, respite care shall also be provided. Respite care is temporary or periodic service for eligible recipients to relieve persons who are providing care without compensation.
- (f) A person who is eligible to receive a personal care service or an ancillary service provided pursuant to Section 14132.95 shall not be eligible to receive that same service pursuant to this article.
- (g) (1) All services provided pursuant to this article shall be equal in amount, scope, and duration to the same services provided pursuant to Section 14132.95, including any adjustments that may be made to those services pursuant to subdivision (e) of Section 14132.95.
- (2) Notwithstanding any other provision of this article, the rate of reimbursement for in-home supportive services provided through any mode of service shall not exceed the rate or reimbursement established under subdivision (j) of Section 14132.95 for the same mode of service unless otherwise provided in the annual Budget Act.
- (3) Any recipient receiving services under both Section 14132.95 and this article shall receive no more than 283 hours of service per month, combined, and any recipient of services under this article shall receive no more than the applicable maximum specified in Section 12303.4.

SEC. 2. Section 12300 of the Welfare and Institutions Code is amended to read:

12300. (a) The purpose of this article is to provide in every county in a manner consistent with this chapter and the annual Budget Act those supportive services identified in this section to aged, blind, or disabled persons, as defined under this chapter, who are unable to perform the services themselves and who cannot safely remain in their homes or abodes of their own choosing unless these services are provided.

(b) Supportive services shall include domestic services and services related to domestic services, heavy cleaning, personal care services, accompaniment by a provider when needed during necessary travel to health-related appointments or to alternative resource sites, yard hazard abatement, protective supervision, teaching and demonstration directed at reducing the need for other supportive services, and paramedical services which make it possible for the recipient to establish and maintain an independent living arrangement.

- (c) Personal care services shall mean all of the following:
 - (1) Assistance with ambulation.

- (2) Bathing, oral hygiene, and grooming.
- (3) Dressing.
- (4) Care and assistance with prosthetic devices.
- (5) Bowel, bladder, and menstrual care.
- (6) Repositioning, skin care, range of motion exercises, and transfers.

(7) Feeding and assurance of adequate fluid intake.

(8) Respiration.

(9) Assistance with self-administration of medications.

(d) Where supportive services are provided by a person having the legal duty pursuant to the Family Code to provide for the care of his or her child who is the recipient, the provider of supportive services shall receive remuneration for the services only when the provider leaves full-time employment or is prevented from obtaining full-time employment because no other suitable provider is available and where the inability of the provider to provide supportive services may result in inappropriate placement or inadequate care.

These providers shall be paid only for the following:

(1) Services related to domestic services.

(2) Personal care services.

(3) Accompaniment by a provider when needed during necessary travel to health-related appointments or to alternative resource sites.

(4) Protective supervision only as needed because of the functional limitations of the child.

(5) Paramedical services.

(e) To encourage maximum voluntary services, so as to reduce governmental costs, respite care shall also be provided. Respite care is temporary or periodic service for eligible recipients to relieve persons who are providing care without compensation.

(f) A person who is eligible to receive a personal care service or an ancillary service provided pursuant to Section 14132.95 shall not be eligible to receive that same service pursuant to this article.

(g) (1) All services provided pursuant to this article shall be equal in amount, scope, and duration to the same services provided pursuant to Section 14132.95, including any adjustments that may be made to those services pursuant to subdivision (e) of Section 14132.95.

(2) Notwithstanding any other provision of this article, the rate of reimbursement for in-home supportive services provided through any mode of service shall not exceed the rate or reimbursement established under subdivision (j) of Section 14132.95 for the same mode of service unless otherwise provided in the annual Budget Act.

(3) Any recipient receiving services under both Section 14132.95 and this article shall receive no more than 283 hours of service per month, combined, and any recipient of services under this article shall receive no more than the applicable maximum specified in Section 12303.4.

SEC. 3. Section 12301.6 of the Welfare and Institutions Code is

amended to read:

12301.6. (a) Notwithstanding Sections 12302 and 12302.1, a county board of supervisors may, at its option, elect to do either of the following:

(1) Contract with a nonprofit consortium to provide for the delivery of in-home supportive services.

(2) Establish, by ordinance, a public authority to provide for the delivery of in-home supportive services.

(b) (1) To the extent that a county elects to establish a public authority pursuant to paragraph (2) of subdivision (a), the enabling ordinance shall specify the membership of the governing body of the public authority, the qualifications for individual members, the manner of appointment, selection, or removal of members, how long they shall serve, and other matters as the board of supervisors deems necessary for the operation of the public authority.

(2) A public authority established pursuant to paragraph (2) of subdivision (a) shall be both of the following:

(A) An entity separate from the county, and shall be required to file the statement required by Section 53051 of the Government Code.

(B) A corporate public body, exercising public and essential governmental functions and that has all powers necessary or convenient to carry out the delivery of in-home supportive services, including the power to contract for services pursuant to Sections 12302 and 12302.1. Employees of the public authority shall not be employees of the county for any purpose.

(3) (A) As an alternative, the enabling ordinance may designate the board of supervisors as the governing body of the public authority.

(B) Any enabling ordinance that designates the board of supervisors as the governing body of the public authority shall also specify that no fewer than 50 percent of the membership of the advisory committee shall be individuals who are current or past users of personal assistance services paid for through public or private funds or recipients of services under this article.

(C) If the enabling ordinance designates the board of supervisors as the governing body of the public authority, it shall also require the appointment of an advisory committee of not more than 11 individuals who shall be designated in accordance with subparagraph (B).

(D) Prior to making designations of committee members pursuant to subparagraph (C), or governing body members in accordance with paragraph (4), the board of supervisors shall solicit recommendations of qualified members of either the governing body of the public authority or of any advisory committee through a fair and open process that includes the provision of reasonable, written notice to, and a reasonable response time by, members of the general public and interested persons and organizations.

(4) If the enabling ordinance does not designate the board of

supervisors as the governing body of the public authority, the enabling ordinance shall require the membership of the governing body to meet the requirements of subparagraph (B) of paragraph (3).

(c) (1) Any public authority created pursuant to this section shall be deemed to be the employer of in-home supportive services personnel referred to recipients under paragraph (3) of subdivision (d) within the meaning of Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code. Recipients shall retain the right to select, terminate, and direct the work of any in-home supportive services personnel providing services to them.

(2) (A) Any nonprofit consortium contracting with a county pursuant to this section shall be deemed to be the employer of in-home supportive services personnel referred to recipients pursuant to paragraph (3) of subdivision (d) for the purposes of collective bargaining over wages, hours, and other terms and conditions of employment.

(B) Recipients shall retain the right to select, terminate, and direct the work of any in-home supportive services personnel providing services for them.

(d) Any nonprofit consortium contracting with a county pursuant to this section or any public authority established pursuant to this section shall provide for all of the following functions under this article, but shall not be limited to those functions:

(1) The provision of assistance to recipients in finding in-home supportive services personnel through the establishment of a registry.

(2) Investigation of the qualifications and background of potential personnel.

(3) Establishment of a referral system under which in-home supportive services personnel shall be referred to recipients.

(4) Providing for training for providers and recipients.

(5) Performing any other functions related to the delivery of in-home supportive services.

(6) Ensuring that the requirements of the personal care option pursuant to Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code are met.

(e) (1) Any nonprofit consortium contracting with a county pursuant to this section or any public authority created pursuant to this section shall be deemed not to be the employer of in-home supportive services personnel referred to recipients under this section for purposes of liability due to the negligence or intentional torts of the in-home supportive services personnel.

(2) In no case shall a nonprofit consortium contracting with a county pursuant to this section or any public authority created pursuant to this section be held liable for action or omission of any in-home supportive services personnel whom the nonprofit consortium or public authority did not list on its registry or otherwise refer to a recipient.

(3) Counties and the state shall be immune from any liability resulting from their implementation of this section in the administration of the In-Home Supportive Services program. Any obligation of the public authority or consortium pursuant to this section, whether statutory, contractual, or otherwise, shall be the obligation solely of the public authority or nonprofit consortium, and shall not be the obligation of the county or state.

(f) Any nonprofit consortium contracting with a county pursuant to this section shall ensure that it has a governing body that complies with the requirements of subparagraph (B) of paragraph (3) of subdivision (b) or an advisory committee that complies with subparagraphs (B) and (C) of paragraph (3) of subdivision (b).

(g) Recipients of services under this section may elect in-home supportive services personnel who are not referred to them by the public authority or nonprofit consortium. Those personnel shall be referred to the public authority or nonprofit consortium for the purposes of wages, benefits, and other terms and conditions of employment.

(h) Nothing in this section shall be construed to alter, require the alteration of, or interfere with the state payroll system and other provisions of Section 12302.2 for individual providers of in-home supportive services, or to affect the state's responsibility with respect to unemployment insurance, or workers' compensation for providers of in-home supportive services.

(i) To the extent permitted by federal law, personal care option funds, obtained pursuant to Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code, along with matching funds using the state and county sharing ratio established in subdivision (c) of Section 12306, or any other funds that are obtained pursuant to Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code, may be used to establish and operate an entity authorized by this section.

(j) Notwithstanding any other provision of law, the county, in exercising its option to establish a public authority, shall not be subject to competitive bidding requirements. However, contracts entered into by either the county, a public authority, or a nonprofit consortium pursuant to this section shall be subject to competitive bidding as otherwise required by law.

(k) (1) The department may adopt regulations implementing this section as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For the purposes of the Administrative Procedures Act, the adoption of the regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, these emergency regulations shall not be subject to the review and approval of the Office of Administrative Law.

(2) Notwithstanding subdivision (h) of Section 11364.1 and Section 11349.6 of the Government Code, the department shall transmit these regulations directly to the Secretary of State for filing. The regulations shall become effective immediately upon filing by the Secretary of State.

(3) Except as otherwise provided for by Section 10554, the Office of Administrative Law shall provide for the printing and publication of these regulations in the California Code of Regulations. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, these regulations shall not be repealed by the Office of Administrative Law and shall remain in effect until revised or repealed by the department.

(l) (1) In the event that a county elects to form a nonprofit consortium or public authority pursuant to subdivision (a) before the State Department of Health Services has obtained all necessary federal approvals pursuant to paragraph (3) of subdivision (j) of Section 14132.95, all of the following shall apply:

(A) Subdivision (c) shall apply only to those matters that do not require federal approval.

(B) The second sentence of subdivision (g) shall not be operative.

(C) The nonprofit consortium or public authority shall not provide services other than those specified in paragraphs (1), (2), (3), (4), and (5) of subdivision (d).

(2) Paragraph (1) shall become inoperative when the State Department of Health Services has obtained all necessary federal approvals pursuant to paragraph (3) of subdivision (j) of Section 14132.95.

SEC. 4. Section 2 of this bill incorporates amendments to Section 12300 of the Welfare and Institutions Code proposed by both this bill and AB 2208. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 12300 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 2208, in which case Section 1 of this bill shall not become operative.

CHAPTER 1030

An act to amend Sections 69845 and 69845.5 of, to add Chapter 1.4 (commencing with Section 68150) to Title 8 of, and to repeal Sections 69503, 69503.1, 69503.2, 69503.3, 69503.5, 69504.6, 69844.5, 71007, 71007.1, and 71008 of, the Government Code, relating to courts.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Chapter 1.4 (commencing with Section 68150) is added to Title 8 of the Government Code, to read:

CHAPTER 1.4. MANAGEMENT OF TRIAL COURT RECORDS

68150. (a) Trial court records may be preserved in any form of communication or representation, including optical, electronic, magnetic, micrographic, or photographic media or other technology capable of accurately producing or reproducing the original record according to minimum standards or guidelines for the preservation and reproduction of the medium adopted by the American National Standards Institute or the Association for Information and Image Management.

Specifications for electronic recordings made as the official record of the oral proceedings shall be governed by the California Rules of Court.

(b) No additions, deletions, or changes shall be made to the content of the record. The records shall be indexed for convenient access.

(c) A copy of the record preserved or reproduced according to subdivisions (a) and (b) shall be deemed the original court record and may be certified as a correct copy of the original record.

(d) A court record preserved or reproduced in accordance with subdivisions (a) and (b) shall be stored in a manner and in a place that reasonably assures its preservation against loss, theft, defacement, or destruction for the prescribed retention period under Section 68152. A duplicate backup copy of a court record preserved on a medium other than paper shall not be required for electronic recordings made as the official record of the oral proceedings unless otherwise specified in the California Rules of Court.

(e) The court record that was reproduced in accordance with subdivisions (a) and (b) may be disposed of in accordance with the procedure under Section 68153, unless it is subject to subdivision (f).

(f) The following court records may be preserved or reproduced under subdivisions (a) and (b) but shall also be preserved on paper, microfilm, or in another form of archival communication or representation approved by and in accordance with archival standards recommended by the American National Standards Institute for the duration of the record's retention period:

(1) The comprehensive historical and sample superior court records preserved for research under the California Rules of Court.

(2) Court records that are preserved permanently.

Court records that must be preserved longer than 10 years but not

permanently may be reproduced on media other than paper or microfilm using technology authorized under subdivisions (a) and (b). However the records shall be reproduced before the expiration of their estimated lifespan for the medium in which they are stored as specified in subdivision (g).

(g) Instructions for access to data stored on a medium other than paper shall be documented. Each court shall conduct a periodic review of the media in which the court records are stored to assure that the storage medium is not obsolete and that current technology is capable of accessing and reproducing the records. The court shall reproduce records before the expiration of their estimated lifespan for the medium in which they are stored according to minimum standards and guidelines for the preservation and reproduction of the medium adopted by the American National Standards Institute or the Association for Information and Image Management.

(h) Court records preserved or reproduced under subdivisions (a) and (b) shall be made reasonably accessible to all members of the public for viewing and duplication as would the paper records. Reasonable provision shall be made for duplicating the records at cost. Cost shall consist of all costs associated with duplicating the records as determined by the court.

68151. The following definitions apply to this chapter:

(a) "Court record" shall consist of the following:

(1) All filed papers and documents in the case folder; but if no case folder is created by the court, all filed papers and documents that would have been in the case folder if one had been created.

(2) Administrative records, depositions, exhibits, transcripts, including preliminary hearing transcripts, and tapes of electronically recorded proceedings filed, lodged, or maintained in connection with the case, unless disposed of earlier in the case pursuant to law.

(3) Other records listed under subdivision (j) of Section 68152.

(b) "Notice of destruction and no transfer" means that the clerk has given notice of destruction of the superior court records open to public inspection, and that there is no request and order for transfer of the records as provided in the California Rules of Court.

(c) "Final disposition of the case" means that an acquittal, dismissal, or order of judgment has been entered in the case or proceeding, the judgment has become final, and no postjudgment motions or appeals are pending in the case or for the reviewing court upon the mailing of notice of the issuance of the remittitur.

In a criminal prosecution, the order of judgment shall mean imposition of sentence, entry of an appealable order (including, but not limited to, an order granting probation, commitment of a defendant for insanity, or commitment of a defendant as a narcotics addict appealable under Section 1237 of the Penal Code), or forfeiture of bail without issuance of a bench warrant or calendaring of other proceedings.

(d) "Retain permanently" means that the original court records shall never be transferred or destroyed.

68152. The trial court clerk may destroy court records under Section 68153 after notice of destruction and if there is no request and order for transfer of the records, except the comprehensive historical and sample superior court records preserved for research under the California Rules of Court, when the following times have expired after final disposition of the case in the categories listed:

- (a) Adoption: retain permanently.
- (b) Change of name: retain permanently.
- (c) Other civil actions and proceedings, as follows:
 - (1) Except as otherwise specified: 10 years.
 - (2) Where a party appears by a guardian ad litem: 10 years after termination of the court's jurisdiction.
 - (3) Domestic violence: same period as duration of the restraining or other orders and any renewals, then retain the restraining or other orders as a judgment; 60 days after expiration of the temporary protective or temporary restraining order.
 - (4) Eminent domain: retain permanently.
 - (5) Family law, except as otherwise specified: 30 years.
 - (6) Harassment: same period as duration of the injunction and any renewals, then retain the injunction as a judgment; 60 days after expiration of the temporary restraining order.
 - (7) Mental health (Lanterman-Petris-Short Act): 30 years.
 - (8) Paternity: retain permanently.
 - (9) Petition, except as otherwise specified: 10 years.
 - (10) Real property other than unlawful detainer: retain permanently if the action affects title or an interest in real property.
 - (11) Small claims: 10 years.
 - (12) Unlawful detainer: one year if judgment is for possession of the premises; 10 years if judgment is for money.
- (d) Notwithstanding subdivision (c), any civil case in the trial court:
 - (1) Involuntarily dismissed by the court for delay in prosecution or failure to comply with state or local rules: one year.
 - (2) Voluntarily dismissed by a party without entry of judgment: one year.

Notation of the dismissal shall be made on the civil index of cases or on a separate dismissal index.

- (e) Criminal.
 - (1) Capital felony (murder with special circumstances where the prosecution seeks the death penalty): retain permanently. If the charge is disposed of by acquittal or a sentence less than death, the case shall be reclassified.
 - (2) Felony, except as otherwise specified: 75 years.
 - (3) Felony, except capital felony, with court records from the initial complaint through the preliminary hearing or plea and for which the case file does not include final sentencing or other final disposition of the case because the case was bound over to the superior court: five years.
 - (4) Misdemeanor, except as otherwise specified: five years.

(5) Misdemeanor alleging a violation of the Vehicle Code, except as otherwise specified: three years.

(6) Misdemeanor alleging a violation of Section 23103, 23152, or 23153 of the Vehicle Code: seven years.

(7) Misdemeanor alleging a violation of Section 14601, 14601.1, 20002, 23104, or 23109 of the Vehicle Code: five years.

(8) Misdemeanor alleging a marijuana violation under subdivision (b), (c), (d), or (e) of Section 11357 of the Health and Safety Code, or subdivision (b) of Section 11360 of the Health and Safety Code in accordance with the procedure set forth in Section 11361.5 of the Health and Safety Code: records shall be destroyed two years from the date of conviction or from the date of arrest if no conviction.

(9) Misdemeanor, infraction, or civil action alleging a violation of the regulation and licensing of dogs under Sections 30951 to 30956, inclusive, of the Food and Agricultural Code or violation of any other local ordinance: three years.

(10) Infraction, except as otherwise specified: three years.

(11) Parking infractions, including alleged violations under the stopping, standing, and parking provisions set forth in Chapter 9 (commencing with Section 22500) of Division 11 of the Vehicle Code: two years.

(f) Habeas corpus: same period as period for retention of the records in the underlying case category.

(g) Juvenile.

(1) Dependent (Section 300 of the Welfare and Institutions Code): upon reaching age 28 or on written request shall be released to the juvenile five years after jurisdiction over the person has terminated under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order five years after the records have been sealed pursuant to subdivision (c) of Section 389 of the Welfare and Institutions Code.

(2) Ward (Section 601 of the Welfare and Institutions Code): upon reaching age 21 or on written request shall be released to the juvenile five years after jurisdiction over the person has terminated under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order five years after the records have been sealed under subdivision (d) of Section 781 of the Welfare and Institutions Code.

(3) Ward (Section 602 of the Welfare and Institutions Code): upon reaching age 38 under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order when the subject of the record reaches the age of 38 under subdivision (d) of Section 781 of the Welfare and Institutions Code.

(4) Traffic and some nontraffic misdemeanors and infractions (Section 601 of the Welfare and Institutions Code): upon reaching age 21 or five years after jurisdiction over the person has terminated under subdivision (c) of Section 826 of the Welfare and Institutions Code. May be microfilmed or photocopied.

(5) Marijuana misdemeanor under subdivision (e) of Section 11357 of the Health and Safety Code in accordance with procedures specified in subdivision (a) of Section 11361.5 of the Health and Safety Code: upon reaching age 18 the records shall be destroyed.

(h) Probate.

(1) Conservatorship: 10 years after decree of termination.

(2) Guardianship: 10 years after the age of 18.

(3) Probate, including probated wills, except as otherwise specified: retain permanently.

(i) Court records of the appellate department of the trial court: five years.

(j) Other records.

(1) Applications in forma pauperis: same period as period for retention of the records in the underlying case category.

(2) Arrest warrant: same period as period for retention of the records in the underlying case category.

(3) Bench warrant: same period as period for retention of the records in the underlying case category.

(4) Bond: three years after exoneration and release.

(5) Coroner's inquest report: same period as period for retention of the records in the underlying case category; if no case, then permanent.

(6) Court orders not associated with an underlying case, such as orders for destruction of court records for telephone taps, or to destroy drugs, and other miscellaneous court orders: three years.

(7) Court reporter notes: 10 years after the notes have been taken in criminal and juvenile proceedings and five years after the notes have been taken in all other proceedings, except notes reporting proceedings in capital felony cases (murder with special circumstances where the prosecution seeks the death penalty and the sentence is death), including notes reporting the preliminary hearing, which shall be retained permanently, unless the Supreme Court on request of the court clerk authorizes the destruction.

(8) Electronic recordings made as the official record of the oral proceedings under the California Rules of Court: any time in infraction and misdemeanor proceedings, 10 years in all other criminal proceedings, and five years in all other proceedings.

(9) Electronic recordings not made as the official record of the oral proceedings under the California Rules of Court: any time either before or after final disposition.

(10) Index, except as otherwise specified: retain permanently.

(11) Index for cases alleging traffic violations: same period as period for retention of the records in the underlying case category.

(12) Judgments within the jurisdiction of the superior court: retain permanently.

(13) Judgments within the jurisdiction of the municipal and justice court: same period as period for retention of the records in the underlying case category.

(14) Minutes: same period as period for retention of the records

in the underlying case category.

(15) Naturalization index: retain permanently.

(16) Ninety-day evaluation (under Section 1203.03 of the Penal Code): same period as period for retention of the records in the underlying case category, or period for completion or termination of probation, whichever is longer.

(17) Register of actions or docket: same period as period for retention of the records in the underlying case category, but in no event less than 10 years for civil cases.

(18) Search warrant: 10 years, except search warrants issued in connection with a capital felony case defined in paragraph (7), which shall be retained permanently.

(k) Retention of any of the court records under this section shall be extended as follows:

(1) By order of the court on its own motion, or on application of a party or any interested member of the public for good cause shown and on such terms as are just. No fee shall be charged for making the application.

(2) Upon application and order for renewal of the judgment to the extended time for enforcing the judgment.

68153. Upon order of the presiding judge of the court, court records open to public inspection and not ordered transferred under the procedures in the California Rules of Court, confidential records, and sealed records that are ready for destruction under Section 68152 may be destroyed. Destruction shall be by shredding, burial, burning, erasure, obliteration, recycling, or other method approved by the court, except confidential and sealed records, which shall not be buried or recycled unless the text of the records is first obliterated.

Notation of the date of destruction shall be made on the index of cases or on a separate destruction index. A list of the court records destroyed within the jurisdiction of the superior court shall be provided to the Judicial Council in accordance with the California Rules of Court.

SEC. 2. Section 69503 of the Government Code is repealed.

SEC. 3. Section 69503.1 of the Government Code is repealed.

SEC. 4. Section 69503.2 of the Government Code is repealed.

SEC. 5. Section 69503.3 of the Government Code is repealed.

SEC. 6. Section 69503.5 of the Government Code is repealed.

SEC. 7. Section 69504.6 of the Government Code is repealed.

SEC. 8. Section 69844.5 of the Government Code is repealed.

SEC. 9. Section 69845 of the Government Code is amended to read:

69845. The clerk of the superior court may keep a register of actions in which shall be entered the title of each cause, with the date of its commencement and a memorandum of every subsequent proceeding in the action with its date.

SEC. 10. Section 69845.5 of the Government Code is amended to read:

69845.5. In lieu of maintaining a register of actions as described

in Section 69845, the clerk of the superior court may maintain a register of actions by preserving all the court records filed, lodged, or maintained in connection with the case.

SEC. 11. Section 71007 of the Government Code is repealed.

SEC. 12. Section 71007.1 of the Government Code is repealed.

SEC. 13. Section 71008 of the Government Code is repealed.

SEC. 14. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1031

An act to amend Sections 548, 549, 801.5, and 803 of the Penal Code, relating to insurance.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 548 of the Penal Code is amended to read:

548. (a) Every person who willfully injures, destroys, secretes, abandons, or disposes of any property which at the time is insured against loss or damage by theft, or embezzlement, or any casualty with intent to defraud or prejudice the insurer, whether the property is the property or in the possession of such person or any other person, is punishable by imprisonment in the state prison for two, three, or five years and by a fine not exceeding fifty thousand dollars (\$50,000).

For purposes of this section, "casualty" does not include fire.

(b) Any person who violates subdivision (a) and who has a prior conviction of the offense set forth in that subdivision, in Section 550 of this code, or in former Section 556 or former Section 1871.1 of the Insurance Code, shall receive a two-year enhancement for each prior conviction in addition to the sentence provided under subdivision (a). The existence of any fact which would subject a person to a penalty enhancement shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court

where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

SEC. 2. Section 549 of the Penal Code is amended to read:

549. Any firm, corporation, partnership, or association, or any person acting in his or her individual capacity, or in his or her capacity as a public or private employee, who solicits, accepts, or refers any business to or from any individual or entity with the knowledge that, or with reckless disregard for whether, the individual or entity for or from whom the solicitation or referral is made, or the individual or entity who is solicited or referred, intends to violate Section 550 of this code or Section 1871.4 of the Insurance Code is guilty of a crime, punishable upon a first conviction by imprisonment in the county jail for not more than one year or by imprisonment in the state prison for 16 months, two years, or three years, or by a fine not exceeding ten thousand dollars (\$10,000), or by both that fine and imprisonment. A second or subsequent conviction is punishable by imprisonment in the state prison.

SEC. 3. Section 801.5 of the Penal Code is amended to read:

801.5. Notwithstanding Section 801 or any other provision of law, prosecution for a violation of Section 550 of this code or former Section 1871.1, or Section 1871.4, of the Insurance Code shall be commenced within three years after discovery of the commission of the offense.

SEC. 4. Section 803 of the Penal Code is amended to read:

803. (a) Except as provided in this section, a limitation of time prescribed in this chapter is not tolled or extended for any reason.

(b) No time during which prosecution of the same person for the same conduct is pending in a court of this state is a part of a limitation of time prescribed in this chapter.

(c) A limitation of time prescribed in this chapter does not commence to run until discovery of an offense described in this subdivision. This subdivision applies to an offense punishable by imprisonment in the state prison, a material element of which is fraud or breach of a fiduciary obligation or the basis of which is misconduct in office by a public officer, employee, or appointee, including, but not limited to, the following offenses:

(1) Grand theft of any type, forgery, falsification of public records, or acceptance of a bribe by a public official or a public employee.

(2) A violation of Section 72, 118, 118a, 132, or 134.

(3) A violation of Section 25540, of any type, or Section 25541 of the Corporations Code.

(4) A violation of Section 1090 or 27443 of the Government Code.

(5) Felony welfare fraud or Medi-Cal fraud in violation of Section 11483 or 14107 of the Welfare and Institutions Code.

(6) Felony insurance fraud in violation of Section 548 or 550 of this code or former Section 1871.1, or Section 1871.4, of the Insurance Code.

(7) A violation of Section 580, 581, 582, 583, or 584 of the Business and Professions Code.

(8) A violation of Section 22430 of the Business and Professions Code.

(9) A violation of Section 10690 of the Health and Safety Code.

(10) A violation of Section 529a.

(d) If the defendant is out of the state when or after the offense is committed, the prosecution may be commenced as provided in Section 804 within the limitations of time prescribed by this chapter, and no time up to a maximum of three years during which the defendant is not within the state shall be a part of those limitations.

(e) A limitation of time prescribed in this chapter does not commence to run until the offense has been discovered, or could have reasonably been discovered, with regard to offenses under Division 7 (commencing with Section 13000) of the Water Code, under Chapter 6.5 (commencing with Section 25100) of, Chapter 6.7 (commencing with Section 25280) of, or Chapter 6.8 (commencing with Section 25300) of, Division 20 of, or Part 4 (commencing with Section 41500) of Division 26 of, the Health and Safety Code, or under Section 386.

(f) Notwithstanding any other limitation of time described in this section, a criminal complaint may be filed within one year of the date of a report to a responsible adult or agency by a child under 18 years of age that the child is a victim of a crime described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.

For purposes of this subdivision, a “responsible adult” or “agency” means a person or agency required to report pursuant to Section 11166. This subdivision shall apply only if both of the following occur:

(1) The limitation period specified in Section 800 or 801 has expired.

(2) The defendant has committed at least one violation of Section 261, 286, 288, 288a, 288.5, 289, or 289.5 against the same victim within the limitation period specified for that crime in either Section 800 or 801.

(g) Notwithstanding any other limitation of time described in this section, a criminal complaint may be filed within one year of the date of a report to a law enforcement agency by a person of any age alleging that he or she, while under the age of 18 years, was the victim of a crime described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5. This subdivision shall apply only if both of the following occur:

(1) The limitation period specified in Section 800 or 801 has expired.

(2) The crime involved substantial sexual conduct, as described in subdivision (b) of Section 1203.066, excluding masturbation which is not mutual, and there is independent evidence that clearly and convincingly corroborates the victim’s allegation. No evidence may be used to corroborate the victim’s allegation which would otherwise be inadmissible during trial. Independent evidence shall not include the opinions of mental health professionals.

CHAPTER 1032

An act to amend Sections 1700.25 and 1700.40 of the Labor Code, relating to talent agencies.

[Approved by Governor September 28, 1994. Filed with Secretary of State September 29, 1994.]

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

SECTION 1. Section 1700.25 of the Labor Code is amended to read:

1700.25. (a) A licensee who receives any payment of funds on behalf of an artist shall immediately deposit that amount in a trust fund account maintained by him or her in a bank or other recognized depository. The funds, less the licensee's commission, shall be disbursed to the artist within 30 days after receipt. However, notwithstanding the preceding sentence, the licensee may retain the funds beyond 30 days of receipt in either of the following circumstances:

(1) To the extent necessary to offset an obligation of the artist to the talent agency that is then due and owing.

(2) When the funds are the subject of a controversy pending before the Labor Commissioner under Section 1700.44 concerning a fee alleged to be owed by the artist to the licensee.

(b) A separate record shall be maintained of all funds received on behalf of an artist and the record shall further indicate the disposition of the funds.

(c) If disputed by the artist and the dispute is referred to the Labor Commissioner, the failure of a licensee to disburse funds to an artist within 30 days of receipt shall constitute a "controversy" within the meaning of Section 1700.44.

(d) Any funds specified in subdivision (a) that are the subject of a controversy pending before the Labor Commissioner under Section 1700.44 shall be retained in the trust fund account specified in subdivision (a) and shall not be used by the licensee for any purpose until the controversy is determined by the Labor Commissioner or settled by the parties.

(e) If the Labor Commissioner finds, in proceedings under Section 1700.44, that the licensee's failure to disburse funds to an artist within the time required by subdivision (a) was a willful violation, the Labor Commissioner may, in addition to other relief under Section 1700.44, order the following:

(1) Award reasonable attorney's fees to the prevailing artist.

(2) Award interest to the prevailing artist on the funds wrongfully withheld at the rate of 10 percent per annum during the period of the violation.

(f) Nothing in subdivision (c), (d), or (e) shall be deemed to supersede Section 1700.45 or to affect the enforceability of a

contractual arbitration provision meeting the criteria of Section 1700.45.

SEC. 2. Section 1700.40 of the Labor Code is amended to read:

1700.40. (a) No talent agency shall collect a registration fee. In the event that a talent agency shall collect from an artist a fee or expenses for obtaining employment for the artist, and the artist shall fail to procure the employment, or the artist shall fail to be paid for the employment, the talent agency shall, upon demand therefor, repay to the artist the fee and expenses so collected. Unless repayment thereof is made within 48 hours after demand therefor, the talent agency shall pay to the artist an additional sum equal to the amount of the fee.

(b) No talent agency may refer an artist to any person, firm, or corporation in which the talent agency has a direct or indirect financial interest for other services to be rendered to the artist, including, but not limited to, photography, audition tapes, demonstration reels or similar materials, business management, personal management, coaching, dramatic school, casting or talent brochures, agency-client directories, or other printing.

(c) No talent agency may accept any referral fee or similar compensation from any person, association, or corporation providing services of any type expressly set forth in subdivision (b) to an artist under contract with the talent agency.

CHAPTER 1033

An act to amend Sections 14105.98 and 14163 of the Welfare and Institutions Code, relating to Medi-Cal, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 14105.98 of the Welfare and Institutions Code is amended to read:

14105.98. (a) The following definitions shall apply for purposes of this section:

(1) "Disproportionate share list" means an annual list of disproportionate share hospitals that provide acute inpatient services issued by the department for purposes of this section.

(2) "Fund" means the Medi-Cal Inpatient Payment Adjustment Fund, created pursuant to Section 14163.

(3) "Eligible hospital" means a hospital included on a disproportionate share list, which is eligible to receive payment adjustments under this section with respect to a particular state fiscal year.

(4) "Hospital" means a health facility that is licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code to provide acute inpatient hospital services, and includes all components of the facility.

(5) "Payment adjustment" or "payment adjustment amount" means an amount paid under this section for acute inpatient hospital services provided by a disproportionate share hospital.

(6) "Payment adjustment year" means the particular state fiscal year with respect to which payments are to be made to eligible hospitals under this section.

(7) "Payment adjustment program" means the system of Medi-Cal payment adjustments for acute inpatient hospital services established by this section.

(8) "Annualized Medi-Cal inpatient paid days" means the total number of Medi-Cal acute inpatient hospital days, regardless of dates of service, for which payment was made by or on behalf of the department to a hospital, under present or previous ownership, during the most recent calendar year ending prior to the beginning of a particular payment adjustment year, including all Medi-Cal acute inpatient covered days of care for hospitals which are paid on a different basis than per diem payments.

(9) "Low-income utilization rate" means a percentage rate determined by the department in accordance with the requirements of Section 1396r-4(b)(3) of Title 42 of the United States Code, and included on a disproportionate share list.

(10) "Low-income number" means a hospital's low-income utilization rate rounded down to the nearest whole number, and included on a disproportionate share list.

(11) "1991 Peer Grouping Report" means the final report issued by the department dated May 1991, entitled "Hospital Peer Grouping."

(12) "Major teaching hospital" means a hospital that meets the definition of a university teaching hospital, major nonuniversity teaching hospital, or large teaching emphasis hospital as set forth on page 51 of the 1991 Peer Grouping Report.

(13) "Children's hospital" means a hospital that meets the definition of a children's hospital-state defined, as set forth on page 53 of the 1991 Peer Grouping Report, or which is listed in subdivision (a), or subdivisions (c) to (g), inclusive, of Section 16996.

(14) "Acute psychiatric hospital" means a hospital that meets the definition of an acute psychiatric hospital, a combination psychiatric/alcohol-drug rehabilitation hospital, or a psychiatric health facility, to the extent the facility is licensed to provide acute inpatient hospital service, as set forth on page 52 of the 1991 Peer Grouping Report.

(15) "Alcohol-drug rehabilitation hospital" means a hospital that meets the definition of an alcohol-drug rehabilitation hospital as set forth on page 52 of the 1991 Peer Grouping Report.

(16) "Emergency services hospital" means a hospital that is a

licensed provider of basic emergency services as described in Sections 70411 to 70419, inclusive, of Title 22 of the California Code of Regulations, or that is a licensed provider of comprehensive emergency medical services as described in Sections 70451 to 70459, inclusive, of Title 22 of the California Code of Regulations.

(17) "Medi-Cal day of acute inpatient hospital service" means any acute inpatient day of service attributable to patients who, for those days, were eligible for medical assistance under the California state plan, including any day of service that is reimbursed on a basis other than per diem payments.

(18) "Total per diem composite amount" means, for each eligible hospital for a particular payment adjustment year, the total of the various per diem payment adjustment amounts to be paid to the hospital for each eligible day as calculated under subdivision (g), (h), (i), or (j).

(19) "Supplemental lump-sum payment adjustment" means a lump-sum amount paid under this section for acute inpatient hospital services provided by a disproportionate share hospital.

(20) "Projected total payment adjustment amount" means, for each eligible hospital for a particular payment adjustment year, the amount calculated by the department as the projected maximum total amount the hospital is expected to receive under the payment adjustment program for the particular payment adjustment year (including all per diem payment adjustment amounts and any applicable supplemental lump-sum payment adjustments).

(21) "To align the program with the federal allotment" means to modify the size of the payment adjustment program to be as close as reasonably feasible to, but not to exceed, the estimated or actual maximum state disproportionate share hospital allotment for the particular federal fiscal year for California under Section 1396r-4(f) of Title 42 of the United States Code.

(22) "Descending pro rata basis" means an allocation methodology under which a pool of funds is distributed to hospitals on a pro rata basis until one of the recipient hospitals reaches its maximum payment limit, after which all remaining amounts in the pool are distributed on a pro rata basis to the recipient hospitals that have not reached their maximum payment limits, until another hospital reaches its maximum payment limit, and which process is repeated until the entire pool of funds has been distributed among the recipient hospitals.

(b) For each fiscal year commencing with 1991-92, there shall be Medi-Cal payment adjustment amounts paid to hospitals pursuant to this section. The amount of payments made and the eligible hospitals for each payment adjustment year shall be determined in accordance with the provisions of this section. The payments are intended to support health care services rendered by disproportionate share hospitals.

(c) For each fiscal year commencing with 1991-92, the department shall issue a disproportionate share list. The list shall be

developed in accordance with subdivisions (e) and (f), and shall serve as a basis for payments under this section for the particular payment adjustment year. In developing the list, the department may, to the extent practicable, utilize applicable data which is consistent with analysis compiled or developed by the California Medical Assistance Commission.

(d) (1) Except as otherwise provided by this section, the payment adjustment amounts under this section shall be distributed as a supplement to, and concurrent with, payments on all billings for Medi-Cal acute inpatient hospital services that are paid through Medi-Cal claims payment systems on or after July 1, 1991. In connection with those billings, the department shall pay payment adjustment amounts in accordance with subdivision (g), (h), (i), or (j), as applicable, to any hospital qualifying under subdivision (e). In addition, the department shall pay to each of those hospitals any supplemental lump-sum payment adjustment amounts payable under subdivisions (u), (v), (w), and (y), and shall adjust payment amounts in accordance with other applicable provisions of this section. The nonfederal share of all payment adjustment amounts shall be funded by amounts from the fund. The department shall obtain federal matching funds for the payment adjustment program through customary Medi-Cal accounting procedures.

(2) As a limitation to paragraph (1), all payment adjustment amounts under this section, which are due with respect to billings paid through Medi-Cal claims payment systems on or after July 1, 1991, shall be suspended until the time federal approval is first obtained for the payment adjustment program as part of the Medi-Cal program. For purposes of this paragraph, federal approval requires both (i) approval by appropriate federal agencies of an amendment to the Medi-Cal State Plan, as referred to in subdivision (o), and (ii) confirmation by appropriate federal agencies regarding the availability of federal financial participation for the payment adjustment program at a level of at least 40 percent of the percentage of federal financial participation that is normally applicable for Medi-Cal expenditures for acute inpatient hospital services. At the time federal approval is first obtained, the department shall proceed pursuant to subparagraphs (A) and (B) in connection with the suspended payment adjustment amounts.

(A) Except as provided by subdivision (l), or by any other subdivision of this section, any payment adjustment amounts which were suspended shall, within 60 days, be paid for all those billings paid through Medi-Cal claims payment systems during periods of time, on or after July 1, 1991, for which federal approval is first effective for the payment adjustment program.

(B) Payment adjustment amounts shall not be paid in connection with any Medi-Cal billings which were paid through Medi-Cal claims payment systems during any period of time for which federal approval is not effective for the payment adjustment program.

(3) As a limitation to paragraph (1), the amendments to this

section enacted during calendar year 1993 shall not be implemented until the department has obtained any approvals that are necessary under federal law. Until such time as all necessary federal approvals are obtained, the payment adjustment program shall continue as though no amendments had been enacted during calendar year 1993. At such time as all necessary federal approvals have been obtained, the amendments enacted during calendar year 1993, shall be implemented effective as of the earliest effective date permissible under federal law.

(4) As a limitation to paragraph (1), amendments to this section enacted during calendar year 1994 shall not be implemented until the department has obtained any approvals that are necessary under federal law. Until all necessary federal approvals are obtained, the payment adjustment program shall continue as though no amendments had been enacted during calendar year 1994. When all necessary federal approvals have been obtained, the amendments enacted during calendar year 1994 shall be implemented effective as of the earliest effective date permissible under federal law. Notwithstanding any other provision of law, on or after the date that federal approval is obtained the payments made prior to that date with respect to the 1994–95 payment adjustment year or subsequent payment adjustment years shall be deemed nonfinal payments for purposes of this section and Section 14163. Any of those amounts paid or payable prior to that date shall then be compared to the payments that would have been made pursuant to the program changes as approved by the federal government for all periods of time permissible under federal law, and the difference, if any, shall be paid or recouped by the department, as appropriate.

(e) To qualify for payment adjustment amounts under this section, a hospital shall have been included on the disproportionate share list for the particular payment adjustment year. The list shall consist of those hospitals which satisfy both of the following requirements:

(1) The hospital shall meet the federal requirements for disproportionate share status set forth in subsection (d) of Section 1396r-4 of Title 42 of the United States Code.

(2) Either of the following shall apply:

(A) The hospital's medicaid inpatient utilization rate, as defined in Section 1396r-4(b) (2) of Title 42 of the United States Code, shall be at least one standard deviation above the mean medicaid inpatient utilization rate for hospitals receiving medicaid payments in the state.

(B) The hospital's low-income utilization rate shall exceed 25 percent.

(f) (1) For the 1991–92 payment adjustment year, a disproportionate share list shall be issued by the department no later than 65 days after the enactment of this section. For subsequent payment adjustment years, a tentative listing shall be prepared by the department at least 60 days before the beginning of the

particular payment adjustment year, and a disproportionate share list shall be issued no later than five days after the beginning of the particular payment adjustment year. All state agencies shall take all necessary steps to supply the most recent data available to the department to meet these deadlines. The Office of Statewide Health Planning and Development shall provide to the department quarterly access to the edited and unedited confidential patient discharge data files for all Medi-Cal eligible patients. The department shall maintain the confidentiality of that data to the same extent as is required of the Office of Statewide Health Planning and Development. In addition, the Office of Statewide Health Planning and Development shall provide to the department no later than March 1 of each year, the data specified by the department, as the data existed on the statewide data base file as of February 1 of each year (except that for the 1991-92 payment adjustment year, the Office of Statewide Health Planning and Development shall provide data as it existed on the statewide data base file as of August 30, 1991), from all of the following:

(A) Hospital annual disclosure reports, filed with the Office of Statewide Health Planning and Development pursuant to Section 443.31 of the Health and Safety Code, for hospital fiscal years which ended during the calendar year ending 13 months prior to the applicable February 1.

(B) Annual reports of hospitals, filed with the Office of Statewide Health Planning and Development pursuant to Section 439.2 of the Health and Safety Code, for the calendar year ending 13 months prior to the applicable February 1.

(C) Hospital patient discharge data reports, filed with the Office of Statewide Health Planning and Development pursuant to subdivision (g) of Section 443.31 of the Health and Safety Code, for the calendar year ending 13 months prior to the applicable February 1.

(D) Any other materials on file with the Office of Statewide Health Planning and Development.

(2) The disproportionate share list shall show all of the following:

(A) The name and license number of the hospital.

(B) Expressed as a percentage, the hospital's Medi-Cal utilization rate and low-income utilization rate as referred to in paragraph (2) of subdivision (e). The department shall determine these rates in accordance with paragraph (4).

(C) Based on the hospital's low-income utilization rate, the hospital's low-income number.

(3) The department shall determine a hospital's satisfaction of paragraph (1) of subdivision (e) based on the most recent annual data available, as it existed on the Office of Statewide Health Planning and Development statewide data base file as of February 1 of each year, and August 30 for the 1991-92 payment adjustment year, whether the data relates to operations under present or previous ownership.

(4) To determine a hospital's Medi-Cal inpatient utilization rate and low-income utilization rate for purposes of disproportionate share lists, the department shall utilize the same methodology, formulae, and data sources as set forth in connection with interim determinations in Attachment 4.19-A of the Medi-Cal State Plan (effective on or about July 1, 1990), except that the following shall apply:

(A) The calculations shall not be interim, but shall be final for purposes of this section.

(B) To the extent permitted by federal law, the payment adjustment amounts provided to hospitals pursuant to this section shall not be included for any purpose in the calculations and determinations made pursuant to this section.

(C) Any other variation otherwise required by this section or by federal law.

(D) The data utilized by the department shall relate to the hospital under present and previous ownership. When there has been a change of ownership, a change in the location of the main hospital facility, or a material change in patient admission patterns during the twenty-four months immediately prior to the payment adjustment year, and the change has resulted in a diminution of access for Medi-Cal inpatients at the hospital, all as determined by the department, the department shall, to the extent permitted by federal law, utilize current data that are reflective of the diminution of access, even if the data are not annual data.

(E) Unless expressly provided otherwise by this section, the hospital's low-income utilization rate shall be based on the most recent annual data available from annual hospital reports existing on the Office of Statewide Health Planning and Development data base file as of February 1 of each year.

(F) (i) If, for the 1994-95 payment adjustment year or subsequent payment adjustment years, some or all of the annual data elements available to the department from hospital reports filed with the Office of Statewide Health Planning and Development for purposes of computing hospital low-income utilization rates are different than in prior years due to changes in data reporting requirements of the Office of Statewide Health Planning and Development or changes in other state health care programs, the department shall take such steps as are necessary to obtain from hospitals appropriate data in order to clarify the annual data filed with the Office of Statewide Health Planning and Development. This shall be done by the department in order to ensure that low-income utilization rates are determined in a manner as equivalent as possible to the approach and methodology used for the 1991-92 payment adjustment year.

(ii) The efforts of the department to obtain and apply data for the purposes described in clause (i) shall include a survey to collect, from one or more hospitals, any data necessary to calculate the low-income utilization rates in accordance with clause (i). The purpose for the

survey shall be to clarify the data already included by hospitals in their annual reports submitted to the Office of Statewide Health Planning and Development. The data requested by the department in the survey may include, among other things, information regarding the manner in which payments made to hospitals under this section were reported by the hospitals to the Office of Statewide Health Planning and Development. The data requested may also include information regarding the manner in which hospitals reported figures relating to charity care, bad debts, and amounts received in connection with state or local indigent care programs.

(iii) In connection with any survey conducted under clause (ii), the department may require that hospitals submit responses in accordance with a deadline established by the department, and that the responses be supported by a verification of a hospital representative. Should any hospital not respond on a timely basis in accordance with protocols established by the department, the department shall utilize prior year data, adjusted by the department in its discretion, to calculate the hospital's low-income utilization rate.

(G) Notwithstanding any other provision of law, all payment adjustment amounts, including per diem payment adjustment amounts and supplemental lump-sum payment adjustments, paid or payable to a hospital under this section, shall be recorded on an accrual basis of accounting in reports filed by the hospital with the Office of Statewide Health Planning and Development or the department.

(5) For purposes of payment adjustment amounts under this section, each disproportionate share list shall be considered complete when issued by the department pursuant to paragraph (1). Nothing on a disproportionate share list, once issued by the department, shall be modified for any reason, other than mathematical or typographical errors or omissions on the part of the department or the Office of Statewide Health Planning and Development in preparation of the list.

(g) For each Medi-Cal day of acute inpatient hospital service paid by or on behalf of the department during a payment adjustment year, regardless of dates of service, to a hospital on the applicable disproportionate share list, where that hospital, on the first day of the payment adjustment year, is a major teaching hospital, the hospital shall be paid the sum of all of the following amounts, except as limited by other applicable provisions of this section:

(1) A minimum payment adjustment of three hundred dollars (\$300).

(2) The sum of the following amounts, minus three hundred dollars (\$300):

(A) A ninety dollar (\$90) payment adjustment for each percentage point, from 25 percent to 29 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(B) A seventy dollar (\$70) payment adjustment for each percentage point, from 30 percent to 34 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(C) A fifty dollar (\$50) payment adjustment for each percentage point, from 35 percent to 44 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(D) A thirty dollar (\$30) payment adjustment for each percentage point, from 45 percent to 64 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(E) A ten dollar (\$10) payment adjustment for each percentage point, from 65 percent to 80 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(3) If the sum calculated under paragraph (2) is less than zero, it shall be disregarded for payment purposes.

(h) For each Medi-Cal day of acute inpatient hospital service paid by or on behalf of the department during a payment adjustment year, regardless of dates of service, to a hospital on the applicable disproportionate share list, where that hospital, on the first day of the payment adjustment year, is a children's hospital, the hospital shall be paid the sum of four hundred fifty dollars (\$450), except as limited by other applicable provisions of this section.

(i) For each Medi-Cal day of acute inpatient hospital service paid by or on behalf of the department during a payment adjustment year, regardless of dates of service, to a hospital on the applicable disproportionate share list, where that hospital, on the first day of the payment adjustment year, is an acute psychiatric hospital or an alcohol-drug rehabilitation hospital, the hospital shall be paid the sum of all of the following amounts, except as limited by other applicable provisions of this section:

(1) A minimum payment adjustment of fifty dollars (\$50).

(2) The sum of the following amounts, minus fifty dollars (\$50):

(A) A ten dollar (\$10) payment adjustment for each percentage point, from 25 to 29 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(B) A seven dollar (\$7) payment adjustment for each percentage point, from 30 to 34 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(C) A five dollar (\$5) payment adjustment for each percentage point, from 35 to 44 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(D) A two dollar (\$2) payment adjustment for each percentage point, from 45 to 64 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(E) A one dollar (\$1) payment adjustment for each percentage point, from 65 to 80 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(3) If the sum calculated under paragraph (2) is less than zero, it

shall be disregarded for payment purposes.

(j) For each Medi-Cal day of acute inpatient hospital service paid by or on behalf of the department during a payment adjustment year, regardless of dates of service, to a hospital on the applicable disproportionate share list, where that hospital does not meet the criteria for receiving payments under subdivision (g), (h), or (i) above, the hospital shall be paid the sum of all of the following amounts, except as limited by other applicable provisions of this section:

(1) A minimum payment adjustment of one hundred dollars (\$100).

(2) If the hospital is an emergency services hospital at the time the payment adjustment is paid, a two hundred dollar (\$200) payment adjustment.

(3) The sum of the following amounts minus one hundred dollars (\$100), and minus an additional two hundred dollars (\$200) if the hospital is an emergency services hospital at the time the payment adjustment is paid:

(A) A forty dollar (\$40) payment adjustment for each percentage point, from 25 percent to 29 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(B) A thirty-five dollar (\$35) payment adjustment for each percentage point, from 30 percent to 34 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(C) A thirty dollar (\$30) payment adjustment for each percentage point, from 35 percent to 44 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(D) A twenty dollar (\$20) payment adjustment for each percentage point, from 45 percent to 64 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(E) A fifteen dollar (\$15) payment adjustment for each percentage point, from 65 percent to 80 percent, inclusive, of the hospital's low-income number as shown on the disproportionate share list.

(4) If the sum calculated under paragraph (3) is less than zero, it shall be disregarded for payment purposes.

(k) (1) For any particular payment adjustment year, no hospital may qualify for payments under more than one subdivision among subdivisions (g), (h), (i), and (j). If any hospital qualifies under more than one subdivision, the department shall determine which subdivision shall apply for payments.

(2) For each payment adjustment year beginning with 1992-93, the total applicable per diem payment adjustment amount calculated for each eligible hospital pursuant to subdivision (g), (h), (i), or (j) shall be adjusted by a percentage identical to the percentage increase in transfer amounts that the department has

authorized for use pursuant to paragraph (1) of subdivision (h) of Section 14163 for the particular fiscal year.

(3) If an eligible hospital ordinarily is paid by or on behalf of the department for Medi-Cal acute inpatient hospital services based on a payment methodology other than per diem payments, the eligible hospital shall receive payment adjustment amounts under subdivision (g), (h), (i), or (j) of this section based on its approved Medi-Cal days of acute inpatient hospital care, in the same fashion as all other eligible hospitals under this section.

(l) (1) (A) In determining Medi-Cal days of service for purposes of payment adjustments under this section, the department shall recognize all acute inpatient hospital days of service required to be taken into account under federal law.

(B) For the 1992-93 payment year, the department may consider the Medi-Cal days of service provided by the qualifying hospitals for Medi-Cal patients covered by the prepaid health plans contracting directly with the Medi-Cal program in achieving their maximum payments.

(C) For 1993-94 and subsequent payment years, the department may consider the Medi-Cal days of service provided by hospitals for Medi-Cal patients covered by the prepaid health plans contracting directly with the Medi-Cal program in determining the Medi-Cal utilization rate and the maximum days of payment. Additionally, the department may consider the days of service provided by the qualifying hospitals for Medi-Cal patients covered by the prepaid health plans contracting directly with the Medi-Cal program in achieving their maximum payments in those payment years.

(D) In order to meet the requirements of subparagraph (C), the Office of Statewide Health Planning and Development shall provide to the department quarterly access to all data elements on the edited and unedited confidential patient discharge data files, including Social Security account numbers. The department shall match these data with the department's Medi-Cal Eligibility Data System files to extract any data necessary to meet the requirements of subparagraph (C). The department shall maintain the confidentiality of all patient discharge data to the same extent as is required of the Office of Statewide Health Planning and Development.

(2) Notwithstanding paragraph (1), there shall be, for each eligible hospital, a maximum limit on the number of Medi-Cal acute inpatient hospital days for which payment adjustment amounts may be paid under this section with respect to each payment adjustment year. The maximum limit shall be that number of days that equals 80 percent of the eligible hospital's annualized Medi-Cal inpatient paid days, as determined from all Medi-Cal paid claims records available through April 1 preceding the beginning of the payment adjustment year.

(m) No payment rate for any service rendered by any hospital under the Medi-Cal selective provider contracting program shall be

reduced as a result of this section.

(n) Notwithstanding any other provision of law, to the extent consistent with federal law, and except as provided by this section, no maximum payment limit shall be placed on the amount of Medi-Cal payment adjustments which may be made to disproportionate share hospitals. The payments made to disproportionate share hospitals pursuant to this section and Section 14105.99 shall not cause any other amounts paid or payable to a hospital to be deemed in excess of any applicable maximum payment limit.

(o) The department shall promptly seek any necessary federal approvals in order to implement this section, including any amendments. Pursuant to Section 1396r-4 of Title 42 of the United States Code, and related federal medicaid statutes and regulations, payment adjustment systems for inpatient hospital services rendered by disproportionate share hospitals shall be included in a state's medicaid plan. Therefore, the department shall, prior to the end of the calendar quarter during which this section is enacted or amended, submit for federal approval an amendment to the Medi-Cal State Plan in connection with the payment adjustment program.

(p) (1) The department shall compute, prior to the beginning of each payment adjustment year, the projected size of the payment adjustment program for the particular payment adjustment year. To do so, the department shall determine the projected total payment adjustment amount for each eligible hospital, and shall add these amounts together to determine the projected total size of the program. To the extent this projected total figure for the program exceeds the portion of the maximum state disproportionate share hospital allotment for California under federal law that the department anticipates will be available for the period in question, the department shall reduce the total per diem composite amounts of the various eligible hospitals in the fashion described below so that the allotment in question will not be exceeded.

(2) As an initial step, all total per diem composite amounts for the entire payment adjustment year shall be reduced proportionately not to exceed 2 percent of each total per diem composite amount.

(3) If the reductions authorized by paragraph (2) are insufficient to align the program with the federal allotment for California, then, to the extent permitted by federal law, the following shall apply:

(A) The adjusted total per diem composite amounts, as calculated under paragraph (2), shall remain in effect for each eligible hospital whose low-income number is 30 percent or more.

(B) The adjusted total per diem composite amounts, as calculated under paragraph (2), for all other eligible hospitals shall be further reduced proportionately to align the program with the federal allotment, but in no event to a level that is less than 65 percent of the total per diem composite amount that would have been payable to the eligible hospital had no reductions taken place.

(4) If the steps set forth in paragraph (3) are not permissible under federal law, or are not adequate to align the program with the federal allotment, the adjusted total per diem composite amounts for all eligible hospitals for the entire payment adjustment year shall be further reduced proportionately to align the program with the federal allotment, but in no event to a level that would result in adjusted total per diem composite amounts that are less than 65 percent of the total per diem composite amounts that would have been payable had no reductions taken place.

(5) When all eligible hospitals have been reduced to the 65-percent level set forth in paragraphs (3) and (4), the adjusted total per diem composite amounts for all eligible hospitals shall be further reduced proportionately as necessary to align the program with the federal allotment.

(6) This subdivision shall not apply to the 1995-96 payment adjustment year.

(q) (1) If it is necessary to apply the provisions of paragraph (3) of subdivision (p) at any time, the department shall, as soon as practicable, evaluate why the insufficiency arose and identify the projected occurrence and duration of any future insufficiencies.

(2) If the department determines as a result of the evaluations under paragraph (1) that (A) implementation of paragraph (3) of subdivision (p) will likely be necessary to resolve additional insufficiencies for the current payment adjustment year or the next payment adjustment year; and (B) that the level of federal financial participation realized by the payment adjustment program, for the current payment adjustment year as a whole, will be less than 30 percent of the percentage of federal financial participation that normally is applicable for Medi-Cal expenditures for acute inpatient hospital services, and that the level of federal financial participation for the payment adjustment program is expected to continue to remain below that 30 percent level for the next payment adjustment year as a whole, the department shall, as soon as practicable, implement paragraphs (3) and (4).

(3) If the department determines that the circumstances described in paragraph (2) are present, the payment adjustment program shall be terminated, effective as of the earliest date permissible under federal law. In that event, all installment payments to the fund which are already due pursuant to Section 14163 at the time of the department's determination shall remain due, and shall be collected by the Controller. However, installment payments which are not yet due at that time shall not become due.

(4) Within 90 days after the termination of the payment adjustment program, as referred to in paragraph (3), or as soon as practicable, the department shall determine whether any amounts remain in the fund which are not needed to pay prior payment adjustment amounts under this section. If remaining amounts exist in the fund, they shall be refunded to transferor entities on a pro rata basis, within 45 days after the date of the department's

determination.

(r) (1) The state shall be held harmless from any federal disallowance resulting from payments made under this section, and from payments made to hospitals based on transfers accepted by the department under Section 14164. Any hospital that has received payments under this section, or based on transfers accepted by the department under Section 14164, shall be liable for any audit exception or federal disallowance only with respect to the payments made to that hospital. The department shall recoup from a hospital the amount of any audit exception or federal disallowance in the manner authorized by applicable laws and regulations.

(2) If any payment adjustment that has been paid, or that is otherwise payable under this section, exceeds the federal hospital-specific limitation under Section 1396r-4(g) of Title 42 of the United States Code, the department shall withhold or recoup the payment adjustment amount that exceeds the limitation. The nonfederal component of the amount withheld or recouped shall be redeposited in, or shall remain in, the fund, as applicable, until used for the purposes described in paragraph (2) of subdivision (j) of Section 14163.

(s) (1) The department may utilize existing administrative appeal procedures for purposes of any appealable matter that arises under the payment adjustment program. The matters that may be appealed shall be limited to those related to the following:

(A) Paragraph (5) of subdivision (f).

(B) State audit disallowances of amounts paid to hospitals under the payment adjustment program.

(2) Calculations which are final pursuant to paragraph (4) or (5) of subdivision (f) or the procedures or data on which those calculations are based, shall not be appealed.

(t) (1) Except as provided in paragraph (2), the department shall take all appropriate steps permitted by law and the Medi-Cal State Plan to ensure the following for all years of the payment adjustment program:

(A) That well baby (nursery) days and acute administrative days are included in the payment adjustment program in the same fashion as all other Medi-Cal days of acute inpatient hospital service.

(B) That, to the same extent as any other Medi-Cal days of acute inpatient hospital service, well baby (nursery) days and acute administrative days are included as payable days under the payment adjustment program and in the total of annualized Medi-Cal inpatient paid days.

(C) That, if pursuant to paragraph (2), any well baby (nursery) days or acute administrative days are not included in the payment adjustment program for payment purposes for any parts of the 1992-93 or 1993-94 payment adjustment years, all such days are nevertheless included in the total of annualized Medi-Cal inpatient paid days for all purposes under the payment adjustment program, unless otherwise barred by paragraph (2).

(2) In no event shall paragraph (1) be implemented in a fashion that is inconsistent with federal medicaid law or the Medi-Cal State Plan.

(u) (1) For the 1993-94 payment adjustment year, each eligible hospital shall also be eligible to receive a supplemental lump-sum payment adjustment, which shall be payable as a result of the hospital being included on the disproportionate share list as of September 30, 1993. For purposes of federal medicaid rules, including Section 447.297(d) of Title 42 of the Code of Federal Regulations, the supplemental payment adjustments shall be applicable to the federal fiscal year that ends on September 30, 1993.

(2) The availability of supplemental payment adjustments under this subdivision shall be determined as follows:

(A) The final maximum state disproportionate share hospital allotment for California under the provisions of applicable federal medicaid rules shall be identified for the 1993 federal fiscal year. This final allotment is two billion one hundred ninety-one million four hundred fifty-one thousand dollars (\$2,191,451,000), as specified at page 43186 of Volume 58 of the Federal Register.

(B) The total amount of all per diem payment adjustment amounts under this section, whether paid or payable, that are applicable to the 1993 federal fiscal year shall be determined. The applicability of the per diem payment adjustment amounts to the 1993 federal fiscal year shall be determined in accordance with federal medicaid rules, including Sections 447.297(d)(3) and 447.298 of Title 42 of the Code of Federal Regulations.

(C) The figure determined under subparagraph (B) shall be subtracted from the figure identified under subparagraph (A). If the remainder is a positive figure, supplemental lump-sum payment adjustments shall be made under this subdivision in accordance with paragraph (3).

(3) The amount of the supplemental lump-sum payment adjustment to each eligible hospital shall be computed as follows:

(A) The projected total of all per diem payment adjustment amounts payable to each particular eligible hospital under this section for the 1993-94 payment adjustment year shall be determined. For each hospital, this figure shall be identical to the figure used for the same hospital in the calculations regarding transfer amounts under subdivision (h) of Section 14163 for the 1993-94 state fiscal year.

(B) The projected totals for all eligible hospitals determined under subparagraph (A) shall be added together to determine an aggregate total of all projected per diem payment adjustments for 1993-94 payment adjustment year. This figure shall be identical to the aggregate figure for all hospitals used in the calculations regarding transfer amounts under subdivision (h) of Section 14163 for the 1993-94 state fiscal year.

(C) The figure determined for each eligible hospital under subparagraph (A) shall be divided by the aggregate figure

determined under subparagraph (B), yielding a percentage figure for each hospital.

(D) The percentage figure determined for each hospital under subparagraph (C) shall be multiplied by the positive remainder calculated under subparagraph (C) of paragraph (2).

(E) The product as so determined for each eligible hospital under subparagraph (D) shall be the supplemental lump-sum payment adjustment amount payable to the particular hospital.

(4) The department shall make partial payments of the supplemental lump-sum payment adjustments to eligible hospitals on or before January 1, 1994. The department shall make final calculations regarding the supplemental lump-sum payments based on data available as of March 1, 1994, and shall distribute the final payments promptly thereafter.

(5) The department shall implement this subdivision only to the extent consistent with federal medicaid law and the Medi-Cal State Plan, and only to the extent that the department determines that federal financial participation is available. In doing so, the department shall comply with any procedures instituted by the Health Care Financing Administration in connection with Sections 447.297(d)(3) and 447.298 of Title 42 of the Code of Federal Regulations.

(v) (1) For the 1993-94 payment adjustment year, each eligible hospital that remains in operation as of June 30, 1994, shall also be eligible to receive a supplemental lump-sum payment adjustment, which shall be payable as a result of the hospital being a disproportionate share hospital in operation as of that date.

(2) The availability of supplemental lump-sum payment adjustments under this subdivision shall be determined by the department as follows:

(A) The final maximum state disproportionate share hospital allotment for California under the provisions of applicable federal medicaid rules shall be identified for the 1994 federal fiscal year. This final allotment is two billion one hundred ninety-one million four hundred fifty-one thousand dollars (\$2,191,451,000), as specified on page 22676 of Volume 59 of the Federal Register.

(B) The total amount of all per diem payment adjustment amounts under this section, whether paid or payable, that are applicable to the period October 1, 1993, through June 30, 1994, shall be determined. The applicability of the per diem payment adjustment amounts to this period of time shall be determined in accordance with federal medicaid rules, including Sections 447.297(d)(3) and 447.298 of Title 42 of the Code of Federal Regulations.

(C) The figure determined under subparagraph (B) shall be subtracted from the figure identified under subparagraph (A). If the remainder is a positive figure, supplemental lump-sum payment adjustments shall be made under this subdivision in accordance with paragraph (3).

(3) The amount of the supplemental lump-sum payment adjustment to each hospital shall be computed as follows:

(A) The projected total of all other payment adjustment amounts payable to each particular hospital under this section applicable to the 1993–94 payment adjustment year shall be determined. For each hospital, this figure shall be identical to the sum of the figures used for the same hospital in the calculations regarding transfer amounts under subdivision (h) of Section 14163 for the 1993–94 state fiscal year, not including the supplemental lump-sum payments described in this subdivision.

(B) The projected totals for all hospitals determined under subparagraph (A) shall be added together to determine an aggregate total. This aggregate total shall be identical to the aggregate figure for all hospitals used in the calculations regarding transfer amounts under subdivision (h) of Section 14163 for the 1993–94 state fiscal year, not including the supplemental lump-sum payments described in this subdivision.

(C) The figure determined for each hospital under subparagraph (A) shall be divided by the aggregate figure determined under subparagraph (B), yielding a percentage figure for each hospital.

(D) The percentage figure determined for each hospital under subparagraph (C) shall be multiplied by the positive remainder calculated under subparagraph (C) of paragraph (2).

(E) The product determined under subparagraph (D) for each hospital shall be the supplemental lump-sum payment adjustment amount payable to the particular hospital, which shall be payable because the facility is a disproportionate share hospital in operation as of June 30, 1994.

(4) The department shall make interim and final payments of the supplemental lump-sum payment adjustments to hospitals on or before October 31, 1994.

(5) The department shall implement this subdivision only to the extent consistent with federal medicaid law and the Medi-Cal State Plan, and only to the extent that the department determines that federal financial participation is available. In doing so, the department shall comply with any procedures instituted by the Health Care Financing Administration in connection with Sections 447.297(d)(3) and 447.298 of Title 42 of the Code of Federal Regulations.

(w) (1) For the 1994–95 payment adjustment year, each eligible hospital that remains in operation as of June 30, 1995, shall also be eligible to receive a supplemental lump-sum payment adjustment, which shall be payable as a result of the hospital being a disproportionate share hospital in operation as of that date.

(2) The availability of supplemental lump-sum payment adjustments under this subdivision shall be determined by the department as follows:

(A) The final maximum state disproportionate share hospital allotment for California under the provisions of applicable federal

medicaid rules shall be identified for the 1995 federal fiscal year.

(B) The total amount of all per diem payment adjustment amounts under this section, whether paid or payable, that are applicable to the period October 1, 1994, through June 30, 1995, shall be determined. The applicability of the per diem payment adjustment amounts to this period of time shall be determined in accordance with federal medicaid rules, including Sections 447.297(d)(3) and 447.298 of Title 42 of the Code of Federal Regulations.

(C) The figure determined under subparagraph (B) shall be subtracted from the figure identified under subparagraph (A). If the remainder is a positive figure, supplemental lump-sum payment adjustments shall be made under this subdivision in accordance with paragraph (3).

(3) The amount of the supplemental lump-sum payment adjustment to each hospital shall be computed as follows:

(A) The projected total of all other payment adjustment amounts payable to each particular hospital under this section applicable to the 1994-95 payment adjustment year shall be determined. For each hospital, this figure shall be identical to the sum of the figures used for the same hospital in the calculations regarding transfer amounts under subdivision (h) of Section 14163 for the 1994-95 state fiscal year, not including the supplemental lump-sum payments described in this subdivision.

(B) The projected totals for all hospitals determined under subparagraph (A) shall be added together to determine an aggregate total. This aggregate total shall be identical to the aggregate figure for all hospitals used in the calculations regarding transfer amounts under subdivision (h) of Section 14163 for the 1994-95 state fiscal year, not including the supplemental lump-sum payments described in this subdivision.

(C) The figure determined for each hospital under subparagraph (A) shall be divided by the aggregate figure determined under subparagraph (B), yielding a percentage figure for each hospital.

(D) The percentage figure determined for each hospital under subparagraph (C) shall be multiplied by the positive remainder calculated under subparagraph (C) of paragraph (2).

(E) The product as so determined under subparagraph (D) for each hospital shall be the supplemental lump-sum payment adjustment amount payable to the particular hospital, which shall be payable because the facility is a disproportionate share hospital in operation as of June 30, 1995.

(4) The department shall make interim and final payments of the supplemental lump-sum payment adjustments to hospitals on or before October 31, 1995.

(5) The department shall implement this subdivision only to the extent consistent with federal medicaid law and the Medi-Cal State Plan, and only to the extent that the department determines that federal financial participation is available. In doing so, the

department shall comply with any procedures instituted by the Health Care Financing Administration in connection with Sections 447.297(d)(3) and 447.298 of Title 42 of the Code of Federal Regulations.

(x) (1) With respect to per diem payment adjustments otherwise payable in connection with the period of July 1 through September 30 of the 1994-95 payment adjustment year, payment adjustment amounts shall be adjusted as described in paragraph (2).

(2) No per diem payment adjustment amounts shall be payable in connection with the period of July 1 through September 30 of the 1994-95 payment adjustment year. The Medi-Cal days of acute inpatient hospital service paid by or on behalf of the department that otherwise would have given rise to payment adjustment amounts with respect to this period of time shall not count toward the maximum limit set forth in paragraph (2) of subdivision (l).

(y) Notwithstanding any other provision of law, except subdivision (z), the payment adjustment program for the 1995-96 payment adjustment year shall be structured as set forth below.

(1) (A) The department shall, in the manner used for prior years, compute the projected total payment adjustment amounts for all eligible hospitals, by determining for each eligible hospital its total per diem composite amount and multiplying that figure by 80 percent of the hospital's annualized Medi-Cal inpatient paid days.

(B) The products of the calculations under subparagraph (A) for all eligible hospitals shall be added together. The sum of all these figures shall be the unadjusted projected total payment adjustment program for the 1995-96 payment adjustment year.

(2) The remaining amount available as part of the state disproportionate share hospital allotment for California under applicable federal rules for July 1995 through September 1995 (as part of the 1995 federal fiscal year) shall be recognized as being zero.

(3) The department shall estimate what the state disproportionate share hospital allotment for California will be for the 1996 federal fiscal year under applicable federal rules. The estimate shall not exceed the allotment that was applicable for California for the 1995 federal fiscal year.

(4) The estimate identified by the department under paragraph (3) shall be reduced by subtracting the total amount of the supplemental lump-sum payments paid or payable under subdivisions (v) and (w).

(5) The remainder determined under paragraph (4) shall be added to the amount determined under paragraph (2). The total of those two amounts shall be the maximum size of the payment adjustment program for the 1995-96 payment adjustment year.

(6) The total per diem composite amount computed for each eligible hospital under subparagraph (A) of paragraph (1) shall be reduced so the payment adjustment program for the 1995-96 payment adjustment year does not exceed the amount computed under paragraph (5). The reductions shall occur as follows:

(A) The department shall reduce the total per diem composite amount for each eligible hospital by multiplying the amount by an identical percentage. The percentage figure to be used for this purpose shall be that percentage that is derived by dividing the amount determined under paragraph (5) by the unadjusted projected total payment adjustment program amount determined under subparagraph (B) of paragraph (1).

(B) The percentage figure derived under subparagraph (A) shall be applied to the total per diem composite amount for each eligible hospital, yielding an adjusted total per diem composite amount for each hospital for the 1995-96 payment adjustment year.

(C) The adjusted total per diem composite amount determined under subparagraph (B) for each eligible hospital shall be multiplied by 80 percent of the hospital's annualized Medi-Cal inpatient paid days, yielding an adjusted projected total payment adjustment amount for the hospital for the 1995-96 payment adjustment year.

(D) The adjusted figures computed for all eligible hospitals under subparagraph (C) shall be added together, yielding the adjusted maximum size of the payment adjustment program for the 1995-96 payment adjustment year, which shall equal the figure computed under paragraph (5).

(7) The adjusted maximum amount of the payment adjustment program for the 1995-96 payment adjustment year as determined under subparagraph (D) of paragraph (6), and the adjusted projected total payment adjustment amount for each eligible hospital, as determined under subparagraph (C) of paragraph (6), shall be distributed as follows:

(A) No per diem payment adjustment amounts shall be payable in connection with the period of July 1 through September 30 of the 1995-96 payment adjustment year. The Medi-Cal days of acute inpatient hospital service paid by or on behalf of the department that otherwise would have given rise to payment adjustment amounts with respect to this period of time shall not count toward the maximum limit set forth in paragraph (2) of subdivision (l).

(B) For all eligible hospitals, the adjusted per diem composite amounts (as determined under subparagraph (B) of paragraph (6)) shall be the amounts payable with respect to the period of October 1 through June 30 of the 1995-96 payment adjustment year, subject to the applicable provisions of subdivision (z).

(8) For the 1995-96 payment adjustment year, each eligible hospital that remains in operation as of June 30, 1996, shall also be eligible to receive a supplemental lump-sum payment adjustment, which shall be payable as a result of the facility being a disproportionate share hospital in operation as of that date. The availability of supplemental lump-sum payment adjustments under this paragraph shall be determined by the department as follows:

(A) The adjusted projected total payment adjustment amount for each hospital, as determined under subparagraph (C) of paragraph (6), shall be identified.

(B) The total amount of all per diem payment adjustment amounts under this section, whether paid or payable, that are applicable to the period July 1, 1995, through June 30, 1996, shall be determined for each hospital, taking into account subparagraph (A) of paragraph (7). The applicability of the per diem payment adjustment amounts to this period of time shall be determined in accordance with federal medicaid rules, including Sections 447.297(d)(3) and 447.298 of Title 42 of the Code of Federal Regulations.

(C) The amount determined under subparagraph (B) for each hospital shall be subtracted from the amount identified under subparagraph (A) for each hospital. If the remainder is a positive figure for the particular hospital, the supplemental lump-sum payment adjustment for the hospital shall be the positive remainder amount, which shall be payable because the facility is a disproportionate share hospital in operation as of June 30, 1996.

(D) The department shall make interim and final payments of the supplemental lump-sum payment adjustments to hospitals on or before September 30, 1996.

(E) The department shall implement this subdivision only to the extent consistent with federal medicaid law and the Medi-Cal State Plan, and only to the extent that the department determines that federal financial participation is available. In doing so, the department shall comply with any procedures instituted by the Health Care Financing Administration in connection with Sections 447.297(d)(3) and 447.298 of Title 42 of the Code of Federal Regulations.

(z) (1) (A) Notwithstanding any other provision of law (except for subparagraph (B)), all Medi-Cal days of acute inpatient hospital service paid by or on behalf of the department that give rise to payment adjustment amounts with respect to the period October 1, 1994, through June 30, 1995, shall be treated as involving 1.4 days for purposes of payment adjustments with respect to this period of time. As a result, each per diem payment adjustment amount otherwise payable to the hospital in connection with these days shall be increased by 40 percent. The Medi-Cal days in question shall be treated as involving 1.4 days toward the maximum limit set forth in paragraph (2) of subdivision (l). The Medi-Cal days in question shall be treated as involving 1.0 days for purposes of determining the hospital's annualized Medi-Cal inpatient paid days for the next applicable payment adjustment year.

(B) For the 1994-95 payment adjustment year, no eligible hospital shall receive total payment adjustments, including per diem payment adjustment amounts and any supplemental lump-sum payment adjustment amounts, in excess of the projected total payment adjustment amounts that were computed or recomputed, as applicable, for the hospital by the department with respect to the 1994-95 payment adjustment year. For each hospital, this maximum figure shall not exceed the sum of the following two components:

(i) The final figure computed by the department as the hospital's total per diem composite amount (including any applicable adjustments under subdivision (p)), multiplied by 80 percent of the hospital's annualized Medi-Cal inpatient paid days.

(ii) The amount calculated by the department as the hospital's pro rata share (based on the figures for all hospitals computed under clause (i)) of the remainder determined by subtracting (I) the sum of the figures computed for all hospitals under clause (i) from (II) the final maximum state disproportionate share hospital allotment for California under applicable federal rules for the 1995 federal fiscal year.

(C) Any payment adjustment amount that otherwise would be payable to a hospital, but that is barred by subparagraph (B), shall be withheld or recouped by the department and distributed on a descending pro rata basis as part of the supplemental lump-sum distribution described in subdivision (w) to those hospitals that have not reached their maximum figures as described in subparagraph (B).

(2) (A) Notwithstanding any other provision of law, except for subparagraph (B), all Medi-Cal days of acute inpatient hospital service paid by or on behalf of the department that give rise to payment adjustment amounts with respect to the period October 1, 1995, through June 30, 1996, shall be treated as involving 1.4 days for purposes of payment adjustments with respect to this period of time. As a result, each per diem payment adjustment amount otherwise payable to the hospital in connection with these days shall be increased by 40 percent. The Medi-Cal days in question shall be treated as involving 1.4 days toward the maximum limit set forth in paragraph (2) of subdivision (l). The Medi-Cal days in question shall be treated as involving 1.0 days for purposes of determining the hospital's annualized Medi-Cal inpatient paid days for the next applicable payment adjustment year.

(B) For the 1995-96 payment adjustment year, no eligible hospital shall receive total payment adjustments, including per diem payment adjustment amounts and any supplemental lump-sum payment adjustment amounts, in excess of the adjusted projected total payment adjustment amount that was computed for the hospital for the 1995-96 payment adjustment year under subparagraph (C) of paragraph (6) of subdivision (y).

(C) Any payment adjustment amount that otherwise would be payable to a hospital, but that is barred by subparagraph (A), shall be withheld or recouped by the department and distributed on a descending pro rata basis as part of the supplemental lump-sum distribution described in paragraph (8) of subdivision (y) to those hospitals that have not reached their maximum figures as described in subparagraph (B).

(3) Notwithstanding any other provision of law, to the extent necessary or appropriate to implement and administer the amendments to this section enacted during the 1994 calendar year,

the department may utilize an approach involving interim payments, with reconciliation to final payments within a reasonable time.

SEC. 2. Section 14163 of the Welfare and Institutions Code is amended to read:

14163. (a) For purposes of this section, the following definitions shall apply:

(1) "Public entity" means a county, a city, a city and county, the University of California, a local hospital district, a local health authority, or any other political subdivision of the state.

(2) "Hospital" means a health facility that is licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code to provide acute inpatient hospital services, and includes all components of the facility.

(3) "Disproportionate share hospital" means a hospital providing acute inpatient services to Medi-Cal beneficiaries that meets the criteria for disproportionate share status relating to acute inpatient services set forth in Section 14105.98.

(4) "Disproportionate share list" means the annual list of disproportionate share hospitals for acute inpatient services issued by the department pursuant to Section 14105.98.

(5) "Fund" means the Medi-Cal Inpatient Payment Adjustment Fund.

(6) "Eligible hospital" means, for a particular state fiscal year, a hospital on the disproportionate share list that is eligible to receive payment adjustment amounts under Section 14105.98 with respect to that state fiscal year.

(7) "Transfer year" means the particular state fiscal year during which, or with respect to which, public entities are required by this section to make an intergovernmental transfer of funds to the Controller.

(8) "Transferor entity" means a public entity that, with respect to a particular transfer year, is required by this section to make an intergovernmental transfer of funds to the Controller.

(9) "Transfer amount" means an amount of intergovernmental transfer of funds that this section requires for a particular transferor entity with respect to a particular transfer year.

(10) "Intergovernmental transfer" means a transfer of funds from a public entity to the state, that is local government financial participation in Medi-Cal pursuant to the terms of this section.

(11) "Licensee" means an entity that has been issued a license to operate a hospital by the department.

(12) "Annualized Medi-Cal inpatient paid days" means the total number of Medi-Cal acute inpatient hospital days, regardless of dates of service, for which payment was made by or on behalf of the department to a hospital, under present or previous ownership, during the most recent calendar year ending prior to the beginning of a particular transfer year, including all Medi-Cal acute inpatient covered days of care for hospitals that are paid on a different basis

than per diem payments.

(13) "Medi-Cal acute inpatient hospital day" means any acute inpatient day of service attributable to patients who, for those days, were eligible for medical assistance under the California state plan, including any day of service that is reimbursed on a basis other than per diem payments.

(b) The Medi-Cal Inpatient Payment Adjustment Fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, the fund shall be continuously appropriated to, and under the administrative control of, the department for the purposes specified in subdivision (d). The fund shall consist of the following:

(1) Transfer amounts collected by the Controller under this section, whether submitted by transferor entities pursuant to subdivision (i) or obtained by offset pursuant to subdivision (j).

(2) Any other intergovernmental transfers deposited in the fund, as permitted by Section 14164.

(3) Any interest that accrues with respect to amounts in the fund.

(c) Moneys in the fund, which shall not consist of any state general funds, shall be used as the source for the nonfederal share of payments to hospitals pursuant to Section 14105.98. Moneys shall be allocated from the fund by the department and matched by federal funds in accordance with customary Medi-Cal accounting procedures, and used to make payments pursuant to Section 14105.98.

(d) Except as otherwise provided in Section 14105.98 or in any provision of law appropriating a specified sum of money to the department for administering this section and Section 14105.98, moneys in the fund shall be used only for the following:

(1) Payments to hospitals pursuant to Section 14105.98.

(2) Except for the amount transferred pursuant to paragraph (3), transfers to the Health Care Deposit Fund in the amount of two hundred thirty-nine million seven hundred fifty-seven thousand six hundred ninety dollars (\$239,757,690), for the 1994-95 fiscal year and for each fiscal year thereafter. Notwithstanding any other provision of law, the amount specified in this paragraph shall be in addition to any amounts transferred to the Health Care Deposit Fund arising from changes of any kind attributable to payment adjustment years prior to the 1993-94 payment adjustment year. These transfers from the fund shall be made in six equal monthly installments to the Medi-Cal local assistance appropriation item (Item 4260-101-001 of the annual Budget Act) in support of Medi-Cal expenditures. The first installment shall accrue in October of each transfer year, and all other installments shall accrue monthly thereafter from November through March.

(3) In the 1993-94 fiscal year, in addition to the amount transferred as specified in paragraph (2), fifteen million dollars (\$15,000,000) shall also be transferred to the Medi-Cal local assistance appropriation item (Item 4260-101-001) of the Budget Act of 1993.

(e) For the 1991-92 state fiscal year, the department shall determine, no later than 70 days after the enactment of this section, the transferor entities for the 1991-92 transfer year. To make this determination, the department shall utilize the disproportionate share list for the 1991-92 fiscal year, which shall be issued by the department no later than 65 days after the enactment of this section, pursuant to paragraph (1) of subdivision (f) of Section 14105.98. The department shall identify each eligible hospital on the list for which a public entity is the licensee as of July 1, 1991. The public entity that is the licensee of each identified eligible hospital shall be a transferor entity for the 1991-92 transfer year.

(f) The department shall determine, no later than 70 days after the enactment of this section, the transfer amounts for the 1991-92 transfer year.

The transfer amounts shall be determined as follows:

(1) The eligible hospitals for 1991-92 shall be identified. For each hospital, the applicable total per diem payment adjustment amount under Section 14105.98 for the 1991-92 transfer year shall be computed. This amount shall be multiplied by 80 percent of the eligible hospital's annualized Medi-Cal inpatient paid days as determined from all Medi-Cal paid claims records available through April 1, 1991. The products of these calculations for all eligible hospitals shall be added together to determine an aggregate sum for the 1991-92 transfer year.

(2) The eligible hospitals for 1991-92 involving transferor entities as licensees shall be identified. For each hospital, the applicable total per diem payment adjustment amount under Section 14105.98 for the 1991-92 transfer year shall be computed. This amount shall be multiplied by 80 percent of the eligible hospital's annualized Medi-Cal inpatient paid days as determined from all Medi-Cal paid claims records available through April 1, 1991. The products of these calculations for all eligible hospitals with transferor entities as licensees shall be added together to determine an aggregate sum for the 1991-92 transfer year.

(3) The aggregate sum determined under paragraph (1) shall be divided by the aggregate sum determined under paragraph (2), yielding a factor to be utilized in paragraph (4).

(4) The factor determined in paragraph (3) shall be multiplied by the amount determined for each hospital under paragraph (2). The product of this calculation for each hospital in paragraph (2) shall be divided by 1.771, yielding a transfer amount for the particular transferor entity for the transfer year, except as provided by paragraph (5).

(5) Only for the transfer year with respect to which the payment adjustment program set forth in Section 14105.98 first gains federal approval, a reduction in the transfer amount determined pursuant to paragraph (4) shall be applicable under the following circumstances:

(A) To determine any such reduction, the transfer amount determined pursuant to paragraph (4) shall first be multiplied by a

fraction, the numerator of which is the number of days of the transfer year for which federal approval is effective and the denominator of which is 365.

(B) If the product of the calculation under subparagraph (A) is 80 percent or more of the transfer amount determined under paragraph (4), no reduction of the transfer amount determined under paragraph (4) shall apply.

(C) If the product of the calculation under subparagraph (A) is less than 80 percent of the transfer amount determined under paragraph (4), a reduction shall apply to the transfer amount determined under paragraph (4). The reduction shall be that particular amount which is equal to the difference between (i) the transfer amount determined under paragraph (4) and (ii) the amount calculated under subparagraph (A) divided by 80 percent.

(D) Any reduction of a transfer amount applicable under subparagraph (C) shall be spread equally among the installments referred to in subdivision (i).

(g) For the 1991-92 transfer year, the department shall notify each transferor entity in writing of its applicable transfer amount or amounts no later than 70 days after the enactment of this section, which amount or amounts shall be subject to adjustment pursuant to subdivisions (f) and (i).

(h) For the 1992-93 transfer year and subsequent transfer years, transfer amounts shall be determined in the same procedural manner as set forth in subdivision (f), except:

(1) The department shall use all of the following:

(A) The disproportionate share list applicable to the particular transfer year to determine the eligible hospitals.

(B) The payment adjustment amounts calculated under Section 14105.98 for the particular transfer year. These amounts shall take into account any projected or actual increases or decreases in the size of the payment adjustment program as are required under Section 14105.98 for the particular year in question. Subject to the installment schedule in paragraph (5) of subdivision (i) regarding transfer amounts, the department may issue interim, revised, and supplemental transfer requests as necessary and appropriate to address changes in payment adjustment levels that occur under Section 14105.98. All transfer requests, or adjustments thereto, issued to transferor entities by the department shall meet the requirements set forth in subparagraph (E) of paragraph (5) of subdivision (i).

(C) Data regarding annualized Medi-Cal inpatient paid days for the most recent calendar year ending prior to the beginning of the particular transfer year, as determined from all Medi-Cal paid claims records available through April 1 preceding the particular transfer year.

(D) The status of public entities as licensees of eligible hospitals as of July 1 of the particular transfer year.

(E) The transfer amounts calculated by the department may be increased or decreased by a percentage amount consistent with the

Medi-Cal State Plan.

(2) For the 1993-94 transfer year and subsequent transfer years, transfer amounts shall be increased on a pro rata basis for each transferor entity for the particular transfer year in the amounts necessary to fund the nonfederal share of the total supplemental lump-sum payment adjustment amounts that arise under Section 14105.98. For purposes of this paragraph, the supplemental lump-sum payment adjustment amounts shall be deemed to arise for the particular transfer year as of the date specified in Section 14105.98. Transfer amounts to fund the nonfederal share of the payments shall be paid by the transferor entities for the particular transfer year within 20 days after the department notifies the transferor entity in writing of the additional transfer amount to be paid.

(3) The department shall prepare preliminary analyses and calculations regarding potential transfer amounts, and potential transferor entities shall be notified by the department of estimated transfer amounts as soon as reasonably feasible regarding any particular transfer year. Written notices of transfer amounts shall be issued by the department as soon as possible with respect to each transfer year. All state agencies shall take all necessary steps in order to supply applicable data to the department to accomplish these tasks. The Office of Statewide Health Planning and Development shall provide to the department quarterly access to the edited and unedited confidential patient discharge data files for all Medi-Cal eligible patients. The department shall maintain the confidentiality of that data to the same extent as is required of the Office of Statewide Health Planning and Development. In addition, the Office of Statewide Health Planning and Development shall provide to the department, not later than March 1 of each year, the data specified by the department, as the data existed on the statewide data base file as of February 1 of each year, from all of the following:

(A) Hospital annual disclosure reports, filed with the Office of Statewide Health Planning and Development pursuant to Section 443.31 of the Health and Safety Code, for hospital fiscal years that ended during the calendar year ending 13 months prior to the applicable February 1.

(B) Annual reports of hospitals, filed with the Office of Statewide Health Planning and Development pursuant to Section 439.2 of the Health and Safety Code, for the calendar year ending 13 months prior to the applicable February 1.

(C) Hospital patient discharge data reports, filed with the Office of Statewide Health Planning and Development pursuant to subdivision (g) of Section 443.31 of the Health and Safety Code, for the calendar year ending 13 months prior to the applicable February 1.

(D) Any other materials on file with the Office of Statewide Health Planning and Development.

(4) For the 1993-94 transfer year and subsequent transfer years,

the divisor to be used for purposes of the calculation referred to in paragraph (4) of subdivision (f) shall be determined by the department. The divisor shall be calculated to ensure that the appropriate amount of transfers from transferor entities are received into the fund to satisfy the requirements of Section 14105.98 for the particular transfer year. For the 1993-94 transfer year, the divisor shall be 1.742.

(5) For the 1993-94 fiscal year, the transfer amount that would otherwise be required from the University of California shall be increased by fifteen million dollars (\$15,000,000).

(6) Notwithstanding any other provision of law, the total amount of transfers required from the transferor entities for any particular transfer year shall not exceed the sum of the following:

(A) The amount needed to fund the nonfederal share of all payment adjustment amounts applicable to the particular payment adjustment year as calculated under Section 14105.98. Included in the calculations for this purpose shall be any decreases in the program as a whole, and for individual hospitals, that arise due to the provisions of Section 1396r-4(f) of Title 42 of the United States Code.

(B) The amount needed to fund the transfers to the Health Care Deposit Fund, as referred to in paragraphs (2) and (3) of subdivision (d).

(7) Except as provided in subparagraph (A) of paragraph (2) of subdivision (j), any amounts in the fund that are not expended, or estimated to be required for expenditure, under Section 14105.98 with respect to a particular transfer year shall be returned on a pro rata basis to the transferor entities for the particular transfer year within 120 days after the department determines that the funds are not needed for an expenditure in connection with the particular transfer year.

(i) (1) For the 1991-92 transfer year, each transferor entity shall pay its transfer amount or amounts to the Controller, for deposit in the fund, in eight equal installments. Except as provided below, the first installment shall accrue on July 25, 1991, and all other installments shall accrue on the 5th day of each month thereafter from August through February.

(2) Notwithstanding paragraph (1), no installment shall be payable to the Controller until that date which is 20 days after the department notifies the transferor entity in writing that the payment adjustment program set forth in Section 14105.98 has first gained federal approval as part of the Medi-Cal program. For purposes of this paragraph, federal approval requires both (i) approval by appropriate federal agencies of an amendment to the Medi-Cal State Plan, as referred to in subdivision (o) of Section 14105.98, and (ii) confirmation by appropriate federal agencies regarding the availability of federal financial participation for the payment adjustment program set forth in Section 14105.98 at a level of at least 40 percent of the percentage of federal financial participation that is normally applicable for Medi-Cal expenditures for acute inpatient

hospital services.

(3) If any installment that would otherwise be payable under paragraph (1) is not paid because of the provisions of paragraph (2), then subparagraphs (A) and (B) shall be followed when federal approval is gained.

(A) All installments that were deferred based on the provisions of paragraph (2) shall be paid no later than 20 days after the department notifies the transferor entity in writing that federal approval has been gained, in an amount consistent with subparagraph (B).

(B) The installments paid pursuant to subparagraph (A) shall be paid in full, subject to an adjustment in amount pursuant to paragraph (5) of subdivision (f).

(4) All installments for the 1991-92 transfer year that arise in months after federal approval is gained shall be paid by the 5th day of the month or 20 days after the department notifies the transferor entity in writing that federal approval has been gained, whichever is later. These installments shall be subject to an adjustment in amount pursuant to paragraph (5) of subdivision (f).

(5) (A) Except as provided in subparagraphs (B) and (C), for the 1992-93 transfer year and subsequent transfer years, each transferor entity shall pay its transfer amount or amounts to the Controller, for deposit in the fund, in eight equal installments. The first installment shall be payable on July 10 of each transfer year. All other installments shall be payable on the 5th day of each month thereafter from August through February.

(B) For the 1994-95 transfer year, each transferor entity shall pay its transfer amount or amounts to the Controller, for deposit in the fund, in five equal installments. The first installment shall be payable on October 5, 1994. The next four installments shall be payable on the fifth day of each month thereafter from November through February.

(C) For the 1995-96 transfer year, each transferor entity shall pay its transfer amount or amounts to the Controller, for deposit in the fund, in five equal installments. The first installment shall be payable on October 5, 1995. The next four installments shall be payable on the fifth day of each month thereafter from November through February.

(D) Except as otherwise specifically provided, subparagraphs (A) to (C), inclusive, shall not apply to increases in transfer amounts described in paragraph (2) of subdivision (h) or to additional transfer amounts described in subdivision (o).

(E) All requests for transfer payments, or adjustments thereto, issued by the department shall be in writing and shall include (i) an explanation of the basis for the particular transfer request or transfer activity, (ii) a summary description of program funding status for the particular transfer year, and (iii) the general calculations used by the department in connection with the particular transfer request or transfer activity.

(6) A transferor entity may use any of the following funds for purposes of meeting its transfer obligations under this section:

(A) General funds of the transferor entity.

(B) Any other funds permitted by law to be used for these purposes, except that a transferor entity shall not submit to the Controller any federal funds unless those federal funds are authorized by federal law to be used to match other federal funds. In addition, no private donated funds from any health care provider, or from any person or organization affiliated with such a health care provider, shall be channeled through a transferor entity or any other public entity to the fund. The transferor entity shall be responsible for determining that funds transferred meet the requirements of this subparagraph.

(j) (1) If a transferor entity does not submit any transfer amount within the time period specified in this section, the Controller shall offset immediately the amount owed against any funds which otherwise would be payable by the state to the transferor entity. The Controller, however, shall not impose an offset against any particular funds payable to the transferor entity where the offset would violate state or federal law.

(2) Where a withhold or a recoupment occurs pursuant to the provisions of paragraph (2) of subdivision (r) of Section 14105.98, the nonfederal portion of the amount in question shall remain in the fund, or shall be redeposited in the fund by the department, as applicable. The department shall then proceed as follows:

(A) If the withhold or recoupment was imposed with respect to a hospital whose licensee was a transferor entity for the particular state fiscal year to which the withhold or recoupment related, the nonfederal portion of the amount withheld or recouped shall serve as a credit for the particular transferor entity against an equal amount of transfer obligations under this section, to be applied whenever the transfer obligations next arise. Should no such transfer obligation arise within 180 days, the department shall return the funds in question to the particular transferor entity within 30 days thereafter.

(B) For other situations, the withheld or recouped nonfederal portion shall be subject to paragraph (7) of subdivision (h).

(k) All amounts received by the Controller pursuant to subdivision (i), paragraph (2) of subdivision (h), or subdivision (o), or offset by the Controller pursuant to subdivision (j), shall immediately be deposited in the fund.

(l) For purposes of this section, the disproportionate share list utilized by the department for a particular transfer year shall be identical to the disproportionate share list utilized by the department for the same state fiscal year for purposes of Section 14105.98. Nothing on a disproportionate share list, once issued by the department, shall be modified for any reason other than mathematical or typographical errors or omissions on the part of the department or the Office of Statewide Health Planning and

Development in preparation of the list.

(m) Neither the intergovernmental transfers required by this section, nor any elective transfer made pursuant to Section 14164, shall create, lead to, or expand the health care funding or service obligations for current or future years for any transferor entity, except as required of the state by this section or as may be required by federal law, in which case the state shall be held harmless by the transferor entities on a pro rata basis.

(n) No amount submitted to the Controller pursuant to subdivision (i), paragraph (2) of subdivision (h), or subdivision (o), or offset by the Controller pursuant to subdivision (j), shall be claimed or recognized as an allowable element of cost in Medi-Cal cost reports submitted to the department.

(o) Whenever additional transfer amounts are required to fund the nonfederal share of payment adjustment amounts under Section 14105.98 that are distributed after the close of the particular payment adjustment year to which the payment adjustment amounts apply, the additional transfer amounts shall be paid by the parties who were the transferor entities for the particular transfer year that was concurrent with the particular payment adjustment year. The additional transfer amounts shall be calculated under the formula that was in effect during the particular transfer year. For transfer years prior to the 1993-94 transfer year, the percentage of the additional transfer amounts available for transfer to the Health Care Deposit Fund under subdivision (d) shall be the percentage that was in effect during the particular transfer year. These additional transfer amounts shall be paid by transferor entities within 20 days after the department notifies the transferor entity in writing of the additional transfer amount to be paid.

(p) (1) Ten million dollars (\$10,000,000) of the amount transferred from the Medi-Cal Inpatient Payment Adjustment Fund to the Health Care Deposit Fund due to amounts transferred attributable to years prior to the 1993-94 fiscal year is hereby appropriated without regard to fiscal years to the State Department of Health Services to be used to support the development of managed care programs under the department's plan to expand Medi-Cal managed care.

(2) These funds shall be used by the department for both of the following purposes: (A) distributions to counties or other local entities that contract with the department to receive those funds to offset a portion of the costs of forming the local initiative entity, and (B) distributions to local initiative entities that contract with the department to receive those funds to offset a portion of the costs of developing the local initiative health delivery system in accordance with the department's plan to expand Medi-Cal managed care.

(3) Entities contracting with the department for any portion of the ten million dollars (\$10,000,000) shall meet the objectives of the department's plan to expand Medi-Cal managed care with regard to traditional and safety net providers.

(4) Entities contracting with the department for any portion of the ten million dollars (\$10,000,000) may be authorized under those contracts to utilize their funds to provide for reimbursement of the costs of local organizations and entities incurred in participating in the development and operation of a local initiative.

(5) To the full extent permitted by state and federal law, these funds shall be distributed by the department for expenditure at the local level in a manner that qualifies for federal financial participation under the medicaid program.

SEC. 3. Section 5 of Chapter 120 of the Statutes of 1994 is amended to read:

Sec. 5. The State Department of Health Services shall take steps as are necessary to have published, on or before June 29, 1994, any public notices that are appropriate or required under federal or California law in order to ensure a federal medicaid effective date prior to July 1, 1994, for the provisions of this act. Notwithstanding any other provision of law, the State Department of Health Services may arrange for the publication of any notice through a private vendor, on a bid or nonbid basis, on an exclusive or nonexclusive basis, without review or approval by any other department, agency, or instrumentality of the state. The costs of publishing any notice through a private vendor shall be recovered by the State Department of Health Services from the Medi-Cal Inpatient Payment Adjustment Fund.

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

In order to ensure sufficient funding for disproportionate share providers in the Medi-Cal program to enable them to provide sufficient access to Medi-Cal benefits as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 1034

An act to amend Section 3214 of the Labor Code, relating to workers' compensation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 3214 of the Labor Code is amended to read:
3214. (a) The Department of Corrections and the Department of the Youth Authority shall, in conjunction with all recognized employee representative associations, develop policy and

implement the workers' compensation early intervention program by December 31, 1989, for all department employees who sustain an injury. The program shall include, but not be limited to, counseling by an authorized independent early intervention counselor and the services of an agreed medical panel to assist in timely decisions regarding compensability. Costs of services through early intervention shall be borne by the departments.

(b) It is the intent of the Legislature to reduce all costs associated with the delivery of workers' compensation benefits, in balance with the need to ensure timely and adequate benefits to the injured worker. Toward this goal the workers' compensation early intervention program was established in the Department of Corrections and the Department of the Youth Authority. The fundamental concept of the program is to settle disputes rather than to litigate them. This is a worthwhile concept in terms of cost control for the employer and timely receipt of benefits for the worker. To ascertain the effectiveness of the program is crucial in helping guide policy in this arena.

The Department of Corrections and the Department of the Youth Authority, with the State Department of Mental Health serving as a control group, shall, in conjunction with the State Compensation Insurance Fund, develop a plan to accomplish an audit of the program to be administered by the Bureau of State Audits. Additionally, the Department of Personnel Administration and major employee representative organizations shall be consulted and updated on the audit plan, as fully and completely as possible.

In developing an audit plan, the Department of Corrections, the Department of the Youth Authority, the State Department of Mental Health, and the State Compensation Insurance Fund shall identify the data needed to determine whether or not the program satisfies the following objectives:

- (1) Saves money in the long and short term.
- (2) Improves the speed at which injured workers receive workers' compensation benefits.
- (3) Affects the number of injuries reported on the Cal-OSHA logs.
- (4) Affects the total number of injuries.
- (5) Affects the elapsed days between the date of injury and the date benefits are provided.
- (6) Affects the number of disability injuries.
- (7) Reduces the number of lost work days.
- (8) Increases the number of employees returning to work from work-related injuries.
- (9) Affects the level of vocational rehabilitation referrals.
- (10) Is cost-effective.
- (11) Reduces the number and cost of medical-legal consultations.
- (12) Reduces the total cost of finalized claims.
- (13) Affects the rate of industrial disability retirements.
- (14) Affects backup costs for industrial injuries.
- (15) Affects industrial disability retirement costs.

The audit plan shall identify data currently being collected which will be used to address the objectives sought by the audit. Furthermore, the plan shall identify information currently unavailable but needed for the audit. The audit plan shall recommend changes to be instituted in the current data collection systems used by the departments to collect all data needed to accomplish the audit.

The audit plan shall be submitted to the Bureau of State Audits for critique and recommendations no later than March 30, 1995. The Department of Corrections, the Department of the Youth Authority, the State Department of Mental Health, and the State Compensation Insurance Fund shall incorporate the Bureau of State Audits recommendations of the audit plan into their data gathering practices.

Throughout this process the Department of Corrections, the Department of the Youth Authority, the Department of Mental Health, and State Compensation Insurance Fund shall provide all data necessary to accomplish the audit required by this subdivision. Costs of gathering all data shall be borne by the individual departments and the State Compensation Insurance Fund.

The Bureau of State Audits shall conduct, complete, and issue its report to the Legislature no later than December 31, 1997.

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

In order to provide adequate time for preparation of the required audit to the Legislature, the employer, and the bargaining agent, it is necessary that this act take effect immediately.

CHAPTER 1035

An act to add and repeal Section 68075.1 of the Education Code, relating to postsecondary education.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 68075.1 is added to the Education Code, to read:

68075.1. (a) Notwithstanding Section 68075, a student who is a member of the armed forces of the United States stationed in this state on active duty, except a member of the armed forces assigned for educational purposes to state-supported institutions of higher education, is entitled to resident classification at any campus of the California Community Colleges.

(b) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1036

An act to amend Section 19707 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 19707 of the Revenue and Taxation Code is amended to read:

19707. The place of trial for the offenses enumerated in this chapter shall be in the county of residence or principal place of business of the defendant or defendants at the time of commission of the offense. However, if the defendant or defendants had no residence or principal place of business in this state at the time of commission of the offense, the trial shall be held in the County of Sacramento.

In a criminal case charging a defendant or defendants with committing an offense enumerated in this chapter, the place of trial may be as set forth in this section or as provided for in Chapter 1 (commencing with Section 777) of Title 3 of Part 2 of the Penal Code.

CHAPTER 1037

An act to add and repeal Section 35700.5 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 28, 1994. Filed with Secretary of State September 29, 1994.]

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

SECTION 1. Section 35700.5 is added to the Vehicle Code, to read:

35700.5. (a) The Department of Transportation, upon adoption of an ordinance or resolution that is in conformance with the provisions of this section by both the City of Long Beach and the City of Los Angeles, may issue a special permit to the operator of a vehicle, combination of vehicles, or mobile equipment, permitting the operation and movement of the vehicle, combination, or equipment, and its load, on the 3.66-mile portion of State Route 47 and State Route 103 known as the Terminal Island Freeway, between Willow Street in the City of Long Beach and Terminal Island in the City of Long Beach and the City of Los Angeles, and on the 2.1-mile portion of State Highway Route 1 that is between Blinn Avenue in the City of Los Angeles and Harbor Avenue in the City of Long Beach, if the vehicle, combination, or equipment meets all of the following criteria:

(1) The vehicle, combination of vehicles, or mobile equipment is used to transport intermodal cargo containers that are moving in international commerce.

(2) The vehicle, combination of vehicles, or mobile equipment, in combination with its load, has a maximum gross weight in excess of the maximum gross weight limit of vehicles and loads specified in this chapter, but does not exceed 95,000 pounds gross vehicle weight.

(3) (A) The vehicle, combination of vehicles, or mobile equipment conforms to the axle weight limits specified in Section 35550.

(B) The vehicle, combination of vehicles, or mobile equipment conforms to the axle weight limits in Section 35551, except as specified in subparagraph (C).

(C) Vehicles, combinations of vehicles, or mobile equipment that impose more than 80,000 pounds total gross weight on the highway by any group of two or more consecutive axles, exceed 60 feet in length between the extremes of any group of two or more consecutive axles, or have more than six axles shall conform to weight limits that shall be determined by the Department of Transportation.

(b) The permit issued by the Department of Transportation shall be required to authorize the operation or movement of a vehicle, combination of vehicles, or mobile equipment described in subdivision (a). The permit shall not authorize the movement of

hazardous materials or hazardous wastes, as those terms are defined by local, state, and federal law. The following criteria shall be included in the application for the permit:

(1) A description of the loads and vehicles to be operated under the permit.

(2) An agreement wherein each applicant agrees to be responsible for all injuries to persons and for all damage to real or personal property of the state and others directly caused by or resulting from the operation of the applicant's vehicles or combination of vehicles under the conditions of the permit. The applicant shall agree to hold harmless and indemnify the state and all its agents for all costs or claims arising out of or caused by the movement of vehicles or combination of vehicles under the conditions of the permit.

(3) The applicant shall provide proof of financial responsibility that covers the movement of the shipment as described in subdivision (a). The insurance shall meet the minimum requirements established by law.

(4) An agreement to carry a copy of the permit in the vehicle at all times and furnish the copy upon request of an employee of the Department of the California Highway Patrol or the Department of Transportation.

(5) An agreement to place an indicia, developed by the Department of Transportation, in consultation with the Department of the California Highway Patrol, upon the vehicle identifying it as a vehicle possibly operating under this section. The indicia shall be displayed in the lower right area of the front windshield of the power unit. The Department of Transportation may charge a fee to cover the cost of producing and issuing this indicia.

(c) The permit issued pursuant to subdivision (a) shall be valid for one year. The permit may be cancelled by the Department of Transportation for any of the following reasons:

(1) The failure of the applicant to maintain any of the conditions required pursuant to subdivision (b).

(2) The failure of the applicant to maintain a satisfactory rating, as required by Section 34501.12.

(3) A determination by the Department of Transportation that there is sufficient cause to cancel the permit because the continued movement of the applicant's vehicles under the permit would jeopardize the safety of the motorists on the roadway or result in undue damage to the highways listed in this section.

(d) The Department of Transportation may charge a fee to cover the cost of issuing a permit pursuant to subdivision (a).

(e) This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 1998, deletes or extends that date.

SEC. 2. (a) The Legislature finds and declares that this act, which is applicable only to the City of Long Beach and the City of Los Angeles, is necessary because of the following facts, which are

unique to the port facilities on Terminal Island:

(1) The Terminal Island Freeway is the only access route to the port facilities on Terminal Island.

(2) Because the Terminal Island Freeway is a state highway, it is subject to the maximum gross weight limits of vehicles and loads set by state law.

(b) The Legislature further finds and declares that it is reasonable to provide an extremely limited exception for the approximately 5.7-mile route of state highways specified in this act to accommodate the movement of cargo containers between the port facilities on Terminal Island and immediately adjacent off-port staging and warehousing areas.

(c) The Legislature, therefore, declares that a general law cannot be made applicable to alleviate the problem of denial of access to the port facilities on Terminal Island and that the enactment of this special law is necessary to ensure that vehicles and loads that exceed the state-imposed weight limits have access to those port facilities.

CHAPTER 1038

An act to amend Section 18986.46 of, and to repeal Section 18986.45 of, the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 18986.45 of the Welfare and Institutions Code is repealed.

SEC. 2. Section 18986.46 of the Welfare and Institutions Code is amended to read:

18986.46. (a) Notwithstanding any provision of state law governing the disclosure of information and records, persons who are trained, qualified, and assigned by their respective agencies to serve on children's multidisciplinary services teams within integrated children's services programs may disclose to one another information and view records on a child or the child's family. Information disclosed or records viewed by members of the team shall be limited to relevant information or records necessary to formulate an integrated services plan or to deliver services to children and their families.

(b) If the members of a multidisciplinary services team within an integrated children's services program require records held by other team members, copies may be provided subject to the limitations in subdivision (c). Requests for copies shall be limited to the records necessary to formulate an integrated services plan, or to deliver

services to children and their families.

(c) (1) Members of a multidisciplinary services team within an integrated children's services program who receive information or records on children and their families shall be allowed to establish and maintain a common data base for the purpose of planning and delivering services. The data base may contain demographic data and data on the level of individual involvement for the children. A memorandum of understanding shall be established that specifies what types of information may be shared and for what purposes.

(2) The release of copies of mental health records, physical health records, and drug or alcohol records may take place only after the team has received a form permitting release of records on the child or the child's family, signed by the child, to the extent the records were generated as a result of health care services to which the child has the power to consent under state law, or, to the extent that the records have not been generated by the provision of these health care services, by the child's parent, guardian, or legal representative, including the court which has jurisdiction over those children who are wards or dependents of the court.

(d) The multidisciplinary team may designate persons qualified pursuant to Section 18986.40 to be a member of the team for a particular case. A person designated as a team member pursuant to this subdivision may receive and disclose relevant information and records, subject to the confidentiality provisions of subdivision (f).

(e) The sharing of information permitted under subdivision (b) shall be governed by memoranda of understanding between the agencies represented on the multidisciplinary team. These memoranda shall specify the types of information that may be shared without a signed release form, in accordance with subdivision (c), and the process to be used to ensure that current confidentiality requirements, as described in subdivision (f), are met.

(f) Every member of the children's multidisciplinary services team who receives information or records on children and families served in the integrated children's services program shall be under the same privacy and confidentiality obligations and subject to the same confidentiality penalties as the person disclosing or providing the information or records. The information or records obtained shall be maintained in a manner that ensures the maximum protection of privacy and confidentiality rights.

(g) This section shall not be construed to restrict guarantees of confidentiality provided under federal law.

(h) Nothing in this section shall be construed to affect the authority of a health care provider to disclose medical information pursuant to paragraph (1) of subdivision (c) of Section 56.10 of the Civil Code.

CHAPTER 1039

An act to amend Sections 11342, 11343.1, 11344, 11344.1, 11346, 11346.1, 11346.4, 11346.5, 11346.8, 11347.3, 11349, 11349.1, 11349.5, 11349.6, 11350, 11350.3, and 11351 of, to amend and renumber Sections 11342.02, 11342.3, 11349.10 and 11349.11 of, to add Sections 11340.5, 11340.6, 11340.7, 11346.3, 11346.9, and 11357 to, to repeal Sections 11340.15, 11342.01, 11342.5, 11346.51, 11346.52, 11346.53, 11346.55, 11346.7, 11347, 11347.1, and 11347.5 of, to repeal and add Sections 11343.2, 11343.4, and 11346.2 of, to amend the heading of Chapter 3.5 (commencing with Section 11340) of, to amend the headings of Article 5 (commencing with Section 11346) and Article 6 (commencing with Section 11349) of Chapter 3.5 of, to amend and renumber the heading of Article 7 (commencing with Section 11350) of Chapter 3.5 of, to add Article 7 (commencing with Section 11349.7) to Chapter 3.5 of, to add a heading to Article 9 (commencing with Section 11351) of Chapter 3.5 of, Part 1 of Division 3 of Title 2 of, the Government Code, relating to administrative regulations.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. The Legislature finds and declares that this act reorganizes Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code and is a restatement of, rather than an substantive change in, existing law.

SEC. 2. The heading of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code is amended to read:

CHAPTER 3.5. ADMINISTRATIVE REGULATIONS AND RULEMAKING

SEC. 3. Section 11340.15 of the Government Code is repealed.

SEC. 4. Section 11340.5 is added to the Government Code, to read:

11340.5. (a) No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in subdivision (g) of Section 11342, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter.

(b) If the office is notified of, or on its own, learns of the issuance, enforcement of, or use of, an agency guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule that has not been adopted as a regulation and filed with the

Secretary of State pursuant to this chapter, the office may issue a determination as to whether the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, is a regulation as defined in subdivision (g) of Section 11342.

(c) The office shall do all of the following:

(1) File its determination upon issuance with the Secretary of State.

(2) Make its determination known to the agency, the Governor, and the Legislature.

(3) Publish its determination in the California Regulatory Notice Register within 15 days of the date of issuance.

(4) Make its determination available to the public and the courts.

(d) Any interested person may obtain judicial review of a given determination by filing a written petition requesting that the determination of the office be modified or set aside. A petition shall be filed with the court within 30 days of the date the determination is published.

(e) A determination issued by the office pursuant to this section shall not be considered by a court, or by an administrative agency in an adjudicatory proceeding if all of the following occurs:

(1) The court or administrative agency proceeding involves the party that sought the determination from the office.

(2) The proceeding began prior to the party's request for the office's determination.

(3) At issue in the proceeding is the question of whether the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule that is the legal basis for the adjudicatory action is a regulation as defined in subdivision (b) of Section 11342.

SEC. 5. Section 11340.6 is added to the Government Code, to read:

11340.6. Except where the right to petition for adoption of a regulation is restricted by statute to a designated group or where the form of procedure for such a petition is otherwise prescribed by statute, any interested person may petition a state agency requesting the adoption, amendment, or repeal of a regulation as provided in Article 5 (commencing with Section 11346). This petition shall state the following clearly and concisely:

(a) The substance or nature of the regulation, amendment, or repeal requested.

(b) The reason for the request.

(c) Reference to the authority of the state agency to take the action requested.

SEC. 6. Section 11340.7 is added to the Government Code, to read:

11340.7. (a) Upon receipt of a petition requesting the adoption, amendment, or repeal of a regulation pursuant to Article 5 (commencing with Section 11346), a state agency shall notify the petitioner in writing of the receipt and shall within 30 days deny the

petition indicating why the agency has reached its decision on the merits of the petition in writing or schedule the matter for public hearing in accordance with the notice and hearing requirements of that article.

(b) A state agency may grant or deny the petition in part, and may grant any other relief or take any other action as it may determine to be warranted by the petition and shall notify the petitioner in writing of this action.

(c) Any interested person may request a reconsideration of any part or all of a decision of any agency on any petition submitted. The request shall be submitted in accordance with Section 11340.6 and include the reason or reasons why an agency should reconsider its previous decision no later than 60 days after the date of the decision involved. The agency's reconsideration of any matter relating to a petition shall be subject to subdivision (a).

(d) Any decision of a state agency denying in whole or in part or granting in whole or in part a petition requesting the adoption, amendment, or repeal of a regulation pursuant to Article 5 (commencing with Section 11346) shall be in writing and shall be transmitted to the Office of Administrative Law for publication in the California Regulatory Notice Register at the earliest practicable date. The decision shall identify the agency, the party submitting the petition, the provisions of the California Code of Regulations requested to be affected, reference to authority to take the action requested, the reasons supporting the agency determination, an agency contact person, and the right of interested persons to obtain a copy of the petition from the agency.

SEC. 7. Section 11342 of the Government Code is amended to read:

11342. In this chapter, unless otherwise specifically indicated, the following definitions apply:

(a) "Agency" and "state agency" do not include an agency in the judicial or legislative departments of the state government.

(b) "Office" means the Office of Administrative Law.

(c) "Order of repeal" means any resolution, order or other official act of a state agency that expressly repeals a regulation in whole or in part.

(d) "Performance standard" means a regulation that describes an objective with the criteria stated for achieving the objective.

(e) "Plain English" means language that can be interpreted by a person who has no more than an eighth grade level of proficiency in English.

(f) "Prescriptive standard" means a regulation that specifies the sole means of compliance with a performance standard by specific actions, measurements, or other quantifiable means.

(g) "Regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or

administered by it, or to govern its procedure, except one that relates only to the internal management of the state agency. "Regulation" does not mean or include legal rulings of counsel issued by the Franchise Tax Board or State Board of Equalization, or any form prescribed by a state agency or any instructions relating to the use of the form, but this provision is not a limitation upon any requirement that a regulation be adopted pursuant to this part when one is needed to implement the law under which the form is issued.

(h) (1) "Small business" means a business activity in agriculture, general construction, special trade construction, retail trade, wholesale trade, services, transportation and warehousing, manufacturing, generation and transmission of electric power, or a health care facility, unless excluded in paragraph (2), that is both of the following:

(A) Independently owned and operated.

(B) Not dominant in its field of operation.

(2) "Small business" does not include the following professional business activities:

(A) A financial institution including a bank, a trust, a savings and loan association, a thrift institution, a consumer finance company, a commercial finance company, an industrial finance company, a credit union, a mortgage and investment banker, a securities broker-dealer, or an investment adviser.

(B) An insurance company, either stock or mutual.

(C) A mineral, oil, or gas broker; a subdivider or developer.

(D) A landscape architect, an architect, or a building designer.

(E) An entity organized as a nonprofit institution.

(F) An entertainment activity or production, including a motion picture, a stage performance, a television or radio station, or a production company.

(G) A utility, a water company, or a power transmission company generating and transmitting more than 4.5 million kilowatt hours annually.

(H) A petroleum producer, a natural gas producer, a refiner, or a pipeline.

(I) A business activity exceeding the following annual gross receipts in the categories of:

(i) Agriculture, one million dollars (\$1,000,000).

(ii) General construction, nine million five hundred thousand dollars (\$9,500,000).

(iii) Special trade construction, five million dollars (\$5,000,000).

(iv) Retail trade, two million dollars (\$2,000,000).

(v) Wholesale trade, nine million five hundred thousand dollars (\$9,500,000).

(vi) Services, two million dollars (\$2,000,000).

(vii) Transportation and warehousing, one million five hundred thousand dollars (\$1,500,000).

(J) A manufacturing enterprise exceeding 250 employees.

(K) A health care facility exceeding 150 beds or one million five

hundred thousand dollars (\$1,500,000) in annual gross receipts.

SEC. 8. Section 11342.01 of the Government Code is repealed.

SEC. 9. Section 11342.02 of the Government Code is amended and renumbered to read:

11344.9. (a) Whenever the term "California Administrative Code" appears in law, official legal paper, or legal publication, it means the "California Code of Regulations."

(b) Whenever the term "California Administrative Notice Register" appears in any law, official legal paper, or legal publication, it means the "California Regulatory Notice Register."

(c) Whenever the term "California Administrative Code Supplement" appears in any law, official legal paper, or legal publication, it means the "California Regulatory Code Supplement."

SEC. 10. Section 11342.3 of the Government Code is amended and renumbered to read:

11359. (a) Except as provided in subdivision (b), on and after January 1, 1982, no new regulation, or the amendment or repeal of any regulation, which regulation is intended to promote fire and panic safety or provide fire protection and prevention, including fire suppression systems, equipment, or alarm regulation, is valid or effective unless it is submitted by, or approved in writing by, the State Fire Marshal before transmittal to the Secretary of State or the Office of Administrative Law.

(b) Approval of the State Fire Marshal is not required if the regulation is expressly required to be at least as effective as federal standards published in the Federal Register pursuant to Section 6 of the Occupational Safety and Health Act of 1970 (P.L. 91-596) within the time period specified by federal law and as provided in subdivision (b) of Section 142.4 of the Labor Code, and as approved by the Occupational Safety and Health Administration of the United States Department of Labor as meeting the requirements of subdivision (a) of Section 142.3 of the Labor Code, unless the regulation is determined by the State Fire Marshal to be less effective in promoting fire and panic safety than regulations adopted by the State Fire Marshal.

SEC. 11. Section 11342.5 of the Government Code is repealed.

SEC. 12. Section 11343.1 of the Government Code is amended to read:

11343.1. (a) All regulations transmitted to the Office of Administrative Law for filing with the Secretary of State shall conform to the style prescribed by the office.

(b) Regulations approved by the office shall bear an endorsement by the office affixed to the certified copy which is filed with the Secretary of State.

SEC. 13. Section 11343.2 of the Government Code is repealed.

SEC. 14. Section 11343.2 is added to the Government Code, to read:

11343.2. The Secretary of State shall endorse on the certified copy of each regulation or order of repeal filed with or delivered to him

or her, the time and date of filing and shall maintain a permanent file of the certified copies of regulations and orders of repeal for public inspection.

No fee shall be charged by any state officer or public official for the performance of any official act in connection with the certification or filing of regulations pursuant to this article.

SEC. 15. Section 11343.4 of the Government Code is repealed.

SEC. 16. Section 11343.4 is added to the Government Code, to read:

11343.4. A regulation or an order of repeal required to be filed with the Secretary of State shall become effective on the 30th day after the date of filing unless:

(a) Otherwise specifically provided by the statute pursuant to which the regulation or order of repeal was adopted, in which event it becomes effective on the day prescribed by this statute.

(b) It is a regulation adopted under Section 8054 or 3373 of the Financial Code, in which event it shall become effective upon filing or upon any later date specified by the state agency in a written instrument filed with, or as part of, the regulation or order of repeal.

(c) A later date is prescribed by the state agency in a written instrument filed with, or as part of, the regulation or order of repeal.

(d) The agency makes a written request to the office demonstrating good cause for an earlier effective date, in which case the office may prescribe an earlier date.

SEC. 17. Section 11344 of the Government Code is amended to read:

11344. The office shall do all of the following:

(a) Provide for the official compilation, printing, and publication of adoption, amendment, or repeal of regulations, which shall be known as the California Code of Regulations.

(b) Provide for the compilation, printing, and publication of weekly updates of the California Code of Regulations. This publication shall be known as the California Regulatory Code Supplement and shall contain amendments to the code.

(c) Provide for the publication dates and manner and form in which regulations shall be printed and distributed and ensure that regulations are available in printed form at the earliest practicable date after filing with the Secretary of State.

(d) Ensure that each regulation is printed together with a reference to the statutory authority pursuant to which it was enacted and the specific statute or other provision of law which the regulation is implementing, interpreting, or making specific.

SEC. 18. Section 11344.1 of the Government Code is amended to read:

11344.1. The office shall do all of the following:

(a) Provide for the publication of the California Regulatory Notice Register, which shall be an official publication of the State of California and which shall contain the following:

(1) Notices of proposed action prepared by regulatory agencies,

subject to the notice requirements of this chapter, and which have been approved by the office.

(2) A summary of all regulations filed with the Secretary of State in the previous week.

(3) All regulation decisions issued in the previous week detailing the reasons for disapproval of a regulation, the reasons for not filing an emergency regulation, and the reasons for repealing an emergency regulation. The California Regulatory Notice Register shall also include a quarterly index of regulation decisions.

(4) The Governor's action in reviewing the disapprovals of the office, the decisions to repeal, the agency's request for review, the office's response thereto, and the decisions of the Governor's office, as required by Section 11349.7.

(5) Determinations issued pursuant to Section 11340.5.

(b) Establish the publication dates and manner and form in which the California Regulatory Notice Register shall be prepared and published and ensure that it is published and distributed in a timely manner to the presiding officer and rules committee of each house of the Legislature and to all subscribers.

SEC. 19. The heading of Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code is amended to read:

Article 5. Public Participation: Procedure for Adoption of
Regulations

SEC. 20. Section 11346 of the Government Code is amended to read:

11346. It is the purpose of this chapter to establish basic minimum procedural requirements for the adoption, amendment, or repeal of administrative regulations. Except as provided in Section 11346.1, the provisions of this chapter are applicable to the exercise of any quasi-legislative power conferred by any statute heretofore or hereafter enacted, but nothing in this chapter repeals or diminishes additional requirements imposed by any statute. This chapter shall not be superseded or modified by any subsequent legislation except to the extent that the legislation shall do so expressly.

SEC. 21. Section 11346.1 of the Government Code is amended to read:

11346.1. (a) This article does not apply to any regulation not required to be filed with the Secretary of State under this chapter, and only this section and Sections 11343.4 and 11349.6 apply to an emergency regulation adopted pursuant to subdivision (b), or to any regulation adopted under Section 8054 or 3373 of the Financial Code.

(b) Except as provided in subdivision (c), if a state agency makes a finding that the adoption of a regulation or order of repeal is necessary for the immediate preservation of the public peace, health and safety or general welfare, the regulation or order of repeal may be adopted as an emergency regulation or order of repeal.

Any finding of an emergency shall include a written statement which contains the information required by paragraphs (2) to (6), inclusive, of subdivision (a) of Section 11346.5 and a description of the specific facts showing the need for immediate action. The enactment of an urgency statute shall not, in and of itself, constitute a need for immediate action.

The statement and the regulation or order of repeal shall be filed immediately with the office.

(c) Notwithstanding any other provision of law, no emergency regulation that is a building standard, as defined in Section 18909 of the Health and Safety Code, shall be filed, nor shall the building standard be effective, unless the building standards are submitted to the State Building Standards Commission, and are approved and filed pursuant to Sections 18937 and 18938 of the Health and Safety Code.

(d) The emergency regulation or order of repeal shall become effective upon filing or upon any later date specified by the state agency in a written instrument filed with, or as a part of, the regulation or order of repeal.

(e) No regulation, amendment, or order of repeal adopted as an emergency regulatory action shall remain in effect more than 120 days unless the adopting agency has complied with Sections 11346.2 to 11346.9, inclusive, prior to the adoption of the emergency regulatory action, or has, within the 120-day period, completed the regulation adoption process by formally adopting the emergency regulation, amendment, or order of repeal or any amendments thereto, pursuant to this chapter. The adopting agency, prior to the expiration of the 120-day period, shall transmit to the office for filing with the Secretary of State the adopted regulation, amendment, or order of repeal, the rulemaking file, and a certification that either Sections 11346.2 to 11346.9, inclusive, were complied with prior to the emergency regulatory action, or that there was compliance with this section within the 120-day period.

(f) In the event an emergency amendment or order of repeal is filed and the adopting agency fails to comply with subdivision (e), the regulation as it existed prior to the emergency amendment or order of repeal shall thereupon become effective and after notice to the adopting agency by the office shall be reprinted in the California Code of Regulations.

(g) In the event a regulation is originally adopted and filed as an emergency and the adopting agency fails to comply with subdivision (e), this failure shall constitute a repeal thereof and after notice to the adopting agency by the office, shall be deleted.

(h) A regulation originally adopted as an emergency regulation, or an emergency regulation substantially equivalent thereto that is readopted as an emergency regulation, shall not be filed with the Secretary of State as an emergency regulation except with the express prior approval of the director of the office.

SEC. 22. Section 11346.2 of the Government Code is repealed.

SEC. 23. Section 11346.2 is added to the Government Code, to read:

11346.2. Every agency subject to this chapter shall prepare, submit to the office with the notice of the proposed action as described in Section 11346.5, and make available to the public upon request, all of the following:

(a) A copy of the express terms of the proposed regulation.

(1) The agency shall draft the regulation in plain, straightforward language, avoiding technical terms as much as possible, and using a coherent and easily readable style. If the regulation affects small business, the agency shall draft the regulation in plain English, as defined in subdivision (e) of Section 11342. However, if it is not feasible to draft the regulation in plain English due to the technical nature of the regulation, the agency shall prepare a noncontrolling plain English summary of the regulation.

(2) The agency shall include a notation following the express terms of each regulation listing the specific statutes or other provisions of law authorizing the adoption of the regulation and listing the specific statutes or other provisions of law being implemented, interpreted, or made specific by the regulation.

(3) The agency shall use underline or italics to indicate additions to, and strikeout to indicate deletions from, the California Code of Regulations.

(b) An initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation. This statement of reasons shall include, but not be limited to, all of the following:

(1) A description of the public problem, administrative requirement, or other condition or circumstance that each adoption, amendment, or repeal is intended to address.

(2) A statement of the specific purpose of each adoption, amendment, or repeal and the rationale for the determination by the agency that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose for which it is proposed. Where the adoption or amendment of a regulation would mandate the use of specific technologies or equipment, a statement of the reasons why the agency believes these mandates or prescriptive standards are required.

(3) An identification of each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies in proposing the adoption, amendment, or repeal of a regulation.

(4) (A) A description of the alternatives to the regulation considered by the agency and the agency's reasons for rejecting those alternatives. In the case of a regulation that would mandate the use of specific technologies or equipment or prescribe specific actions or procedures, the imposition of performance standards shall be considered as an alternative.

(B) A description of any alternatives the agency has identified that would lessen any adverse impact on small business. It is not the

intent of this paragraph to require the agency to artificially construct alternatives or to justify why it has not identified alternatives.

(5) Facts, evidence, documents, testimony, or other evidence upon which the agency relies to support a finding that the action will not have a significant adverse economic impact on business.

(6) A department, board, or commission within the Environmental Protection Agency, the Resources Agency, or the Office of the State Fire Marshal shall describe its efforts, in connection with a proposed rulemaking action, to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues. These agencies may adopt regulations different from federal regulations contained in the Code of Federal Regulations addressing the same issues upon a finding of one or more of the following justifications:

(A) The differing state regulations are authorized by law.

(B) The cost of differing state regulations is justified by the benefit to human health, public safety, public welfare, or the environment.

(c) A state agency that adopts or amends a regulation mandated by federal law or regulations, the provisions of which are identical to a previously adopted or amended federal regulation, shall be deemed to have complied with this section if a statement to the effect that a federally mandated regulation or amendment to a regulation is being proposed, together with a citation to where an explanation of the provisions of the regulation can be found, is included in the notice of proposed adoption or amendment prepared pursuant to Section 11346.5. However, the agency shall comply fully with this chapter with respect to any provisions in the regulation that the agency proposes to adopt or amend that are different from the corresponding provisions of the federal regulation.

SEC. 24. Section 11346.3 is added to the Government Code, to read:

11346.3. (a) State agencies proposing to adopt or amend any administrative regulation shall assess the potential for adverse economic impact on California business enterprises and individuals, avoiding the imposition of unnecessary or unreasonable regulations or reporting, recordkeeping, or compliance requirements. For purposes of this subdivision assessing the potential for adverse economic impact shall require agencies, when adopting new regulations or reviewing or amending existing regulations, to adhere to the following requirements, to the extent that these requirements do not conflict with other state or federal laws:

(1) The regulations shall be based on adequate information concerning the need for, and consequences of, proposed governmental action.

(2) The state agency, prior to submitting regulations to the office, shall consider the impact on business when initiating, processing, and adopting regulations with consideration of industries affected including the ability of California businesses to compete with

businesses in other states. For purposes of evaluating the impact on the ability of California businesses to compete with businesses in other states, an agency shall consider, but not be limited to, information supplied by interested parties.

It is not the intent of this section to impose additional criteria on agencies, above that which exists in current law, in assessing adverse economic impact on California business enterprises, but only to assure that the assessment is made early in the process of initiation and development of proposed regulations or amendments to regulations.

(b) (1) All state agencies proposing to adopt or amend any administrative regulations shall assess whether and to what extent it will affect the following:

(A) The creation or elimination of jobs within the State of California.

(B) The creation of new businesses or the elimination of existing businesses within the State of California.

(C) The expansion of businesses currently doing business within the State of California.

(2) For purposes of this subdivision, "state agency" shall include every state office, officer, department, division, bureau, board, and commission, whether created by the Constitution, statute, or initiative, but shall not include the courts, an agency in the judicial or legislative branch of state government, the University of California, the Hastings College of the Law, or the Fair Political Practices Commission.

(3) Information required from state agencies for the purpose of completing the assessment may come from existing state publications.

(c) No administrative regulation adopted on or after January 1, 1993, that requires a report shall apply to businesses, unless the state agency adopting the regulation makes a finding that it is necessary for the health, safety, or welfare of the people of the state that the regulation apply to businesses.

SEC. 25. Section 11346.4 of the Government Code is amended to read:

11346.4. (a) At least 45 days prior to the hearing and close of the public comment period on the adoption, amendment, or repeal of a regulation, notice of the proposed action shall be:

(1) Mailed to every person who has filed a request for notice of regulatory actions with the state agency.

(2) In cases in which the state agency is within a state department, mailed or delivered to the director of the department.

(3) Mailed to a representative number of small business enterprises or their representatives which have been identified as being affected by the proposed action.

(4) When appropriate in the judgment of the state agency, mailed to any person or group of persons whom the agency believes to be interested in the proposed action and published in the form and

manner as the state agency shall prescribe.

(5) Published in the California Regulatory Notice Register as prepared by the office for each state agency's notice of regulatory action.

(b) The effective period of a notice issued pursuant to this section shall not exceed one year from the date thereof. If the adoption, amendment, or repeal of a regulation proposed in the notice is not completed and transmitted to the office within the period of one year, a notice of the proposed action shall again be issued pursuant to this article.

(c) Once the adoption, amendment, or repeal is completed and approved by the office, no further adoption, amendment, or repeal to the noticed regulation shall be made without subsequent notice being given.

(d) The office may refuse to publish a notice submitted to it if the agency has failed to comply with this article.

(e) The office shall make the California Regulatory Notice Register available to the public and state agencies at a nominal cost that is consistent with a policy of encouraging the widest possible notice distribution to interested persons.

(f) Where the form or manner of notice is prescribed by statute in any particular case, in addition to filing and mailing notice as required by this section, the notice shall be published, posted, mailed, filed, or otherwise publicized as prescribed by that statute. The failure to mail notice to any person as provided in this section shall not invalidate any action taken by a state agency pursuant to this article.

SEC. 26. Section 11346.5 of the Government Code is amended to read:

11346.5. (a) The notice of proposed adoption, amendment, or repeal of a regulation shall include the following:

(1) A statement of the time, place, and nature of proceedings for adoption, amendment, or repeal of the regulation.

(2) Reference to the authority under which the regulation is proposed and a reference to the particular code sections or other provisions of law that are being implemented, interpreted, or made specific.

(3) An informative digest containing a concise and clear summary of existing laws and regulations, if any, related directly to the proposed action and the effect of the proposed action. The informative digest shall be drafted in a format similar to the Legislative Counsel's digest on legislative bills.

(A) If the proposed action differs substantially from an existing comparable federal regulation or statute, the informative digest shall also include a brief description of the significant differences and the full citation of the federal regulations or statutes.

(B) If the proposed action affects small business, the informative digest shall also include a plain English policy statement overview explaining the broad objectives of the regulation and, if appropriate,

the specific objectives.

(4) Any other matters as are prescribed by statute applicable to the specific state agency or to any specific regulation or class of regulations.

(5) A determination as to whether the regulation imposes a mandate on local agencies or school districts and, if so, whether the mandate requires state reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4.

(6) An estimate, prepared in accordance with instructions adopted by the Department of Finance, of the cost or savings to any state agency, the cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, other nondiscretionary cost or savings imposed on local agencies, and the cost or savings in federal funding to the state.

For purposes of this paragraph, "cost or savings" means additional costs or savings, both direct and indirect, that a public agency necessarily incurs in reasonable compliance with regulations.

(7) If a state agency, in proposing to adopt or amend any administrative regulation, determines that the action may have a significant adverse economic impact on business, including the ability of California businesses to compete with businesses in other states, it shall include the following information in the notice of proposed action:

(A) Identification of the types of businesses that would be affected.

(B) A description of the projected reporting, recordkeeping, and other compliance requirements that would result from the proposed action.

(C) The following statement: "The (name of agency) finds that the (adoption/amendment) of this regulation may have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states. The (name of agency) (has/has not) considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

(i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.

(ii) Consolidation or simplification of compliance and reporting requirements for businesses.

(iii) The use of performance standards rather than prescriptive standards.

(iv) Exemption or partial exemption from the regulatory requirements for businesses."

(8) If a state agency, in adopting or amending any administrative regulation, determines that the action will not have a significant adverse economic impact on business, including the ability of

California businesses to compete with businesses in other states, it shall make a declaration to that effect in the notice of proposed action. In making this determination, the agency shall provide in the record facts, evidence, documents, testimony, or other evidence upon which the agency relies to support that finding.

An agency's determination and declaration that a proposed regulation may have or will not have a significant, adverse impact on businesses, including the ability of California businesses to compete with businesses in other states, shall not be grounds for the office to refuse to publish the notice of proposed action.

(9) A statement of the potential cost impact of the proposed action on private persons or businesses directly affected, as considered by the agency during the regulatory development process.

For purposes of this paragraph, "cost impact" means the reasonable range of costs, or a description of the type and extent of costs, direct or indirect, that a representative private person or business necessarily incurs in reasonable compliance with the proposed action.

(10) A statement of the results of the assessment required by subdivision (b) of Section 11346.3.

(11) A statement that the action would have a significant effect on housing costs, if a state agency, in adopting, amending, or repealing any administrative regulation, determines that the action would have an effect. In addition, the agency officer designated in paragraph (13), shall make available to the public, upon request, the agency's evaluation, if any, of the effect of the proposed regulatory action on housing costs.

(12) A statement that the adopting agency must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

(13) The name and telephone number of the agency officer to whom inquiries concerning the proposed administrative action may be directed.

(14) The date by which comments submitted in writing must be received to present statements, arguments, or contentions in writing relating to the proposed action in order for them to be considered by the state agency before it adopts, amends, or repeals a regulation.

(15) Reference to the fact that the agency proposing the action has prepared a statement of the reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action, pursuant to subdivision (b).

(16) A statement that if a public hearing is not scheduled, any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Section 11346.8.

(17) A statement indicating that the full text of a regulation changed pursuant to Section 11346.8 will be available for at least 15 days prior to the date on which the agency adopts, amends, or repeals the resulting regulation.

(b) The agency officer designated in paragraph (13) of subdivision (a) shall make available to the public upon request the express terms of the proposed action. The officer shall also make available to the public upon request the location of public records, including reports, documentation, and other materials, related to the proposed action.

(c) This section shall not be construed in any manner that results in the invalidation of a regulation because of the alleged inadequacy of the notice content or the summary or cost estimates, or the alleged inadequacy or inaccuracy of the housing cost estimates, if there has been substantial compliance with those requirements.

SEC. 27. Section 11346.51 of the Government Code is repealed.

SEC. 28. Section 11346.52 of the Government Code is repealed.

SEC. 29. Section 11346.53 of the Government Code is repealed.

SEC. 30. Section 11346.55 of the Government Code is repealed.

SEC. 31. Section 11346.7 of the Government Code is repealed.

SEC. 32. Section 11346.8 of the Government Code is amended to read:

11346.8. (a) If a public hearing is held, statements, arguments, or contentions, either oral or in writing, or both, shall be permitted. If a public hearing is not scheduled, the state agency shall, consistent with Section 11346.4, afford any interested person or his or her duly authorized representative, the opportunity to present statements, arguments or contentions in writing. In addition, a public hearing shall be held if, no later than 15 days prior to the close of the written comment period, an interested person or his or her duly authorized representative submits in writing to the state agency, a request to hold a public hearing. The state agency shall, to the extent practicable, provide notice of the time, date, and place of the hearing by mailing the notice to every person who has filed a request for notice thereby with the state agency. The state agency shall consider all relevant matter presented to it before adopting, amending, or repealing any regulation.

(b) In any hearing under this section, the state agency or its duly authorized representative shall have authority to administer oaths or affirmations. An agency may continue or postpone a hearing from time to time to the time and at the place as it determines. If a hearing is continued or postponed, the state agency shall provide notice to the public as to when it will be resumed or rescheduled.

(c) No state agency may adopt, amend, or repeal a regulation which has been changed from that which was originally made available to the public pursuant to Section 11346.5, unless the change is (1) nonsubstantial or solely grammatical in nature, or (2) sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally

proposed regulatory action. If a sufficiently related change is made, the full text of the resulting adoption, amendment, or repeal, with the change clearly indicated, shall be made available to the public for at least 15 days before the agency adopts, amends, or repeals the resulting regulation. Any written comments received regarding the change must be responded to in the final statement of reasons required by Section 11346.9.

(d) No state agency shall add any material to the record of the rulemaking proceeding after the close of the public hearing or comment period, unless adequate provision is made for public comment on that matter.

SEC. 33. Section 11346.9 is added to the Government Code, to read:

11346.9. Every agency subject to this chapter shall do the following:

(a) Prepare and submit to the office with the adopted regulation a final statement of reasons that shall include all of the following:

(1) An update of the information contained in the initial statement of reasons. If the update identifies any data or any technical, theoretical or empirical study, report, or similar document on which the agency is relying in proposing the adoption or amendment of a regulation that was not identified in the initial statement of reasons, or which was otherwise not identified or made available for public review prior to the close of the public comment period, the agency shall comply with subdivision (d) of Section 11346.8.

(2) A determination as to whether the regulation imposes a mandate on local agencies or school districts. If the determination is that the regulation does contain a local mandate, the agency shall state whether the mandate is reimbursable pursuant to Part 7 (commencing with Section 17500) of Division 4. If the agency finds that the mandate is not reimbursable, it shall state the reasons for that finding.

(3) A summary of each objection or recommendation made regarding the specific adoption, amendment, or repeal proposed, together with an explanation of how the proposed action has been changed to accommodate each objection or recommendation, or the reasons for making no change. This requirement applies only to objections or recommendations specifically directed at the agency's proposed action or to the procedures followed by the agency in proposing or adopting the action.

(4) A determination with supporting information that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation.

(5) An explanation setting forth the reasons for rejecting any proposed alternatives that would lessen the adverse economic impact on small businesses.

(b) Prepare and submit to the office with the adopted regulation an updated informative digest containing a clear and concise summary of the immediately preceding laws and regulations, if any, relating directly to the adopted, amended, or repealed regulation and the effect of the adopted, amended, or repealed regulation. The informative digest shall be drafted in a format similar to the Legislative Counsel's Digest on legislative bills.

(c) A state agency that adopts or amends a regulation mandated by federal law or regulations, the provisions of which are identical to a previously adopted or amended federal regulation, shall be deemed to have complied with this section if a statement to the effect that a federally mandated regulation or amendment to a regulation is being proposed, together with a citation to where an explanation of the provisions of the regulation can be found, is included in the notice of proposed adoption or amendment prepared pursuant to Section 11346.5. However, the agency shall comply fully with this chapter with respect to any provisions in the regulation which the agency proposes to adopt or amend that are different from the corresponding provisions of the federal regulation.

SEC. 34. Section 11347 of the Government Code is repealed.

SEC. 35. Section 11347.1 of the Government Code is repealed.

SEC. 36. Section 11347.3 of the Government Code is amended to read:

11347.3. (a) Every agency shall maintain a file of each rulemaking that shall be deemed to be the record for that rulemaking proceeding. The file shall include:

(1) Copies of any petitions received from interested persons proposing the adoption, amendment, or repeal of the regulation, and a copy of any decision provided for by subdivision (d) of Section 11340.7, which grants a petition in whole or in part.

(2) All published notices of proposed adoption, amendment, or repeal of the regulation, and an updated informative digest, the initial statement of reasons, and the final statement of reasons.

(3) The determination, together with the supporting data required by paragraph (5) of subdivision (a) of Section 11346.5.

(4) The determination, together with the supporting data required by paragraph (8) of subdivision (a) of Section 11346.5.

(5) The estimate, together with the supporting data and calculations, required by paragraph (6) of subdivision (a) of Section 11346.5.

(6) All data and other factual information, any studies or reports, and written comments submitted to the agency in connection with the adoption, amendment, or repeal of the regulation.

(7) All data and other factual information, technical, theoretical, and empirical studies or reports, if any, on which the agency is relying in the adoption, amendment, or repeal of a regulation, including any cost impact estimates as required by Section 11346.3.

(8) A transcript, recording, or minutes of any public hearing connected with the adoption, amendment, or repeal of the

regulation.

(9) The date on which the agency made available to the public for 15 days prior to the adoption, amendment, or repeal of the regulation the full text as required by subdivision (c) of Section 11346.8 if the agency made changes to the regulation noticed to the public.

(10) The text of regulations as originally proposed and the modified text of regulations, if any, that were made available to the public prior to adoption.

(11) Any other information, statement, report, or data that the agency is required by law to consider or prepare in connection with the adoption, amendment, or repeal of a regulation.

(12) An index or table of contents that identifies each item contained in the rulemaking file. The index or table of contents shall include an affidavit or a declaration under penalty of perjury in the form specified by Section 2015.5 of the Code of Civil Procedure by the agency official who has compiled the rulemaking file, specifying the date upon which the record was closed, and that the file or the copy, if submitted, is complete.

(b) Every agency shall submit to the office with the adopted regulation, the rulemaking file or a complete copy of the rulemaking file.

(c) The agency file of the rulemaking proceeding shall be made available by the agency to the public, and to the courts in connection with the review of the regulation.

SEC. 37. Section 11347.5 of the Government Code is repealed.

SEC. 38. The heading of Article 6 (commencing with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code is amended to read:

Article 6. Review of Proposed Regulations

SEC. 39. Section 11349 of the Government Code is amended to read:

11349. The following definitions govern the interpretation of this chapter:

(a) "Necessity" means the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation taking into account the totality of the record. For purposes of this standard, evidence includes, but is not limited to, facts, studies, and expert opinion.

(b) "Authority" means the provision of law which permits or obligates the agency to adopt, amend, or repeal a regulation.

(c) "Clarity" means written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them.

(d) "Consistency" means being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law.

(e) "Reference" means the statute, court decision, or other

provision of law which the agency implements, interprets, or makes specific by adopting, amending, or repealing a regulation.

(f) "Nonduplication" means that a regulation does not serve the same purpose as a state or federal statute or another regulation. This standard requires that an agency proposing to amend or adopt a regulation must identify any state or federal statute or regulation which is overlapped or duplicated by the proposed regulation and justify any overlap or duplication. This standard is not intended to prohibit state agencies from printing relevant portions of enabling legislation in regulations when the duplication is necessary to satisfy the clarity standard in paragraph (3) of subdivision (a) of Section 11349.1. This standard is intended to prevent the indiscriminate incorporation of statutory language in a regulation.

SEC. 40. Section 11349.1 of the Government Code is amended to read:

11349.1. (a) The office shall review all regulations adopted pursuant to the procedure specified in Article 5 (commencing with Section 11346) and submitted to it for publication in the California Regulatory Code Supplement and for transmittal to the Secretary of State and make determinations using all of the following standards:

- (1) Necessity.
- (2) Authority.
- (3) Clarity.
- (4) Consistency.
- (5) Reference.
- (6) Nonduplication.

In reviewing regulations pursuant to this section, the office shall restrict its review to the regulation and the record of the rulemaking proceeding. The office shall approve the regulation or order of repeal if it complies with the standards set forth in this section and with this chapter.

(b) In reviewing proposed regulations for the criteria in subdivision (a), the office may consider the clarity of the proposed regulation in the context of related regulations already in existence.

(c) The office shall adopt regulations governing the procedures it uses in reviewing regulations submitted to it. The regulations shall provide for an orderly review and shall specify the methods, standards, presumptions, and principles the office uses, and the limitations it observes, in reviewing regulations to establish compliance with the standards specified in subdivision (a). The regulations adopted by the office shall ensure that it does not substitute its judgment for that of the rulemaking agency as expressed in the substantive content of adopted regulations.

(d) The office shall return any regulation subject to this chapter to the adopting agency if any of the following occur:

(1) The adopting agency has not prepared the estimate required by paragraph (6) of subdivision (a) of Section 11346.5 and has not included the data used and calculations made and the summary report of the estimate in the file of the rulemaking.

(2) The agency has not complied with Section 11346.3.

(3) The adopting agency has prepared the estimate required by paragraph (6) of subdivision (a) of Section 11346.5, the estimate indicates that the regulation will result in a cost to local agencies or school districts that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, and the adopting agency fails to do any of the following:

(A) Cite an item in the Budget Act for the fiscal year in which the regulation will go into effect as the source from which the Controller may pay the claims of local agencies or school districts.

(B) Cite an accompanying bill appropriating funds as the source from which the Controller may pay the claims of local agencies or school districts.

(C) Attach a letter or other documentation from the Department of Finance which states that the Department of Finance has approved a request by the agency that funds be included in the Budget Bill for the next following fiscal year to reimburse local agencies or school districts for the costs mandated by the regulation.

(D) Attach a letter or other documentation from the Department of Finance which states that the Department of Finance has authorized the augmentation of the amount available for expenditure under the agency's appropriation in the Budget Act which is for reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 to local agencies or school districts from the unencumbered balances of other appropriations in the Budget Act and that this augmentation is sufficient to reimburse local agencies or school districts for their costs mandated by the regulation.

(e) The office shall notify the Department of Finance of all regulations returned pursuant to subdivision (d).

(f) The office shall return a rulemaking file to the submitting agency if the file does not comply with subdivisions (a) and (b) of Section 11347.3. Within three state working days of the receipt of a rulemaking file, the office shall notify the submitting agency of any deficiency identified. If no notice of deficiency is mailed to the adopting agency within that time, a rulemaking file shall be deemed submitted as of the date of its original receipt by the office. A rulemaking file shall not be deemed submitted until each deficiency identified under this subdivision has been corrected.

This subdivision shall not limit the review of regulations under this article, including, but not limited to, the conformity of rulemaking files to subdivisions (a) and (b) of Section 11347.3.

SEC. 41. Section 11349.5 of the Government Code is amended to read:

11349.5. (a) To initiate a review of a decision by the office, the agency shall file a written Request for Review with the Governor's Legal Affairs Secretary within 10 days of receipt of the written opinion provided by the office pursuant to subdivision (b) of Section 11349.3. The Request for Review shall include a complete statement

as to why the agency believes the decision is incorrect and should be overruled. Along with the Request for Review, the agency shall submit all of the following:

(1) The office's written decision detailing the reasons for disapproval required by subdivision (b) of Section 11349.3.

(2) Copies of all regulations, notices, statements, and other documents which were submitted to the office.

(b) A copy of the agency's Request for Review shall be delivered to the office on the same day it is delivered to the Governor's office. The office shall file its written response to the agency's request with the Governor's Legal Affairs Secretary within 10 days and deliver a copy of its response to the agency on the same day it is delivered to the Governor's office.

(c) The Governor's office shall provide the requesting agency and the office with a written decision within 15 days of receipt of the response by the office to the agency's Request for Review. Upon receipt of the decision, the office shall publish in the California Regulatory Notice Register the agency's Request for Review, the office's response thereto, and the decision of the Governor's office.

(d) The time requirements set by subdivisions (a) and (b) may be shortened by the Governor's office for good cause.

(e) The Governor may overrule the decision of the office disapproving a proposed regulation, an order repealing an emergency regulation adopted pursuant to subdivision (b) of Section 11346.1, or a decision refusing to allow the readoption of an emergency regulation pursuant to subdivision (k) of Section 11346.1. In that event, the office shall immediately transmit the regulation to the Secretary of State for filing.

(f) Upon overruling the decision of the office, the Governor shall immediately transmit to the Committees on Rules of both houses of the Legislature a statement of his or her reasons for overruling the decision of the office, along with copies of the adopting agency's initial statement of reasons issued pursuant to Section 11346.2 and the office's statement regarding the disapproval of a regulation issued pursuant to subdivision (b) of Section 11349.3. The Governor's action and the reasons therefor shall be published in the California Regulatory Notice Register.

SEC. 42. Section 11349.6 of the Government Code is amended to read:

11349.6. (a) In the event the adopting agency has complied with Sections 11346.2 to 11346.9, inclusive, prior to the adoption of the regulation as an emergency, the office shall approve or disapprove the regulation in accordance with this article.

(b) Emergency regulations adopted pursuant to subdivision (b) of Section 11346.1 shall be reviewed by the office within 10 calendar days after their submittal to the office. The office shall not file the emergency regulations with the Secretary of State if it determines that the regulation is not necessary for the immediate preservation of the public peace, health and safety, or general welfare, or if it

determines that the regulation fails to meet the standards set forth in Section 11349.1, or if it determines the agency failed to comply with subdivisions (b) and (c) of Section 11346.1.

(c) If the office considers any information not submitted to it by the rulemaking agency when determining whether to file emergency regulations, the office shall provide the rulemaking agency with an opportunity to rebut or comment upon that information.

(d) Within 30 days of the filing of a certificate of compliance, the office shall review the regulation and hearing record and approve or order the repeal of an emergency regulation if it determines that the regulation fails to meet the standards set forth in Section 11349.1, or if it determines that the agency failed to comply with this chapter.

SEC. 43. Article 7 (commencing with Section 11349.7) is added to Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code, to read:

Article 7. Review of Existing Regulations

11349.7. The office, at the request of any standing, select, or joint committee of the Legislature, shall initiate a priority review of any regulation, group of regulations, or series of regulations that the committee believes does not meet the standards set forth in Section 11349.1.

The office shall notify interested persons and shall publish notice in the California Regulatory Notice Register that a priority review has been requested, shall consider the written comments submitted by interested persons, the information contained in the rulemaking record, if any, and shall complete each priority review made pursuant to this section within 90 calendar days of the receipt of the committee's written request. During the period of any priority review made pursuant to this section, all information available to the office relating to the priority review shall be made available to the public. In the event that the office determines that a regulation does not meet the standards set forth in Section 11349.1, it shall order the adopting agency to show cause why the regulation should not be repealed and shall proceed to seek repeal of the regulation as provided by this section in accordance with the following:

(a) In the event it determines that any of the regulations subject to the review do not meet the standards set forth in Section 11349.1, the office shall within 15 days of the determination order the adopting agency to show cause why the regulation should not be repealed. In issuing the order, the office shall specify in writing the reasons for its determination that the regulation does not meet the standards set forth in Section 11349.1. The reasons for its determination shall be made available to the public. The office shall also publish its order and the reasons therefor in the California Regulatory Notice Register. In the case of a regulation for which no, or inadequate, information relating to its necessity can be furnished

by the adopting agency, the order shall specify the information which the office requires to make its determination.

(b) No later than 60 days following receipt of an order to show cause why a regulation should not be repealed, the agency shall respond in writing to the office. Upon written application by the agency, the office may extend the time for an additional 30 days.

(c) The office shall review and consider all information submitted by the agency in a timely response to the order to show cause why the regulation should not be repealed, and determine whether the regulation meets the standards set forth in Section 11349.1. The office shall make this determination within 60 days of receipt of an agency's response to the order to show cause. If the office does not make a determination within 60 days of receipt of an agency's response to the order to show cause, the regulation shall be deemed to meet the standards set forth in subdivision (a) of Section 11349.1. In making this determination, the office shall also review any written comments submitted to it by the public within 30 days of the publication of the order to show cause in the California Regulatory Notice Register. During the period of review and consideration, the information available to the office relating to each regulation for which the office has issued an order to show cause shall be made available to the public. The office shall notify the adopting agency within two working days of the receipt of information submitted by the public regarding a regulation for which an order to show cause has been issued. If the office determines that a regulation fails to meet the standards, it shall prepare a statement specifying the reasons for its determination. The statement shall be delivered to the adopting agency, the Legislature, and the Governor and shall be made available to the public and the courts. Thirty days after delivery of the statement required by this subdivision the office shall prepare an order of repeal of the regulation and shall transmit it to the Secretary of State for filing.

(d) The Governor, within 30 days after the office has delivered the statement specifying the reasons for its decision to repeal, as required by subdivision (c), may overrule the decision of the office ordering the repeal of a regulation. The regulation shall then remain in full force and effect. Notice of the Governor's action and the reasons therefor shall be published in the California Regulatory Notice Register.

The Governor shall transmit to the rules committee of each house of the Legislature a statement of reasons for overruling the decision of the office, plus any other information that may be requested by either of the rules committees.

(e) In the event that the office orders the repeal of a regulation, it shall publish the order and the reasons therefor in the California Regulatory Notice Register.

SEC. 44. Section 11349.10 of the Government Code is amended and renumbered to read:

11349.8. (a) If the office is notified of, or on its own becomes

aware of, an existing regulation in the California Code of Regulations for which the statutory authority has been repealed or becomes ineffective or inoperative by its own terms, the office shall order the adopting agency to show cause why the regulation should not be repealed for lack of statutory authority and shall notify the Legislature in writing of this order. In issuing the order, the office shall specify in writing the reasons for issuance of the order. "Agency," for purposes of this section and Section 11349.9, refers to the agency that adopted the regulation and, if applicable, the agency that is responsible for administering the regulation in issue.

(b) The agency may, within 30 days after receipt of the written notification, submit in writing to the office any citations, legal arguments, or other information opposing the repeal, including public comments during this period. This section shall not apply where the agency demonstrates in its response that any of the following conditions exists:

(1) The statute or section thereof is simultaneously repealed and substantially reenacted through a single piece of legislation, or where subsequent legislation evinces a specific legislative intent to reenact the substance of the statute or section. When a regulation cites more than one specific statute or section as reference or authority for the adoption of a regulation, and one or more of the statutes or sections are repealed or become ineffective or inoperative, then the only provisions of the regulation which remain in effect shall be those for which the remaining statutes or sections provide specific or general authority.

(2) The statute is temporarily repealed, or rendered ineffective or inoperative by a provision of law which is effective only for a limited period, in which case any regulation described in subdivision (a) is thereby also temporarily repealed, rendered ineffective, or inoperative during that limited period. Any regulation so affected shall have the same force and effect upon the expiration of the limited period during which the provision of law was effective as if that temporary provision had not been enacted.

(3) The statute or section of a statute being repealed, or becoming ineffective or inoperative by its own terms, is to remain in full force and effect as regards events occurring prior to the date of repeal or ineffectiveness, in which case any regulation adopted to implement or interpret that statute shall likewise be deemed to remain in full force and effect in regards to those same events.

(c) This section shall not be construed to deprive any person or public agency of any substantial right which would have existed prior to, or hereafter exists subsequent to, the effective date of this section.

(d) Thirty days after receipt of the agency's opposition material, or the close of the 30-day agency and public response period if no response is submitted, the office shall do one of the following:

(1) Inform the agency and the Legislature in writing that the office has withdrawn its order to show cause.

(2) Issue a written notice to the agency specifying the reasons for

the repeal and its intent to file a Notice of Repeal of the invalid regulation with the Secretary of State. Within seven calendar days of the filing of the Notice of Repeal, the office shall provide the agency, the Governor, and the Legislature with a written decision detailing the reasons for the repeal and a copy of the Notice of Repeal, and publish the office's written decision in the California Regulatory Notice Register.

(e) The office shall order the removal of the repealed regulation from the California Code of Regulations within 30 days after filing the Notice of Repeal, if the agency has not appealed the office's decision, or upon receipt of notification of the Governor's decision upholding the office's decision, if an appeal has been filed pursuant to Section 11349.9.

SEC. 45. Section 11349.11 of the Government Code is amended and renumbered to read:

11349.9. (a) To initiate a review of the office's Notice of Repeal pursuant to Section 11349.8, the agency shall appeal the office's decision by filing a written Request for Review with the Governor's Legal Affairs Secretary within 10 days of receipt of the Notice of Repeal and written decision provided for by paragraph (2) of subdivision (d) of Section 11349.8. The Request for Review shall include a complete statement as to why the agency believes the decision is incorrect and should be overruled. Along with the Request for Review, the agency shall submit all of the following:

(1) The offices' written opinion detailing the reasons for repeal required by paragraph (2) of subdivision (d) of Section 11349.8.

(2) Copies of all statements and other documents which were submitted to the office.

(b) A copy of the agency's Request for Review shall be delivered to the office on the same day it is delivered to the Governor's office. The office shall file its written response to the agency's request with the Governor's Legal Affairs Secretary within 10 days, and deliver a copy of its response to the agency on the same day it is delivered to the Governor's office.

(c) The Governor's office shall provide the requesting agency and the office with a written decision within 15 days of receipt of the response by the office to the agency's Request for Review. Upon receipt of the decision, the office shall publish in the California Regulatory Notice Register the agency's Request for Review, the office's response thereto, and the decision of the Governor's office.

(d) The time requirements set by subdivisions (a) and (b) may be shortened by the Governor's office for good cause.

(e) In the event the Governor overrules the decision of the office, the office shall immediately transmit the regulation to the Secretary of State for filing.

(f) Upon overruling the decision of the office, the Governor shall transmit to the rules committees of both houses of the Legislature a statement of the reasons for overruling the decision of the office.

SEC. 46. The heading of Article 7 (commencing with Section

11350) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code is amended and renumbered to read:

Article 8. Judicial Review

SEC. 47. Section 11350 of the Government Code is amended to read:

11350. (a) Any interested person may obtain a judicial declaration as to the validity of any regulation by bringing an action for declaratory relief in the superior court in accordance with the Code of Civil Procedure. The right to judicial determination shall not be affected by the failure either to petition or to seek reconsideration of a petition filed pursuant to Section 11347.1 before the agency promulgating the regulations. The regulation may be declared to be invalid for a substantial failure to comply with this chapter, or, in the case of an emergency regulation or order to repeal, upon the ground that the facts recited in the statement do not constitute an emergency within the provisions of Section 11346.1.

(b) In addition to any other ground that may exist, a regulation may be declared invalid if either of the following exists:

(1) The agency's determination that the regulation is reasonably necessary to effectuate the purpose of the statute, court decision, or other provision of law that is being implemented, interpreted, or made specific by the regulation is not supported by substantial evidence.

(2) The agency declaration pursuant to paragraph (8) of subdivision (a) of Section 11346.5 is in conflict with substantial evidence in the record.

For purposes of this section, the record shall be deemed to consist of all material maintained in the file of the rulemaking proceeding as defined in Section 11347.3.

(c) The approval of a regulation by the office or the Governor's overruling of a decision of the office disapproving a regulation shall not be considered by a court in any action for declaratory relief brought with respect to a regulation.

SEC. 48. Section 11350.3 of the Government Code is amended to read:

11350.3. Any interested person may obtain a judicial declaration as to the validity of a regulation which the office has disapproved or ordered repealed pursuant to Section 11349.3, 11349.6, or 11349.7 by bringing an action for declaratory relief in the superior court in accordance with the Code of Civil Procedure. The court may declare the regulation valid if it determines that the regulation meets the standards set forth in Section 11349.1 and that the agency has complied with this chapter. If the court so determines, it may order the office to immediately file the regulation with the Secretary of State.

SEC. 49. A heading is added as Article 9 (commencing with Section 11351) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the

Government Code, to read:

Article 9. Special Procedures

SEC. 50. Section 11351 of the Government Code is amended to read:

11351. (a) Except as provided in subdivision (b), Article 5 (commencing with Section 11346), Article 6 (commencing with Section 11349), Article 7 (commencing with Section 11349.7), and Article 8 (commencing with Section 11350) shall not apply to the Public Utilities Commission, the Division of Worker's Compensation, or the Workers' Compensation Appeals Board, and Article 3 (commencing with Section 11343) and Article 4 (commencing with Section 11344) shall apply only to the rules of procedure of these state agencies.

(b) The Public Utilities Commission, the Division of Worker's Compensation and the Workers' Compensation Appeals Board shall comply with paragraph (5) of subdivision (a) of Section 11346.4 with respect to regulations that are required to be filed with the Secretary of State pursuant to Section 11343.

SEC. 51. Section 11357 is added to the Government Code, to read:

11357. (a) The Department of Finance shall adopt and update, as necessary, instructions for inclusion in the State Administrative Manual prescribing the methods that any agency subject to this chapter shall use in making the determination required by paragraph (5) and the estimate required by paragraph (6) of subdivision (a) of Section 11346.5. The instructions shall include, but need not be limited to, the following:

(1) Guidelines governing the types of data or assumptions, or both, that may be used, and the methods that shall be used, to calculate the estimate of the cost or savings to public agencies mandated by the regulation for which the estimate is being prepared.

(2) The types of direct or indirect costs and savings that should be taken into account in preparing the estimate.

(3) The criteria that shall be used in determining whether the cost of a regulation must be funded by the state pursuant to Section 6 of Article XIII B of the California Constitution and Part 7 (commencing with Section 17500) of Division 4.

(4) The format the agency preparing the estimate shall follow in summarizing and reporting its estimate of the cost or savings to state and local agencies, school districts, and in federal funding of state programs that will result from the regulation.

(b) Any action by the Department of Finance to adopt and update, as necessary, instructions to any state or local agency for the preparation, development, or administration of the state budget, including any instructions included in the State Administrative Manual, shall be exempt from this chapter.

(c) The Department of Finance may review any estimate

prepared pursuant to this section for content including, but not limited to, the data and assumptions used in its preparation.

CHAPTER 1040

An act to amend Section 4027.6 of the Health and Safety Code, relating to drinking water, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 4027.6 of the Health and Safety Code is amended to read:

4027.6. (a) The department may grant a variance or variances from primary drinking water standards to a public water system. Any variance granted pursuant to this subdivision shall conform to the requirements established under the federal Safe Drinking Water Act, as amended (42 U.S.C. Sec. 300g-4).

(b) (1) In addition to the authority provided in subdivision (a), at the request of any public water system, the department shall grant a variance from the primary drinking water standard adopted by the department for fluoride. A variance granted by the department pursuant to this subdivision shall prohibit fluoride levels in excess of 75 percent of the maximum contaminant level established in the national primary drinking water regulation adopted by the United States Environmental Protection Agency for fluoride, or three milligrams per liter, whichever is higher, and shall be valid for a period of up to 30 years. The department shall review each variance granted pursuant to this section at least every five years. The variance may be withdrawn upon reasonable notice by the department if the department determines that the community served by the public water system no longer accepts the fluoride level authorized in the variance or the level of fluoride authorized by the variance poses an unreasonable risk to health. In no case may a variance be granted in excess of the United States Environmental Protection Agency maximum contaminant level.

(2) The department shall grant a variance pursuant to paragraph (1) only if it determines, after conducting a public hearing in the community served by the public water system, that there is no substantial community opposition to the variance and the variance does not pose an unreasonable risk to health. The public water system shall provide written notification, approved by the department, to all customers which shall contain at least the following information:

(A) The fact that a variance has been requested.

(B) The date, time and location of the public hearing that will be conducted by the department.

(C) The level of fluoride that will be allowed by the requested variance and how this level compares to the maximum contaminant levels prescribed by the state primary drinking water standard, the federal national primary drinking water regulation, and the federal national secondary drinking water regulation.

(D) A discussion of the types of health and dental problems that may occur when the fluoride concentration exceeds the maximum contaminant levels prescribed by the state standard and the federal regulations.

(3) If, at any time after a variance has been granted pursuant to paragraph (1), substantial community concerns arise concerning the level of fluoride present in the water supplied by the public water system, the public water system shall notify the department, conduct a public hearing on the concerns expressed by the community, determine the fluoride level that is acceptable to the community, and apply to the department for an amendment to the variance which reflects that determination.

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

In order to ensure that safe drinking water in adequate supply is available for consumers of public water systems, it is necessary that this act take effect immediately.

CHAPTER 1041

An act to add Section 4466 to the Vehicle Code, relating to vehicles.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 4466 is added to the Vehicle Code, to read:
4466. (a) If an individual, who is the registered owner, applies in person for a copy, duplication, or substitution, as the case may be, of a certificate of ownership or license plate, he or she shall present proof of ownership of the vehicle, acceptable to the department, and a driver's license or identification card containing a picture of the licensee or cardholder issued to the registered owner by the department pursuant to Chapter 1 (commencing with Section 12500) of Division 6.

(b) Subdivision (a) does not apply if an application is delivered by mail or by any other courier or delivery service, if it is submitted by or through a dealer or dismantler, or if the applicant applies in

person and is a business entity.

CHAPTER 1042

An act to add Sections 857, 1764.5, 11450.10, and 11450.11 to the Welfare and Institutions Code, relating to minors.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 857 is added to the Welfare and Institutions Code, to read:

857. Whenever a minor is incarcerated in a juvenile hall or other county juvenile facility for a period of at least 30 consecutive days, the facility may inform the State Department of Social Services of the name, date of birth, and social security number of the incarcerated person.

SEC. 2. Section 1764.5 is added to the Welfare and Institutions Code, to read:

1764.5. Whenever a minor is incarcerated in a Youth Authority facility for a period of at least 30 consecutive days, the Youth Authority shall inform the State Department of Social Services of the name, date of birth, social security number, and county of residence of the incarcerated person.

SEC. 3. Section 11450.10 is added to the Welfare and Institutions Code, to read:

11450.10. Whenever the department is informed pursuant to either Section 857 or 1764.5 that a minor is being incarcerated for a period of at least 30 consecutive days, the department shall determine whether the minor is a part of a family for whom benefits are being received pursuant to Section 11450. In any case where it is determined that a child identified pursuant to this section is a part of a family for whom aid is being received pursuant to Section 11450, the department shall notify the county welfare department in the county in which the incarcerated youth resides prior to the first day of the month following the receipt of the notification by the Youth Authority or by juvenile hall, or by the county juvenile facility.

SEC. 4. Section 11450.11 is added to the Welfare and Institutions Code, to read:

11450.11. Whenever a county welfare department is informed that a child who is incarcerated is also a member of a family receiving benefits pursuant to Section 11450, the county welfare department shall seek reimbursement of any overpayments pursuant to existing law and regulation.

CHAPTER 1043

An act to amend Section 4420 of the Government Code, relating to insurance.

[Approved by Governor September 28, 1994. Filed with Secretary of State September 29, 1994.]

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

SECTION 1. Section 4420 of the Government Code is amended to read:

4420. (a) No officer or employee of this state, or of any public agency or of any public authority, and no person acting or purporting to act on behalf of any officer, employee, or public agency or authority, except a public agency or authority created pursuant to agreement or compact with another state, shall, with respect to any public building or construction contract which is about to be or which has been competitively bid, require the bidder to make application to, or furnish financial data to, or to obtain or procure any surety bond or contract of insurance specified in connection with the contract, or specified by any law, ordinance, or regulation, from, a particular surety or insurance company, agent, or broker.

(b) No officer or employee, or person, firm, or corporation acting or purporting to act on behalf of any officer or employee, shall negotiate, make application for, obtain, or procure any such surety bond or contract of insurance (except contracts of insurance for builder's risk or owner's protective liability) which can be obtained or procured by the bidder, contractor, or subcontractor.

(c) Subdivision (b) shall not apply to the construction of any exclusive public mass transit guideway project in any county with a population exceeding 6,000,000, or in the County of Santa Clara or the City and County of San Francisco; to any exclusive public mass transit guideway project undertaken by either the San Francisco Bay Area Rapid Transit District or the Sacramento Regional Transit District; to any airport expansion project undertaken at the San Francisco International Airport; to any water, waste water, or reclamation project undertaken by a public agency serving a population exceeding 250,000; to any exclusive public water storage or conveyance facility undertaken by a metropolitan water district that was organized under the Metropolitan Water District Act, Chapter 209 of the Statutes of 1969, as amended; to any county medical center within San Bernardino County or Riverside County; to any construction project undertaken by the harbor departments of the City of Los Angeles and the City of Long Beach, or any joint powers authority formed by the City of Los Angeles and the City of Long Beach, for the purpose of improving the Alameda Corridor; to any construction or renovation project undertaken by the Foothill/Eastern or San Joaquin Hills Transportation Corridor

Agencies in Orange County; or to construction or renovation of additions to any county medical center located within Santa Clara County.

(d) As used in this section, "public agency" means any city, county, city and county, district, municipal or public corporation, or any agency or instrumentality thereof.

CHAPTER 1044

An act to amend Section 14608 of, and to add and repeal Section 19080.4 of, the Government Code, and to amend Section 10302.5 of the Public Contract Code, relating to state operations.

[Approved by Governor September 28, 1994. Filed with Secretary of State September 29, 1994.]

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

SECTION 1. Section 14608 of the Government Code is amended to read:

14608. Whenever any statute requires by the use of the word or words "approve," "approval," "authorize," or "authorization," the director of the department to approve or authorize any act or transaction, the approval or authorization shall be deemed to have been given only if given in writing by the director, the deputy director, or by some other officer or employee of the department acting pursuant to written authority of the director. The term "in writing" includes a secured electronic signature, whereby an electronically produced document may be signed electronically by the authorized signatory who possesses a secured electronic password available only to the signatory or his or her designee.

SEC. 2. Section 19080.4 is added to the Government Code, to read:

19080.4. (a) The board may authorize limited-term appointments to be extended for up to two years beyond the limits specified in Section 19080.3 when the extension is needed to complete construction projects still in progress.

(b) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

SEC. 3. Section 10302.5 of the Public Contract Code is amended to read:

10302.5. All product specifications that the Department of General Services or any other state agency prepares for goods for any contract entered into by any state agency for the purchase of goods under Section 10295 are not subject to the review and adoption procedure under Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

CHAPTER 1045

An act to amend Section 3200 of the Food and Agricultural Code, and to add Section 6516.9 to the Government Code, relating to fairs and expositions, and making an appropriation therefor.

[Approved by Governor September 28, 1994. Filed with Secretary of State September 29, 1994.]

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

SECTION 1. Section 3200 of the Food and Agricultural Code is amended to read:

3200. Notwithstanding any other provision of law, all funds appropriated for California fairs and expositions pursuant to Sections 19622, 19627, 19627.1, and subdivision (c) of Section 19627.2 of the Business and Professions Code for the 1994–95 fiscal year shall not be utilized for the purposes specified in those sections but shall, instead, be utilized for the purposes specified in Section 19630 of the Business and Professions Code, and may be allocated by the Secretary of Food and Agriculture to all state designated fairs as defined by Section 19418 of the Business and Professions Code, for the purposes specified in Section 19630.

SEC. 2. Section 6516.9 is added to the Government Code, to read:

6516.9. Notwithstanding any other provision of law, a joint powers agency provided for by a joint powers agreement pursuant to this article, the members of which may conduct agricultural, livestock, industrial, cultural, or other types of fairs and exhibitions, may establish and administer risk pooling arrangements for the payment of general liability losses incurred by nonprofit corporations conducting or benefiting agricultural, livestock, industrial, cultural, or other types of fairs and exhibitions, and by nonprofit corporations or auxiliary organizations operating facilities, programs, or events at public schools, the California Community Colleges, the California State University, or the University of California. The joint powers agency may provide the nonprofit corporations with any services provided to the agency's members. Aggregate payments made under each risk pooling arrangement shall not exceed the amount available in the pool established for that arrangement. The joint powers agency may establish and administer as many separate risk pooling arrangements as it deems desirable. A general liability risk pooling arrangement established pursuant to this section may also provide for the payment of losses incurred by special events users, lessees, and licensees of facilities operated by nonprofit corporations, auxiliary organizations, public schools, community colleges, the California State University, or the University of California and for the payment of losses incurred by participants and exhibitors in programs sponsored by those entities.

CHAPTER 1046

An act to amend Section 3260 of the Civil Code, relating to works of improvement.

[Approved by Governor September 28, 1994. Filed with Secretary of State September 29, 1994.]

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

SECTION 1. Section 3260 of the Civil Code is amended to read:
3260. (a) This section is applicable with respect to all contracts entered into on or after July 1, 1991, relating to the construction of any private work of improvement. However, the amendments made to this section during the 1992 portion of the 1991–92 Regular Session of the Legislature are applicable only with respect to contracts entered into on or after January 1, 1993, relating to the construction of any private work of improvement. Moreover, the amendments made to this section during the 1993 portion of the 1993–94 Regular Session of the Legislature are applicable only with respect to contracts entered into on or after January 1, 1994, relating to the construction of any private work of improvement.

(b) The retention proceeds withheld from any payment by the owner from the original contractor, or by the original contractor from any subcontractor, shall be subject to this section.

(c) Within 45 days after the date of completion, the retention withheld by the owner shall be released. "Date of completion," for purposes of this section, means any of the following:

(1) The date of issuance of any certificate of occupancy covering the work by the public agency issuing the building permit.

(2) The date of completion indicated on a valid notice of completion recorded pursuant to Section 3093.

(3) The date of completion as defined in Section 3086.

However, release of retentions withheld for any portion of the work of improvement which ultimately will become the property of a public agency, may be conditioned upon the acceptance of the work by the public agency. In the event of a dispute between the owner and the original contractor, the owner may withhold from the final payment an amount not to exceed 150 percent of the disputed amount.

(d) Subject to subdivision (e), within 10 days from the time that all or any portion of the retention proceeds are received by the original contractor, the original contractor shall pay each of its subcontractors from whom retention has been withheld, each subcontractor's share of the retention received. However, if a retention payment received by the original contractor is specifically designated for a particular subcontractor, payment of the retention shall be made to the designated subcontractor, if the payment is consistent with the terms of the subcontract.

(e) If a bona fide dispute exists between a subcontractor and the original contractor, the original contractor may withhold from that subcontractor with whom the dispute exists its portion of the retention proceeds. The amount withheld from the retention payment shall not exceed 150 percent of the estimated value of the disputed amount.

(f) Within 10 days of receipt of written notice by the owner from the original contractor or by the original contractor from the subcontractor, as the case may be, that any work in dispute has been completed in accordance with the terms of the contract, the owner or original contractor shall advise the notifying party of the acceptance or rejection of the disputed work. Within 10 days of acceptance of the disputed work, the owner or original contractor, as the case may be, shall release the retained portion of the retention proceeds.

(g) In the event that retention payments are not made within the time periods required by this section, the owner or original contractor withholding the unpaid amounts shall be subject to a charge of 2 percent per month on the improperly withheld amount, in lieu of any interest otherwise due. Additionally, in any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs.

(h) It shall be against public policy for any party to require any other party to waive any provision of this section.

(i) This section shall not be construed to apply to retentions withheld by a lender in accordance with the construction loan agreement.

CHAPTER 1047

An act to amend Section 9002 of the Fish and Game Code, relating to commercial fishing.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 9002 of the Fish and Game Code is amended to read:

9002. (a) Except as provided in subdivisions (b), (c), and (d), it is unlawful to willfully or recklessly disturb, move, or damage any trap that belongs to another person and that is marked with a buoy identification number pursuant to Section 9006.

(b) A person, who has been issued a general trap permit under Section 9001 and has it in his or her possession, may pull or raise a trap marked with a buoy, if the buoy is marked with a buoy identification number pursuant to subdivision (b) of Section 9006. A

person pulling or raising a trap marked with a buoy identification number, other than his or her own buoy identification number, shall have written permission in his or her possession from the other person who holds the buoy identification number that is marked on the buoy.

(c) Subdivision (a) does not apply to employees of the department while engaged in the performance of official duties.

(d) (1) Subdivision (a) does not apply to publicly employed safety personnel, including, but not limited to, lifeguards, marine safety officers, harbor patrol officers, and peace officers, who, while engaged in the performance of their official duties, may remove a trap, buoy, or line located in or near breaking surf or adjacent to a public beach if they believe that the trap poses a public safety hazard. If any of those persons remove a trap, a buoy, or a trap or buoy line, any captured marine life shall be immediately returned to the ocean.

(2) Any person described in this subdivision who removes a trap and any attachments thereto identified by a buoy identification number shall make an attempt to contact the person whose permit or license number is marked on the buoy by personal contact, by telephone, by recorded message left on a telephone answering machine, by regular United States Postal Service, or by other means, advising where the property is located. Those persons shall have no responsibility to secure the trap or attachments against loss or damage.

(3) Employees of the department may disclose the name, address, and buoy identification numbers of currently permitted or licensed persons to representatives of public safety agencies described in this subdivision to assist in the return of traps and attachments to their proper owners or operators.

(4) If the person whose permit or license number is marked on the buoy has been notified pursuant to this subdivision but has not retrieved the trap within seven days of notification, or if that person cannot be identified within seven days after the trap has been removed, the trap may be discarded.

(5) This subdivision does not create any duty on any state or local agency to remove or move a trap, line, or buoy that may endanger the public safety and does not create any liability pursuant to Part 2 (commencing with Section 814) of Division 3.6 of Title 1 of the Government Code.

CHAPTER 1048

An act to amend Sections 77442 and 77481.5 of, to add Section 42951 to, and to add and repeal Chapter 11 (commencing with Section 48000) of Division 17 of, the Food and Agricultural Code, relating to agriculture, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1994. Filed with Secretary of State September 29, 1994.]

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

SECTION 1. Section 42951 is added to the Food and Agricultural Code, to read:

42951. (a) It is unlawful for any person to adulterate any solution or chemical or to alter any instrument or any other device provided to an enforcing officer for use in determining compliance with this division or the regulations adopted pursuant to this division.

(b) A violation of this section is a misdemeanor, punishable by a fine of not less than one hundred dollars (\$100) or more than three thousand dollars (\$3,000), by imprisonment in a county jail for not more than six months, or by both that fine and imprisonment.

SEC. 2. Chapter 11 (commencing with Section 48000) is added to Division 17 of the Food and Agricultural Code, to read:

CHAPTER 11. NAVEL AND VALENCIA ORANGES

48000. The handling and marketing of navel and Valencia oranges is affected with the public interest. The provisions of this chapter are enacted for the protection of the industry and for the purposes of protecting the health and general welfare of the people of this state. Assessments established by this chapter shall be expended exclusively for the purpose of administering an inspection program in the counties specified in subdivision (d) of Section 48002 pertaining to standards for orange maturity and freeze damage as provided by statute or regulation. The inspection in these counties shall be conducted by the county agricultural commissioner pursuant to a memorandum of understanding between the department and the commissioners.

48001. (a) There is in the department the Navel and Valencia Orange Advisory Committee, which shall oversee the implementation of the inspection program.

(b) The committee shall be composed of five producers and three handlers. Four of the producer members shall be engaged in the production of navel or Valencia oranges in the San Joaquin Valley, and two of those four members shall be engaged in production in Tulare County. The three handler members shall have their principal place of business located in one of the counties specified in

subdivision (d) of Section 48002. Two of the three handlers shall be located in the San Joaquin Valley and one shall be located in southern California.

(c) The committee shall be appointed by the secretary from nominations submitted to the secretary by members of the navel orange and Valencia orange industries group.

(d) Committee members may be compensated for reasonable expenses actually incurred in the performance of their duties, as determined by the committee and concurred in by the secretary.

(e) The committee shall meet at the request of the secretary, the committee chairperson, or upon the request of three committee members.

(f) The committee shall appoint a chairperson, one or more vice chairpersons, a secretary, and any other officers it deems necessary.

(g) The committee shall develop and make recommendations to the secretary on all matters regarding the implementation of this chapter including:

(1) Procedures for implementing an inspection program that shall include, but not be limited to, the following:

(i) The minimum number of inspections to be conducted, and the duration of each inspection period.

(ii) The minimum number of samples to be taken.

(iii) Statistical analysis of compliance levels and determination of acceptable level of compliance.

(iv) Documentation of inspection data including the number of inspectors, number of inspections performed, and budget information relating to expenses of personnel, mileage, and overhead costs.

(v) Monitoring and postevaluation of program effectiveness by the secretary.

(vi) Development of a single memorandum of understanding between the department and all of the county agricultural commissioners for the counties specified in subdivision (d) of Section 48002.

(2) Determinations as to which counties have met the inspection requirements.

(h) The secretary shall accept the recommendations of the committee if he or she determines that the recommendations are practicable and in the interest of the industry and the public. The secretary shall provide the committee within 30 days of receipt of the recommendations with a written statement of reasons if he or she does not accept any of the recommendations.

48002. (a) In addition to any other assessment, fees, or charges that may be required pursuant to this code, producers of navel oranges and Valencia oranges that are grown in this state and prepared for fresh market in the counties specified in subdivision (d) shall pay an assessment that shall not exceed 7 mills (\$0.007) per carton for navel oranges and 2½ mills (\$0.0025) per carton for Valencia oranges through the 1996 marketing season. Thereafter, the

assessment shall not exceed 9 mills (\$.009) per carton for navel oranges and 4 mills (\$.004) per carton for Valencia oranges. The assessment shall be:

(1) Based on the number of cartons shipped.

(2) Used to reimburse agricultural commissioners, pursuant to a memorandum of understanding between the department and the commissioners, in the counties specified in subdivision (d) who meet the requirements of the inspection program as determined by the committee and concurred in by the secretary.

(3) Collected from the producer by the first handler. For the purposes of this chapter, "producer" means a grower of navel oranges or Valencia oranges and "handler" means a person or entity who receives navel oranges or Valencia oranges from a producer and who prepares the oranges for fresh market. If a producer prepares the oranges for market, the producer shall be deemed the handler.

(4) Remitted to the department by the first handler, along with an assessment form, at the end of each month during the marketing season.

(5) Deposited in the Department of Food and Agriculture Fund or, upon the recommendation of the committee, deposited in accordance with Section 227 or Article 2.5 (commencing with Section 230) of Chapter 2 of Part 1 of Division 1.

(b) In no case shall:

(1) The total amount reimbursed to all counties exceed the total amount collected from the producers in all counties.

(2) The reimbursement to any county exceed the amount approved by the committee and concurred in by the secretary.

(c) If the inspection program is terminated and there are insufficient funds to cover the cost of terminating the inspection program, the assessment shall continue until all those costs are recovered.

(d) Assessments collected pursuant to this chapter are for the purpose of conducting an inspection program in the Counties of Fresno, Kern, Madera, Orange, Riverside, San Bernardino, Santa Clara, Tulare, and Ventura. A producer shall not be required to pay assessments unless the county agricultural commissioners of those counties provide an inspection program in accordance with this chapter, unless otherwise recommended by the committee and approved by the secretary. A county agricultural commissioner shall not be required to provide an inspection program.

48003. (a) Upon establishment of an inspection program, any handler who does not file the required assessment report and assessments by the 10th day of the month following the month for which the assessment is payable shall pay a penalty of 10 percent of the assessment owed and, in addition, 1½ percent interest per month on the unpaid balance.

(b) Upon establishment of an inspection program, it shall be unlawful for any handler to refuse to collect the assessments or remit the assessments and the proper forms required by this chapter.

48004. This chapter shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 3. Section 77442 of the Food and Agricultural Code is amended to read:

77442. A quorum of the commission is a majority of the voting producer members, a majority of the voting shipper members, and a majority of the voting processor members on the commission. Except as provided in Sections 77481.5 and 77503, the vote of a majority of members present at a meeting at which there is a quorum shall constitute an act of the commission.

SEC. 4. Section 77481.5 of the Food and Agricultural Code is amended to read:

77481.5. An assessment established by the commission shall require a favorable vote of not less than two-thirds of the voting producer members, a majority of the voting shipper members, and a majority of the voting processor members on the commission.

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

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure continued funding of a citrus inspection program that the counties are no longer able to provide at the earliest time possible, it is necessary that this act take effect immediately.

CHAPTER 1049

An act to amend Sections 704, 704.1, 1088, 1095, 1110, 1111, 1111.5, 1112.5, 1113.1, 1114, 1115, 1116, 1126, 1127, 1128, 1132, 1703, 1852, 2117, 2117.5, 2121, 2123, 13002, 13021, 13021.5, 13050, 13051, 13053, 13054, 13056, 13057, and 13058 of, and to add Section 1117 to, the Unemployment Insurance Code, relating to unemployment insurance, and making an appropriation therefor.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 704 of the Unemployment Insurance Code is amended to read:

704. The director shall not approve an election under Section 701, 702, 702.1, 702.5, 703, 708, or 708.5 if he or she finds that any of the following conditions exist:

(a) The self-employed individual is currently unable to perform his or her regular and customary work due to injury or illness.

(b) The employing unit or self-employed individual is not normally and continuously engaged in a regular trade, business, or occupation.

(c) The employing unit or self-employed individual intends to discontinue the regular trade, business or occupation within eight calendar quarters.

(d) The regular trade, business, or occupation of the employing unit or self-employed individual is seasonal in its operations.

(e) The major portion of the self-employed individual's remuneration is not derived from his or her trade, business, or occupation.

(f) The self-employed individual is unable to provide a copy of his or her Internal Revenue Service Schedule SE as reported on or before April 15 of the preceding year showing a net profit of at least four thousand six hundred dollars (\$4,600) or to certify to an average net profit of at least one thousand one hundred fifty dollars (\$1,150) per quarter since becoming self-employed or for the preceding four quarters, whichever period is less.

(g) The employing unit or self-employed individual has failed to make a return or report, or to pay contributions within the time required by this division and there is an unpaid amount of contributions owing by the employing unit or self-employed individual.

(h) (1) A prior elective coverage agreement entered into pursuant to Section 708 or 708.5 has been terminated by the department under Section 704.1 or by means of a written application for termination as required by this division, and the individual has not completed a waiting period of 18 consecutive months from the date of termination.

(2) The waiting period for reinstatement to the elective coverage program may be waived for any individual who becomes eligible for coverage after being terminated under paragraph (1), (2), (4), or (5) of subdivision (a) of Section 704.1, upon receipt by the department of an application for coverage to be effective the first day of the quarter in which the application is received.

(i) The employing unit or any officer or agent of or person having charge of the affairs of the employing unit, or the self-employed

individual has been convicted within the preceding eight consecutive calendar quarters of any violation under Chapter 10 (commencing with Section 2101). For the purposes of this subdivision, a plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction irrespective of whether an order granting probation or other order is made suspending the imposition of the sentence or whether sentence is imposed but execution thereof is suspended.

(j) For purposes of this section, Internal Revenue Service Schedule SE is defined as Internal Revenue Service Form 1040 Schedule SE, or in the case of statutory employees under the Internal Revenue Code, it shall be defined as Internal Revenue Service Form 1040 Schedule C, or the California Income Tax Return, when accompanied by Internal Revenue Service Form W-2.

SEC. 2. Section 704.1 of the Unemployment Insurance Code is amended to read:

704.1. (a) Notwithstanding any other provision of this division, the director may terminate any elective coverage agreement under this article if he or she finds that any of the following conditions exist:

(1) The employing unit or self-employed individual is not normally and continuously engaged in a regular trade, business, or occupation.

(2) The employing unit or self-employed individual has discontinued the regular trade, business, or occupation.

(3) The regular trade, business, or occupation of the employing unit or self-employed individual is seasonal in its operations.

This paragraph shall not apply to any public entity.

(4) The major portion of the self-employed individual's remuneration is not derived from his or her trade, business, or occupation.

(5) The self-employed individual reports a net profit of less than four thousand six hundred dollars (\$4,600) on his or her Internal Revenue Service Schedule SE for a third consecutive year.

(6) The employing unit or self-employed individual has failed to make a return or report, or to pay contributions within the time required by this division and there is an unpaid amount of contributions owing by the employing unit or self-employed individual, except when the elective coverage agreement has been in effect for less than two complete calendar years.

(7) The employing unit or self-employed individual, or a representative thereof, is found by the director to have filed a false statement in order to be considered eligible for elective coverage.

(8) The employing unit or any officer or agent of or person having charge of the affairs of the employing unit, or the self-employed individual is convicted of any violation pursuant to Chapter 10 (commencing with Section 2101). For the purposes of this paragraph, a plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction irrespective of whether an order granting probation or other order is made

suspending the imposition of the sentence or whether sentence is imposed but execution thereof is suspended.

(b) The director shall give to the employing unit, or to the self-employed individual, a written notice pursuant to Section 1206 of the director's termination of the elective coverage agreement under this section. The date of termination may be the end of the calendar quarter immediately preceding the existence of any condition specified in subdivision (a), or the end of any subsequent calendar quarter thereafter, as determined by the director.

Any termination of elective coverage shall not affect the liability of the employing unit or self-employed individual for any contributions due, owing, and unpaid to the department.

(c) Sections 1222, 1223, and 1224 shall apply to matters arising under this section.

(d) For purposes of this section, Internal Revenue Service Schedule SE is defined as Internal Revenue Service Form 1040 Schedule SE, or in the case of statutory employees under the Internal Revenue Code, it shall be defined as Internal Revenue Service Form 1040 Schedule C, or the California Income Tax Return, when accompanied by Internal Revenue Service Form W-2.

SEC. 3. Section 1088 of the Unemployment Insurance Code is amended to read:

1088. (a) (1) Each employer shall file with the director within the time required by subdivision (a) or (d) of Section 1110 for payment of employer contributions, a report of contributions and a report of wages paid to his or her workers in the form and containing any information as the director prescribes. An electronic funds transfer of contributions pursuant to subdivision (f) of Section 1110 shall satisfy the requirement for a report of contributions. The report of wages shall include individual amounts required to be withheld under Section 13020.

(2) In order to enhance efforts to reduce tax fraud and to reduce the personal income tax reporting burden, effective January 1, 1997, the report of wages shall also include the full first name of the employee and total wages, as defined in Section 13009, paid to each employee. This paragraph shall apply to reports of wages for the 1997 calendar year and after.

(b) Each employer shall file with the director within the time required by subdivision (b) or (d) of Section 1110 for payment of worker contributions, a report of contributions containing the employer's business name, address, and account number, the total amount of worker contributions due, and any other information as the director shall prescribe. The director shall prescribe the form for the report of contributions. An electronic funds transfer of contributions pursuant to subdivision (f) of Section 1110 shall satisfy the requirement for a report of contributions.

(c) In addition to the report of contributions and report of wages required by employers under subdivision (a), an individual who has elected coverage under subdivision (a) of Section 708 is also required

to file a separate report of contributions, subject to Part 2 (commencing with Section 2601).

(d) Any employer making an election under subdivision (d) of Section 1110 shall submit the report of wages described in subdivision (a), within the time required for submitting employer contributions under subdivision (a) of Section 1110.

(e) In addition to the report of contributions and report of wages described in subdivision (a), each employer shall file with the director an annual reconciliation return showing the total amount of wages, employer contributions required under Sections 976 and 976.6, worker contributions required under Section 984, the amounts required to be withheld under Section 13020, and any other information as the director shall prescribe. This annual reconciliation return shall be due on the first day of January following the close of the prior calendar year and shall become delinquent if not filed on or before the last day of that month.

This subdivision shall not apply to individuals electing coverage under Section 708 or 708.5 or employers electing financing under Section 821.

(f) For purposes of making a report of wages under subdivision (a), employers who are required under Section 6011 of the Internal Revenue Code and authorized regulations thereunder to file magnetic media returns, shall, within 90 days of becoming subject to this requirement, do one of the following:

(1) Submit a magnetic media format to the department for approval, and upon receiving approval from the department, submit any subsequent reports of wages on magnetic media.

(2) Establish to the satisfaction of the director that there is a lack of automation, a severe economic hardship, a current exemption from submitting magnetic media information returns for federal purposes, or other good cause for not complying with the provisions of this subdivision. Approved waivers shall be valid for six months or longer, at the discretion of the director.

(g) The Franchise Tax Board shall be allowed access to the information filed with the department pursuant to this section.

(h) If an employer demonstrates that an undue hardship would be imposed, the director may authorize an exemption from the requirement in subdivision (a) to report individual amounts withheld under Section 13020 and the requirement in subdivision (e) to file the annual reconciliation return for the 1995 calendar year only. Any request for exemption must be filed on or before January 15, 1995. Upon approval of a request for exemption under this subdivision, the employer shall file quarterly returns and reports of wages in the manner and method prescribed by the director for the 1995 calendar year only.

SEC. 4. Section 1095 of the Unemployment Insurance Code is amended to read:

1095. The director shall permit the use of any information in his or her possession to the extent necessary for any of the following

purposes:

- (a) To properly present a claim for benefits.
- (b) To acquaint a worker or his or her authorized agent with his or her existing or prospective right to benefits.
- (c) To furnish an employer or his or her authorized agent with information to enable him or her to fully discharge his or her obligations or safeguard his or her rights under this division or Division 3 (commencing with Section 9000). This subdivision, as it relates to Division 3 (commencing with Section 9000), applies only to subdivision (j) of this section.
- (d) To enable an employer to receive a reduction in contribution rate.
- (e) To enable the Director of Social Services or his or her representatives or the Director of Health Services or his or her representatives, subject to federal law, to verify or determine the eligibility or entitlement of an applicant for, or a recipient of, public social services provided pursuant to the Welfare and Institutions Code, and directly connected with, and limited to, the administration of public social services.
- (f) To enable county administrators of general relief or assistance, or their representatives, to determine entitlement to locally provided general relief or assistance, where the determination is directly connected with, and limited to, the administration of general relief or assistance.
- (g) To enable county district attorneys, or their representatives, to seek criminal, civil, or administrative remedies in connection with the unlawful application for, or receipt of, relief provided under Division 9 (commencing with Section 10000) of the Welfare and Institutions Code.
- (h) To enable the director or his or her representative to carry out his or her responsibilities under this code.
- (i) To enable county departments of collection or their representatives to determine entitlement to medical assistance services rendered pursuant to Part 5 (commencing with Section 17000) of Division 9 of the Welfare and Institutions Code, and, when appropriate, to enable collection for the county's expenditures for these medical assistance services.
- (j) To furnish an employer, or his or her authorized agent, with information including, but not limited to, the applicant's or recipient's name, social security number, address, employable skills, and job placement in order to enable him or her to fully discharge his or her obligations or safeguard his or her rights under the elements of a joint union, management, and Employment Development Department agreement as are deemed necessary to assist displaced workers to obtain new employment under the provisions of Chapter 2.9 (commencing with Section 9970) of Part 1 of Division 3 and related provisions of Division 3 (commencing with Section 9000). The information shall be limited to any information gathered under these divisions by the department and authorized

for release by the labor organization which shall act as an agent for the affected workers under terms of the agreement and shall participate in defining the information release provisions.

(k) To provide any law enforcement agency with the name, address, telephone number, birth date, social security number, physical description, and names and addresses of present and past employers, of any victim, suspect, missing person, potential witness, or person for whom a felony arrest warrant has been issued, when a request for this information is made by any investigator or peace officer as defined by Sections 830.1 and 830.2 of the Penal Code and designated by the head of the law enforcement agency and who requests this information in the course of and as a part of an investigation into the commission of a crime where there is a reasonable suspicion that the crime is a felony and that the information would lead to relevant evidence. The information provided pursuant to this subdivision shall be provided to the extent permitted by federal law and regulations, and to the extent the information is available and accessible within the constraints and configurations of existing department records. Any person who receives any information under this subdivision shall make a written report of the information to the law enforcement agency that employs him or her, for filing under the normal procedures of that agency. Any officer or employee of the department who discloses information in violation of this subdivision is guilty of a misdemeanor. Any person who obtains information in violation of this subdivision is guilty of a misdemeanor.

(1) This subdivision shall not be construed to authorize the release of a general list identifying individuals applying for or receiving benefits to any law enforcement agency.

(2) The department shall maintain records pursuant to this subdivision only for periods required under regulations or statutes enacted for the administration of its programs.

(3) This subdivision shall not be construed as limiting the information provided to law enforcement agencies to that pertaining only to applicants for, or recipients of, benefits.

(4) The department shall notify all applicants for benefits that release of confidential information from their records will not be protected should there be a felony arrest warrant issued against the applicant or in the event of an investigation by a law enforcement agency into the commission of a felony.

(l) Nothing in this section shall be construed to authorize or permit the use of information obtained in the administration of this code by any private collection agency.

(m) To provide the State Teachers' Retirement System, pursuant to Section 22242 of the Education Code, with information relating to the earnings of any person who is receiving a disability allowance, or disability retirement allowance, from the State Teachers' Retirement System. The earnings information shall be released to the Teachers' Retirement Board only upon written request from the

board specifying that the person is receiving a disability allowance or disability retirement allowance from the system. The request may be made by the chief executive officer of the system or by an employee of the system so authorized and identified by name and title by the chief executive officer in writing.

(n) To provide the Public Employees' Retirement System, pursuant to Section 20143 of the Government Code, with information relating to the earnings of any person who is receiving a disability retirement allowance from the Public Employees' Retirement System. The earnings information shall be released to the Board of Administration of the system only upon written request from the board specifying that the person is receiving a disability retirement allowance from the system. The request may be made by the executive officer of the system or by an employee of the system so authorized and identified by name and title by the executive officer in writing.

(o) To provide the University of California Retirement System with information in its possession relating to the earnings of any person who has applied for or is receiving disability income from the system. The earnings information shall be disclosed only upon written request from the system specifying that the person has applied for or is receiving disability income from the system. The request may be made by the chief administrative officer of the system or by an employee so authorized and identified by name and title by the chief administrative officer in writing. The system shall notify applicants for and recipients of disability income that earnings information from the department's records will be released upon the system's request. The information obtained pursuant to this subdivision shall be used or disclosed by the system only to determine or to verify entitlement to, or continuing eligibility for, disability income. The system shall reimburse the department for all reasonable administrative expenses incurred pursuant to this subdivision.

(p) To enable the Division of Labor Standards Enforcement in the Department of Industrial Relations to seek criminal, civil, or administrative remedies in connection with the failure to pay, or the unlawful payment of, wages pursuant to Chapter 1 (commencing with Section 200) of Part 1 of Division 2 of, and Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of, the Labor Code. The Division of Labor Standards Enforcement shall reimburse the department for all reasonable administrative expenses incurred pursuant to this subdivision.

(q) To enable the federal Department of Health and Human Services, Office of Child Support Enforcement, Federal Parent Locator Service, to administer its child support enforcement programs under Title IV of the Social Security Act (42 U.S.C. Sec. 651 et seq.).

(r) To provide county probation departments with wage and claim information in its possession that will assist those departments

in the location of victims of crime who, by state mandate or court order, are entitled to restitution that has been, or can be recovered, and to assist in the collection of money owed to the county or the state by any person who has been directed by state mandate or court order to pay restitution, fines, penalties, assessments, or fees as a result of a violation of law. Information provided about victims of crime shall be limited to data necessary to assist in locating them. The county shall reimburse the department for all reasonable administrative expenses incurred pursuant to this subdivision. Except as provided by Section 1463.007 of the Penal Code, any officer or employee of the department who discloses information in violation of this subdivision is guilty of a misdemeanor. Except as provided by Section 1463.007 of the Penal Code, any person who obtains information in violation of this subdivision is guilty of a misdemeanor.

(s) To provide the Student Aid Commission with information concerning any individuals who are delinquent or in default on guaranteed student loans or who owe repayment of funds received through other financial assistance programs administered by the commission. The information obtained pursuant to this subdivision shall be utilized by the commission exclusively to enable the collection of defaulted loans and other funds owed, pursuant to the authority granted in Chapter 2 (commencing with Section 69500) of Part 42 of the Education Code and Chapter 1 (commencing with Section 30000) of Title 5 of the California Code of Regulations. The information released by the director for the purposes of this subdivision shall not include any employment, wage, or other information concerning any person who is receiving unemployment insurance benefits. The information shall be released to the commission only upon written request from the director of the commission or by an employee so authorized and identified by name and title by the director. The commission shall reimburse the department for all reasonable administrative expenses incurred pursuant to this subdivision.

(t) To provide an authorized governmental agency with any or all relevant information that relates to any specific workers' compensation insurance fraud investigation. The information shall be provided to the extent permitted by federal law and regulations. For the purposes of this subdivision, "authorized governmental agency" means the district attorney of any county, the office of the Attorney General, the Department of Industrial Relations, and the Department of Insurance. An authorized governmental agency may disclose this information to the State Bar, the Medical Board of California, or any other licensing board or department whose licensee is the subject of a workers' compensation insurance fraud investigation. This subdivision shall not prevent any authorized governmental agency from reporting to any board or department the suspected misconduct of any licensee of that body. The Department of Insurance or Department of Industrial Relations shall

reimburse the department for all reasonable administrative expenses incurred relative to a request that it submits pursuant to this subdivision. Relevant information may include, but is not limited to, all of the following:

(1) Copies of unemployment and disability insurance application and claim forms and copies of any supporting medical records, documentation, and records pertaining thereto.

(2) Copies of returns or reports filed by an employer pursuant to Section 1088 and copies of supporting documentation.

(3) Copies of benefit payment checks issued to claimants.

(4) Copies of any documentation that specifically identifies the claimant by social security number, residence address, or telephone number.

(u) To provide employment tax information to the tax officials of Mexico, if a reciprocal agreement exists. For purposes of this subdivision, "reciprocal agreement" means a formal agreement to exchange information between national taxing officials of Mexico and taxing authorities of the State Board of Equalization, the Franchise Tax Board, and the Employment Development Department. Furthermore, the reciprocal agreement shall be limited to the exchange of information which is essential for tax administration purposes only. Taxing authorities of the State of California shall be granted tax information only on California residents. Taxing authorities of Mexico shall be granted tax information only on Mexican nationals.

(v) Wages as defined by Section 13009 and amounts required to be deducted and withheld under Section 13020 shall not be disclosed except as provided in Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2 of Division 2 of the Revenue and Taxation Code.

SEC. 5. Section 1110 of the Unemployment Insurance Code is amended to read:

1110. (a) Employer contributions required under Sections 976 and 976.6, the amount of benefits received by any individual pursuant to this part that is deducted from an award or settlement made by the employer under the provisions of Section 1382, and, except as provided by subdivision (b) of this section, worker contributions required under Section 984 are due and payable on the first day of the calendar month following the close of each calendar quarter and shall become delinquent if not paid on or before the last day of that month.

(b) Workers' contributions required under Section 984 are due and payable at the same time and by the same method as amounts required to be withheld under Section 13020 are paid to the department pursuant to Section 13021, regardless of the amount of accumulated unpaid liability for workers' contributions.

(c) Employer contributions submitted pursuant to Section 976.5 shall be paid on or before the last working day of March of the calendar year to which the reduced contribution rate would be

applicable. Any employer whose eligibility for an unemployment insurance contribution rate determination is redetermined to make that employer eligible to submit voluntary unemployment insurance contributions in accordance with Section 976.5, may submit a voluntary unemployment insurance contribution within 30 days of the date of notification of the redetermination.

(d) Except as provided in subdivision (e), any employer described in Sections 682 and 684 may elect to report and pay employer contributions required under Sections 976 and 976.6, and worker contributions required under Section 984, annually. All contributions are due and payable on the first day of January following the close of the prior calendar year and shall become delinquent if not paid on or before the last day of that month. For purposes of this subdivision, the election shall be effective on the first day of the calendar month following the close of the calendar quarter in which the election was approved by the department. An election under this subdivision shall not be approved if the employer has an outstanding return or report delinquency on the records of the department, or an unpaid amount owed to the department, that is not the subject of a timely petition for reassessment pending before the appeals board at the time the election is filed.

(e) Any employer described in Sections 682 and 684 who pays more than twenty thousand dollars (\$20,000) in wages annually, shall not be entitled to the election allowed in subdivision (d). If at any time during the year the total wages paid by an employer electing to file under subdivision (d) exceeds twenty thousand dollars (\$20,000), the election shall be terminated at the close of that calendar quarter. In addition to the report of wages due for that quarter, the employer shall file a return and pay any contributions due for that portion of the year during which the election was in effect, and shall pay contributions in accordance with subdivisions (a), (b), and (c) for the remainder of that year.

(f) Contributions due pursuant to this section may be submitted by electronic funds transfer, as defined in Section 13021.5. Contributions submitted by electronic funds transfer shall be deemed complete in accordance with paragraph (4) of subdivision (e) of Section 13021.

SEC. 6. Section 1111 of the Unemployment Insurance Code is amended to read:

1111. The director for good cause may extend for not to exceed 60 days the time for making a return or report or paying without penalty any amount required to be paid under this division. Any employer to whom an extension is granted and who pays the amount required within the period for which the extension is granted shall pay, in addition to the contributions, interest at the adjusted annual rate and by the method established pursuant to Section 19521 of the Revenue and Taxation Code from the date on which the payment would have been delinquent without the extension until the date of payment.

SEC. 7. Section 1111.5 of the Unemployment Insurance Code is amended to read:

1111.5. If the Governor declares a state of emergency, the director may extend the time requirements for filing returns or reports pursuant to Section 1088 and the time requirement for payment of employer and worker contributions pursuant to Section 1110. The extension granted by the director pursuant to this section shall apply only to employers prevented by the conditions giving rise to the state of emergency from timely filing their returns or reports, or from timely payment of the taxes due.

SEC. 8. Section 1112.5 of the Unemployment Insurance Code is amended to read:

1112.5. (a) Any employer who without good cause fails to file the reports required by subdivision (a) of Section 1088 and subdivision (a) of Section 13021 within 60 days of the time required under subdivision (a) of Section 1110 shall pay a penalty of 10 percent of the amount of contributions and personal income tax withholding required by this report. This penalty shall be in addition to the penalties required by Sections 1112 and 1126.

(b) For purposes of subdivision (a), the amount of contributions and personal income tax required by the report of contributions shall be reduced by the amount of any contributions and personal income tax paid on or before the prescribed payment dates.

SEC. 9. Section 1113.1 of the Unemployment Insurance Code is amended to read:

1113.1. An employer who, through an error caused by excusable neglect, makes an underpayment of the amount due on a monthly report of contributions pursuant to subdivision (b) of Section 1088 shall not be liable for penalty or interest under Sections 1112, 1113, 1127 or 1129 if proper adjustment is made at the time of the filing of the quarterly report of contributions for the same calendar quarter under subdivision (a) of Section 1088 and an explanation of the error is attached to the report.

SEC. 10. Section 1114 of the Unemployment Insurance Code is amended to read:

1114. (a) Any employer who, without good cause, fails to file within 15 days after service by the director of notice pursuant to Section 1206 of a specific written demand therefor, a report of wages of each of his or her workers required by this division, shall pay in addition to other amounts required, for each unreported wage item a penalty of ten dollars (\$10).

(b) Any employer required by this division to file a report of wages of each of his or her workers on magnetic media as prescribed by subdivision (f) of Section 1088, who, without good cause, instead files a report of wages on paper or in another form, shall pay in addition to other amounts required, for each wage item a penalty of ten dollars (\$10).

SEC. 11. Section 1115 of the Unemployment Insurance Code is amended to read:

1115. (a) If the director finds that the collection of any contributions will be jeopardized in any case where an employing unit is insolvent, or is delinquent in a substantial amount of contributions due under this division, or is about to discontinue business at any of its known places of business, or the business is of a temporary or seasonal nature, the director may, upon giving the employing unit 10 days' notice pursuant to Section 1206:

(1) Require payment of contributions with respect to wages paid from the beginning date of the calendar quarter in which notice is given to the date designated in the notice.

(2) Require payment of contributions for reporting periods less than calendar quarters.

(b) As used in this section "reporting period" means that period less than a calendar quarter which is established by the director.

(c) Contributions required under subdivision (a)(1) of this section are due and payable on the date designated in the notice and shall become delinquent if not paid within 10 days of the due date.

(d) Contributions required under subdivision (a)(2) of this section are due and payable on the first day of the reporting period following the close of each reporting period and shall become delinquent if not paid within 10 days of the due date.

(e) The employing unit shall file within the time required for payment of contributions under this section a report or return as required by Section 1088, in the form and containing the information that the director prescribes.

SEC. 12. Section 1116 of the Unemployment Insurance Code is amended to read:

1116. (a) (1) Every employing unit except a domestic or foreign corporation shall, within 10 days of quitting business, file with the director final returns and reports of its workers, in the form and containing the information that the director prescribes.

(2) Every domestic corporation shall, within 10 days of quitting business or within 10 days of the commencement of proceedings to windup its affairs and voluntarily dissolve, whichever expires earlier, file with the director final returns and reports of its workers, in the form and containing the information that the director prescribes.

(3) Every foreign corporation shall, within 10 days of quitting business or within 10 days of the surrender of its right to engage in business of this state in accordance with Section 2112 and subdivision (d) of Section 2114 of the Corporations Code, whichever expires the earlier, file with the director final returns and reports of its workers, in the form and containing the information that the director prescribes.

(4) As used in this section, "quitting business" does not include any change in the form or membership of an employing unit if before and after the change 50 percent or more of the control of management is held by the same individual, or is held by an individual before death and after the individual's death by the individual's estate or heirs.

(b) Contributions with respect to returns and reports required under subdivision (a) are due and payable on the first day of the applicable 10-day period established pursuant to subdivision (a) and shall become delinquent if not paid within 10 days of the due date.

(c) The director for good cause may extend for not to exceed 30 days the time for making returns and reports or paying without penalty or interest any amount required to be paid under this section.

SEC. 13. Section 1117 is added to the Unemployment Insurance Code, to read:

1117. If any employer fails to file the annual reconciliation return described in subdivision (e) of Section 1088 or subdivision (j) of Section 13021 on or before 30 days after notice has been given to the employer of his or her failure to file, unless the failure is due to good cause, the employer, in addition to any other penalties imposed by this code, shall pay a penalty of one thousand dollars (\$1,000), or 5 percent of the employer and worker contributions required to be reconciled by subdivision (e) of Section 1088, whichever is less.

SEC. 14. Section 1126 of the Unemployment Insurance Code is amended to read:

1126. If any employing unit fails to make a return or report as required under this division, the director shall make an estimate based upon any information in his or her possession or that may come into his or her possession of the amount of wages paid for employment in the period or periods for which no return or report was filed and upon the basis of the estimate shall compute and assess the amounts of employer and worker contributions payable by the employing unit, adding thereto a penalty of 10 percent of the amount of contributions.

SEC. 15. Section 1127 of the Unemployment Insurance Code is amended to read:

1127. If the director is not satisfied with any return or report made by any employing unit of the amount of employer or worker contributions, he or she may compute the amount required to be paid upon the basis of facts contained in the return or reports or may make an estimate upon the basis of any information in his or her possession or that may come into his or her possession and make an assessment of the amount of the deficiency. If any part of the deficiency is due to negligence or intentional disregard of this division or authorized regulations, a penalty of 10 percent of the amount of the deficiency shall be added to the assessment.

SEC. 16. Section 1128 of the Unemployment Insurance Code is amended to read:

1128. If the failure of the employing unit to file a return or report within the time required by this division and authorized regulations or if any part of the deficiency for which an assessment is made is due to fraud or an intent to evade this division or authorized regulations, a penalty of 50 percent of the amount of contributions assessed shall be added to the assessment. This penalty is in addition to the

penalties provided pursuant to Sections 1126 and 1127.

SEC. 17. Section 1132 of the Unemployment Insurance Code is amended to read:

1132. Except in the case of failure without good cause to file a return or report, fraud or intent to evade any provision of this division or authorized regulations, every notice of assessment shall be made within three years after the last day of the month following the close of the calendar quarter during which the contribution liability included in the assessment accrued or within three years after the deficient return or report is filed, or was due, whichever period expires the later. An employing unit may waive this limitation period or may consent to its extension.

In case of failure without good cause to file a return or report, every notice of assessment shall be made within eight years after the last day of the month following the close of the calendar quarter during which the contribution liability included in the assessment accrued. An employing unit may waive this limitation period or may consent to its extension.

SEC. 18. Section 1703 of the Unemployment Insurance Code is amended to read:

1703. (a) If any employing unit or other person fails to pay any amount imposed under this division at the time that it becomes due and payable, the amount thereof, including penalties and interest, together with any costs, shall be a perfected and enforceable state tax lien. This lien is subject to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

(b) For purposes of this section, amounts are "due and payable" on the following dates:

(1) For amounts disclosed on a return or report received by the director, the date of the notice by the director to the taxpayer of the amount due.

(2) For penalties imposed pursuant to Sections 1112.5, 1114, and 13052.5, the date of the notice by the director to the taxpayer of the amount due.

(3) For any amounts reestablished under Section 1875, the date of the written notice of rescission provided under subdivision (c) of that section.

(4) For all other amounts, the date the assessment is final.

(c) The lien provided by this section shall not arise during any period that Section 362 of the United States Bankruptcy Code applies to the employing unit or other person against whom the lien would otherwise apply.

SEC. 19. Section 1852 of the Unemployment Insurance Code is amended to read:

1852. In addition to any other tax administration and collection procedures authorized in this division, the director may bring an action in the courts of this or any other state or of the United States, in the name of the State of California, to administer the provisions of, and to collect the amount of any delinquent contributions or taxes,

together with penalties and interest, due under this code. No such action shall be commenced later than:

(a) Three years after the date on which any amount due on a return or report filed by an employing unit or on an assessment made by the director becomes delinquent.

(b) Ten years after:

(1) The date on which a judgment is last entered under Article 5 of this chapter.

(2) The date on which a notice of state tax lien is last recorded or filed under Section 7171 of the Government Code.

SEC. 20. Section 2117 of the Unemployment Insurance Code is amended to read:

2117. Any person who, with or without intent to evade any requirement of this code or any lawful requirement of the department under this code, fails to file any return or report, or to supply any information required by this code or who, with or without like intent, makes, renders, signs, or verifies any false or fraudulent return, report, or statement, or supplies any false or fraudulent information, is liable for a civil penalty of not more than one thousand dollars (\$1,000), and is also guilty of a misdemeanor and shall, upon conviction, be fined an amount not to exceed one thousand dollars (\$1,000), or be imprisoned for not more than one year, or both the fine and imprisonment, at the discretion of the court.

SEC. 21. Section 2117.5 of the Unemployment Insurance Code is amended to read:

2117.5. Any person who, within the time required by this code, willfully fails to file any return or report, or to supply any information with intent to evade any tax imposed by this code, or who, willfully and with like intent, makes, renders, signs, or verifies any false or fraudulent return, report, or statement or supplies any false or fraudulent information, is punishable by imprisonment in the county jail not to exceed one year, or in the state prison, or by a fine of not more than twenty thousand dollars (\$20,000), or by both the fine and imprisonment, at the discretion of the court.

SEC. 22. Section 2121 of the Unemployment Insurance Code is amended to read:

2121. Any person who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, this code, of a return, report, affidavit, claim, or other document that is fraudulent or is false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present the return, affidavit, claim, or document is in violation of this chapter.

SEC. 23. Section 2123 of the Unemployment Insurance Code is amended to read:

2123. The certificate of the department to the effect that a return or report has not been filed or that information has not been supplied

as required by Division 6 (commencing with Section 13000) is prima facie evidence that the return or report has not been filed or that the information has not been supplied.

SEC. 24. Section 13002 of the Unemployment Insurance Code is amended to read:

13002. The following provisions of this code shall apply to any amount required to be deducted, reported, and paid to the department under this division:

(1) Sections 301, 305, 306, 310, 311, 312, 317, and 318, relating to general administrative powers of the department.

(2) Sections 403 to 413, inclusive, Section 1336, and Chapter 8 (commencing with Section 1951) of Part 1 of Division 1, relating to appeals and hearing procedures.

(3) Sections 1110.6, 1111, 1112, 1113, 1113.1, 1114, 1115, 1116, and 1117 relating to the making of returns or the payment of reported contributions.

(4) Article 8 (commencing with Section 1126) of Chapter 4 of Part 1 of Division 1, relating to assessments.

(5) Article 9 (commencing with Section 1176), except Section 1176, of Chapter 4 of Part 1 of Division 1, relating to refunds and overpayments.

(6) Article 10 (commencing with Section 1206) of Chapter 4 of Part 1 of Division 1, relating to notice.

(7) Article 11 (commencing with Section 1221) of Chapter 4 of Part 1 of Division 1, relating to administrative appellate review.

(8) Article 12 (commencing with Section 1241) of Chapter 4 of Part 1 of Division 1, relating to judicial review.

(9) Chapter 7 (commencing with Section 1701) of Part 1 of Division 1, relating to collections.

(10) Chapter 10 (commencing with Section 2101) of Part 1 of Division 1, relating to violations.

SEC. 25. Section 13021 of the Unemployment Insurance Code is amended to read:

13021. (a) Every employer required to withhold any tax under Section 13020 shall for each calendar quarter, whether or not wages or payments are paid in the quarter, file a withholding report and a report of wages in a form prescribed by the department, and pay over the taxes so required to be withheld. The report of wages shall include individual amounts required to be withheld under Section 13020. Except as provided in subdivisions (c) and (d) of this section, the employer shall file a withholding report and remit the total amount of income taxes withheld during the calendar quarter on or before the last day of the month following the close of the calendar quarter.

(b) Every employer electing to file a single annual return under subdivision (d) of Section 1110 shall report and pay any taxes withheld under Section 13020 on an annual basis within the time specified in subdivision (d) of Section 1110.

(c) (1) Effective January 1, 1995, whenever an employer is

required, for federal income tax purposes, to remit the total amount of withheld federal income tax in accordance with Section 6302 of the Internal Revenue Code and regulations thereunder, and the accumulated amount of state income tax withheld is more than five hundred dollars (\$500), the employer shall remit the total amount of income tax withheld for state income tax purposes within the number of banking days as specified for withheld federal income taxes by Section 6302 of the Internal Revenue Code, and regulations thereunder.

(2) Effective January 1, 1996, the five hundred dollar (\$500) amount referred to in paragraph (1) shall be adjusted annually as follows, based on the annual average rate of interest earned on the Pooled Money Investment Fund as of June 30 in the prior fiscal year:

Average Rate of Interest

Greater than or equal to 9 percent:	\$ 75
Less than 9 percent, but greater than or equal to 7 percent:	250
Less than 7 percent, but greater than or equal to 4 percent:	400
Less than 4 percent:	500

(d) (1) Notwithstanding subdivisions (a) and (c), for calendar years beginning prior to January 1, 1995, if in the 12-month period ending June 30 of the prior year the cumulative average payment made pursuant to this division or Section 1110, for eighth-monthly periods, as defined under Section 6302 of the Internal Revenue Code and regulations thereunder, was fifty thousand dollars (\$50,000) or more, the employer shall remit the total amount of income tax withheld within three banking days following the close of each eighth-monthly period, as defined by Section 6302 of the Internal Revenue Code and regulations thereunder. For purposes of this subdivision, payment shall be made by electronic funds transfer in accordance with Section 13021.5, for one calendar year beginning on January 1. Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed complete on the date settlement occurs. The department shall, on or before October 31 of the prior year, notify all employers required to make payment by electronic funds transfer of these requirements.

(2) Notwithstanding subdivisions (a) and (c), for calendar years beginning on or after January 1, 1995, if in the 12-month period ending June 30 of the prior year, the cumulative average payment made pursuant to this division or Section 1110 for any deposit periods, as defined under Section 6302 of the Internal Revenue Code and regulations thereunder, was twenty thousand dollars (\$20,000)

or more, the employer shall remit the total amount of income tax withheld within the number of banking days as specified for federal income taxes by Section 6302 of the Internal Revenue Code and regulations thereunder. For purposes of this subdivision, payment shall be made by electronic funds transfer in accordance with Section 13021.5, for one calendar year beginning on January 1. Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed complete on the date settlement occurs. The department shall, on or before October 31 of the prior year, notify all employers required by this paragraph to make payments by electronic funds transfer of these requirements.

(3) Notwithstanding paragraph (2), effective January 1, 1995, electronic funds transfer payments that are subject to the one-day deposit rule, as defined by Section 6302 of the Internal Revenue Code and regulations thereunder, shall be deemed timely if the payment settles to the state's demand account within three banking days after the date the employer meets the threshold for the one-day deposit rule.

(4) Any taxpayer required to remit payments pursuant to paragraphs (1) and (2) may request from the department a waiver of those requirements. The department may grant a waiver only if it determines that the particular amounts paid in excess of fifty thousand dollars (\$50,000) or twenty thousand dollars (\$20,000), as stated in paragraphs (1) and (2), respectively, were the result of an unprecedented occurrence for that employer, and were not representative of the employer's cumulative average payment in prior years.

(5) Any state agency required to remit payments pursuant to paragraphs (1) and (2) may request a waiver of those requirements from the department. The department may grant a waiver if it determines that there will not be a negative impact on the interest earnings of the General Fund. If there is a negative impact to the General Fund, the department may grant a waiver if the requesting state agency follows procedures designated by the department to mitigate the impact to the General Fund.

(e) Any employer not required to make payment pursuant to subdivision (d) of this section may elect to make payment by electronic funds transfer in accordance with Section 13021.5 under the following conditions:

(1) The election shall be made in a form, and shall contain information, as prescribed by the director, and shall be subject to approval by the department.

(2) If approved, the election shall be effective on the date specified in the notification to the employer of approval.

(3) The election shall be operative from the date specified in the

notification of approval, and shall continue in effect until terminated by the employer or the department.

(4) Funds remitted by electronic funds transfer pursuant to this subdivision shall be deemed complete in accordance with subdivision (d) or as deemed appropriate by the director to encourage use of this payment method.

(f) Notwithstanding Section 1112, no interest or penalties shall be assessed against any employer who remits at least 95 percent of the amount required by subdivision (c) or (d), provided that the failure to remit the full amount is not willful and any remaining amount due is paid with the next payment. The director may allow any employer to submit the amounts due from multiple locations upon a showing that those submissions are necessary to comply with the provisions of subdivision (c) or (d).

(g) The department may, if it believes that action is necessary, require any employer to make the report required by this section and pay to it the tax deducted and withheld at any time, or from time to time but no less frequently than provided for in subdivision (a).

(h) Any employer required to withhold any tax and who is not required to make payment under subdivision (c) shall remit the total amount of income tax withheld during each month of each calendar quarter, on or before the 15th day of the subsequent month if the income tax withheld for any of the three months or, cumulatively for two or more months, is three hundred fifty dollars (\$350) or more.

(i) For purposes of subdivisions (a), (c), and (h), payment is deemed complete when it is placed in a properly addressed envelope, bearing the correct postage, and it is deposited in the United States mail.

(j) In addition to the withholding report and report of wages described in subdivision (a), each employer shall file with the director an annual reconciliation return showing the amount required to be withheld under Section 13020, and any other information the director shall prescribe. This annual reconciliation return shall be due on the first day of January following the close of the prior calendar year and shall become delinquent if not filed on or before the last day of that month.

(k) If an employer demonstrates that an undue hardship would be imposed, the director may authorize an exemption from the requirement in subdivision (a) to report individual amounts withheld under Section 13020 and the requirement in subdivision (j) to file the annual reconciliation return for the 1995 calendar year only. Any request for exemption must be filed on or before January 15, 1995. Upon approval of a request for exemption under this subdivision, the employer shall file quarterly returns reporting the amount withheld under Section 13020, the statement required to be furnished under Section 13050, and the annual return required by Section 13053, for the 1995 calendar year only.

SEC. 26. Section 13021.5 of the Unemployment Insurance Code is amended to read:

13021.5. (a) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape, so as to order, instruct, or authorize a financial institution to debit or credit an account. Electronic funds transfers shall be accomplished by an automated clearinghouse debit, an automated clearinghouse credit, Fedwire, or by other specific electronic funds transfer methods approved in advance by the department.

(b) "Automated clearinghouse" means any federal reserve bank, or an organization established in agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks and/or bank accounts and which authorizes an electronic transfer of funds between those banks or bank accounts.

(c) "Automated clearinghouse debit" means a transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the employer's bank account and crediting the state's bank account for the amount of tax. Banking costs incurred for the automated clearinghouse debit transaction shall be paid by the state.

(d) "Automated clearinghouse credit" means an automated clearinghouse transaction in which the employer through its own bank, originates an entry crediting the state's bank account and debiting its own bank account. Banking costs incurred for the automated clearinghouse credit transaction charged to the employer and to the state shall be paid by the employer.

(e) "Fedwire" means any transaction originated by the employer and utilizing the national electronic payment system to transfer funds through the federal reserve banks, pursuant to which the employer debits its own bank account and credits the state's bank account. Electronic funds transfer payments may be made by Fedwire only if prior approval is obtained from the department and payment cannot, for good cause, be made pursuant to subdivision (a). Banking costs incurred for the Fedwire transaction charged to the employer and to the state shall be paid by the employer.

(f) "Banking day" means any day other than a Saturday, Sunday, or banking holiday as recognized by the Federal Reserve System.

(g) "Settlement date" means the date on which an exchange of funds with respect to an entry is reflected on the books of the Federal Reserve Bank.

(h) For the purposes of Section 13021, the "cumulative average payment" means the cumulative dollar amount of deposits divided by the number of payments submitted during a given period. For the purposes of this section, the "cumulative average payment" may also be defined as a single annual deposit, when only one payment is made during the 12-month period ending June 30.

SEC. 27. Section 13050 of the Unemployment Insurance Code is amended to read:

13050. (a) Every employer or person required to deduct and withhold from an employee a tax under Section 986, 3260, or 13020, or who would have been required to deduct and withhold a tax under Section 13020 (determined without regard to Section 13025) if the employee had claimed no more than one withholding exemption, shall furnish to each employee in respect of the remuneration paid by the person to the employee during the calendar year, on or before January 31 of the succeeding year, or, if his or her employment is terminated before the close of the calendar year, on the day on which the last payment of remuneration is made, a written statement showing all of the following:

- (1) The name of the person.
- (2) The name of the employee, and his or her social security or identifying number if wages have been paid.
- (3) The total amount of wages, except that in the case of tips received by an employee in the course of his or her employment, the amounts required shall include only those tips included in statements furnished to the employer pursuant to Section 13055.
- (4) The total amount deducted and withheld as tax under Section 13020.
- (5) The total amount of worker contributions paid by the employee pursuant to Section 986.
- (6) The total amount of worker contributions paid by the employee pursuant to Section 3260.
- (7) The total amount of elective deferrals (within the meaning of Section 402(g)(3) of the Internal Revenue Code) and compensation deferred pursuant to Section 457 of the Internal Revenue Code.

(b) The statement required to be furnished pursuant to this section in respect of any remuneration shall be furnished at other times, shall contain other information, and shall be in a form, as the department may by authorized regulations prescribe.

(c) (1) A duplicate of any statement made pursuant to this section and in accordance with authorized regulations prescribed by the department shall, when required by the regulations, be filed with the department.

(2) Effective January 1, 1995, this subdivision shall apply only to those employers exempted under subdivision (h) of Section 1088 or subdivision (k) of Section 13021 from the requirements to report individual amounts withheld on the report of wages and to file the annual reconciliation return for the 1995 calendar year only. This subdivision shall remain in effect only until March 1, 1996, and on that date is repealed, unless a later enacted statute that is enacted before March 1, 1996, deletes or extends that date.

(d) If, during any calendar year, any person makes a payment of third-party sick pay to an employee, that person shall, on or before January 15 of the succeeding year, furnish a written statement to the employer in respect of whom the payment was made showing all of the following:

- (1) The name and, if there is withholding under this division, the

social security number of that employee.

(2) The total amount of the third-party sick pay paid to that employee during the calendar year.

(3) The total amount, if any, deducted and withheld from that sick pay under this division. For purposes of the preceding sentence, the term "third-party sick pay" means any sick pay, as defined in subdivision (b) of Section 13028.6, which does not constitute wages for purposes of this division, determined without regard to subdivision (a) of Section 13028.6.

(A) The reporting requirements of subdivision (a) with respect to any payments shall, with respect to those payments, be in lieu of the requirements of subdivision (a) and of Section 18637 of the Revenue and Taxation Code.

(B) For purposes of Chapter 10 (commencing with Section 2101) of Part 1 of Division 1, the statements required to be furnished by this subdivision shall be treated as statements required under this section to be furnished to employees.

(C) Every employer who receives a statement under this subdivision with respect to sick pay paid to any employee during any calendar year shall, on or before January 31 of the succeeding year, furnish a written statement to that employee showing all of the following:

(i) The information shown on the statement furnished under this subdivision.

(ii) If any portion of the sick pay is excludable from gross income pursuant to Article 3 (commencing with Section 17131) of Chapter 3 of Part 10 of Division 2 of the Revenue and Taxation Code, the portion that is not so excludable and the portion that is so excludable. To the extent practicable, the information required under the preceding sentence shall be furnished on or with the statement, if any, required under subdivision (a).

(e) The Franchise Tax Board shall be allowed access to the information filed with the department pursuant to this section.

SEC. 28. Section 13051 of the Unemployment Insurance Code is amended to read:

13051. (a) (1) If a person or employer fails to file a statement of the aggregate amount of payments to another person required by subdivision (c) of Section 13050, unless the failure is due to reasonable cause and not to willful neglect, the person or employer shall pay ten dollars (\$10) for each failure but the total amount imposed on the delinquent person or employer for all failures during any calendar year shall not exceed ten thousand dollars (\$10,000).

(2) If one or more failures to which paragraph (1) applies are due to intentional disregard of the filing requirement, then with respect to those failures, all of the following shall apply:

(A) The penalty imposed under paragraph (1) shall not be less than an amount equal to 2 percent of the aggregate amount of the items required to be reported.

(B) The ten thousand dollar (\$10,000) limitation under paragraph

(1) shall not be applicable.

(3) The penalty shall be assessed and collected in the same manner as the tax.

(b) The amendments to this section made by the 1981–82 Regular Session of the Legislature shall apply to statements required to be furnished after December 31, 1981.

(c) The amendments to this section made by the 1983–84 Regular Session of the Legislature shall apply to statements required to be furnished after December 31, 1983.

(d) Effective January 1, 1995, this section shall apply only to those employers exempted under subdivision (h) of Section 1088 or subdivision (k) of Section 13021 from the requirement to report individual amounts withheld on the report of wages and to file the annual reconciliation return for the 1995 calendar year only. This section shall remain in effect only until January 1, 1996, and on that date is repealed, unless a later enacted statute that is enacted before January 1, 1996, deletes or extends that date.

SEC. 29. Section 13053 of the Unemployment Insurance Code is amended to read:

13053. (a) Every employer shall file an annual return with the department, on forms prescribed by the department, reporting the total tax withheld for the year pursuant to Section 13020 at the time prescribed by the director. The employer shall include with the return, in a manner prescribed by the director, duplicates of the statements required pursuant to Section 13050.

(b) Effective January 1, 1995, this section shall apply only to those employers exempted under subdivision (h) of Section 1088 or subdivision (k) of Section 13021 from the requirement to report individual amounts withheld on the report of wages and to file the annual reconciliation return for the 1995 calendar year only. This section shall remain in effect only until January 1, 1996, and on that date is repealed, unless a later enacted statute that is enacted before January 1, 1996, deletes or extends that date.

SEC. 30. Section 13054 of the Unemployment Insurance Code is amended to read:

13054. (a) If an employer fails to file the annual report of compensation paid and taxes withheld, required under Section 13053, on or before 30 days after notice has been given to the employer of his or her failure to file, unless the failure is due to reasonable cause, the employer, in addition to any other penalties imposed by this division and Part 10 (commencing with Section 17001) and Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code, shall pay a penalty of two hundred fifty dollars (\$250) or 100 percent of the tax amount required to be reported by Section 13053, whichever is less. The penalty shall be assessed and collected in the same manner as the tax.

(b) Effective January 1, 1995, this section shall apply only to those employers exempted under subdivision (h) of Section 1088 or subdivision (k) of Section 13021 from the requirement to report

individual amounts withheld on the report of wages and to file the annual reconciliation return for the 1995 calendar year only. This section shall remain in effect only until January 1, 1996, and on that date is repealed, unless a later enacted statute that is enacted before January 1, 1996, deletes or extends that date.

SEC. 31. Section 13056 of the Unemployment Insurance Code is amended to read:

13056. (a) When required by authorized regulations prescribed by the department:

(1) Any person or employer required under the authority of this division to make a return, report, statement, or other document shall include in the return, report, statement, or other document the identifying number as may be prescribed for securing proper identification of the person.

(2) Any person with respect to whom a return, report, statement, or other document is required under the authority of this division to be made by another person shall furnish to the other person the identifying number as may be prescribed for securing his or her proper identification.

(3) Any person or employer required under the authority of this division to make a return, report, statement, or other document with respect to another person shall request from the other person, and shall include in the return, report, statement, or other document, the identifying number as may be prescribed for securing proper identification of the other person.

(b) (1) Except as provided in paragraph (2), a return or report of any person with respect to his or her liability for tax, or any statement or other document in support thereof, shall not be considered for purposes of paragraphs (2) and (3) of subdivision (a) as a return, report, statement, or other document with respect to another person.

(2) For purposes of paragraphs (2) and (3) of subdivision (a), a return or report of an estate or trust with respect to its liability for tax, and any statement or other document in support thereof, shall be considered as a return, report, statement, or other document with respect to each beneficiary of the estate or trust.

(c) For purposes of this section, the department is authorized to require the information that may be necessary to assign an identifying number to any person.

SEC. 32. Section 13057 of the Unemployment Insurance Code is amended to read:

13057. (a) If any person who is required by regulations prescribed under Section 13056 to provide a required identifying number fails without good cause to comply with that requirement at the time prescribed by the regulations, the person shall pay a penalty of five dollars (\$5) for each failure:

(1) To include his or her identifying number in any return, report, statement, or other document.

(2) To furnish his or her identifying number to another person.

(3) To include in any return, report, statement, or other document made with respect to another person the identifying number of the other person.

(4) To furnish any other agency's taxpayer identification number.

(b) The penalty under this section shall be assessed and collected in the same manner as the tax.

SEC. 33. Section 13058 of the Unemployment Insurance Code is amended to read:

13058. Except as otherwise provided by the department, any return, report, statement, or other document required to be made under any provision of this division or authorized regulations shall contain, or be verified by, a written declaration that it is made under the penalty of perjury. The returns, reports, and all other returns, reports, statements, or other documents or copies thereof required by this division, shall be in the form as the department may from time to time prescribe, and shall be filed with the department. The department shall prepare blank forms for the returns, reports, declarations, statements, or other documents and shall distribute them throughout the state and furnish them upon application. Failure to receive or secure the form does not relieve any employer or person from making any return, report, statement, or other document required.

SEC. 34. The Employment Development Department shall, upon appropriation in the annual Budget Act, allocate resources from any savings that may be realized by this act to tax collection activities sufficient to recover any lost interest earnings to the General Fund that may be caused by this act.

CHAPTER 1050

An act to amend Sections 1026, 1375, 1380, and 2121 of, and to add Section 1144 to, the Unemployment Insurance Code, relating to unemployment insurance.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 1026 of the Unemployment Insurance Code is amended to read:

1026. (a) The director shall maintain a separate reserve account for each employer, and shall credit each reserve account with all the contributions paid on his or her behalf.

(b) Unemployment compensation benefits paid to an unemployed individual during any benefit year shall be charged against the reserve account of his or her employer during his or her base period. If the individual performed services in employment for

more than one employer during his or her base period, unemployment compensation benefits paid to him or her shall be charged against the respective reserve accounts of the employers in the proportion that the total wages paid to the individual in employment for each employer bears to the total wages paid to the individual in employment for all employers during the base period.

(c) The director shall credit the interest earned by the Unemployment Fund to each positive reserve employer account in proportion to the amount the account bears to the total of all positive reserve accounts.

(d) Except as provided by Sections 803 and 821, in proportion to the amount each employer's taxable wages bears to the total of all employers' taxable wages, the director shall credit to each employer reserve account all of the following:

(1) Benefit overpayments collected in the four quarters prior to the computation date.

(2) Positive balances in reserve accounts canceled pursuant to Section 1029.

(3) Other nontax income.

(e) Except as provided by Sections 803 and 821, in the same proportion as provided in subdivision (d), the director shall charge to each employer reserve account all of the following:

(1) The increase in the total of all negative reserve account balances as computed by subtracting the total of all negative reserve account balances on July 31 of each year prior to the cancellations required by Section 1027.5 from the total of all negative reserve account balances on the prior July 31 after the cancellations required by Section 1027.5, except as provided by Section 1144.

(2) Benefit overpayments established in the four quarters prior to the computation date.

(3) Benefits not charged to employer reserve accounts pursuant to Section 1032, 1032.5, 1034, 1035, 1036, 1335, 1338, or 1380.

(4) Other items of expense and benefit charges not included in active employer reserve accounts.

SEC. 2. Section 1144 is added to the Unemployment Insurance Code, to read:

1144. (a) Any employer who induces, solicits, or coerces an employee to file a false or fraudulent claim for benefits shall be assessed a penalty in an amount equal to 100 percent of the liability established under Sections 1375 and 1375.1 against the employee. Amounts collected under this section shall be deposited in the fund from which the overpayment was made and as prescribed in Section 1375.1, in the following order of priority:

(1) First to the fund from which the overpayment was made, up to the total amount of the benefit overpayment liability assessed against the employee under Section 1375.

(2) Second to the Benefit Audit Fund, up to the total amount assessed against the employee under Section 1375.1.

(b) The reserve account of any employer who is assessed under

this section shall not be relieved of the charges for benefits related to the fraudulent claim.

SEC. 3. Section 1375 of the Unemployment Insurance Code is amended to read:

1375. Any person who is overpaid any amount of benefits under this part is liable for the amount overpaid unless any of the following is applicable:

(a) (1) The overpayment was not due to fraud, misrepresentation or willful nondisclosure on the part of the recipient, and (2) the overpayment was received without fault on the part of the recipient, and its recovery would be against equity and good conscience.

(b) The person who received the overpayment cooperates with the department in an investigation that results in the assessment of a penalty under Section 1144 or the prosecution or other action taken to impose a penalty pursuant to Section 2121.

(c) The department determines that it is in the interest of justice to waive all or part of the liability established under this section because the overpayment was a direct result of inducement, solicitation, or coercion on the part of the employer.

SEC. 4. Section 1380 of the Unemployment Insurance Code is amended to read:

1380. No person shall be liable for the amount of benefits received where the benefits were paid pursuant to an administrative law judge's decision which affirmed an initial determination or in accordance with a final decision of the appeals board, regardless of any further appeal. An employer's experience rating account shall not be charged with any benefits erroneously or unlawfully paid, except as provided in Section 1026 or 1144.

SEC. 5. Section 2121 of the Unemployment Insurance Code is amended to read:

2121. Any person who willfully aids or assists in, or procures, counsels, advises, or coerces anyone in the preparation or presentation under, or in connection with any matter arising under, this code, of a return, report, affidavit, claim, or other document, that is fraudulent or is false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present the return, report, affidavit, claim, or document is in violation of this chapter.

CHAPTER 1051

An act to add Section 25360.3 to the Health and Safety Code, relating to hazardous substances.

[Approved by Governor September 28, 1994. Filed with Secretary of State September 29, 1994.]

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

SECTION 1. Section 25360.3 is added to the Health and Safety Code, to read:

25360.3. (a) For the purposes of this section, the following terms have the following meaning:

(1) "Easement" means a conservation easement, as defined in Section 815.1 of the Civil Code.

(2) "Environmental assessment" means an investigation of real property, conducted by an independent qualified environmental consultant, to discover the presence or likely presence of a release or a threat of a release of a hazardous substance at, on, to, or from the real property. An environmental assessment shall include, but is not limited to, an investigation of the historical use of the real property, any prior releases, records, consultant reports and regulatory agency correspondence, a visual survey of the real property, and, if warranted, sampling and analytical testing.

(3) "Owner" means either of the following:

(A) An independent special district, as defined in Section 56044 of the Government Code.

(B) An entity or organization that holds an easement.

(4) "Property" means either of the following:

(A) Real property acquired by a special district by means of a gift or donation for which an environmental assessment was completed prior to the transfer or conveyance of the real property to the special district.

(B) An easement for which an environmental assessment was completed prior to the transfer or conveyance of the easement to an entity or organization authorized to accept the easement pursuant to Section 815.3 of the Civil Code.

(b) (1) Notwithstanding any other provision of this chapter, if an environmental assessment of property discovers no evidence of the presence or likely presence of a release or a threat of a release of a hazardous substance, and a hazardous substance release is subsequently discovered on, to, or from that property, the owner of that property is entitled to a rebuttable presumption, affecting the burden of producing evidence, that the owner is not a liable person or responsible party for purposes of this chapter. An owner is entitled to this presumption whether the action is brought by the state or by a private party seeking contribution or indemnification.

(2) In an action brought against an owner of property to recover

costs or expenditures incurred from the state account or the Hazardous Substance Cleanup Fund pursuant to this chapter in response to a hazardous substance release, the presumption may be rebutted if it is established by a preponderance of the evidence that the facts upon which the department made the certification pursuant to paragraph (1), (2), (3), or (4) of subdivision (c) are true.

(c) An action for recovery of costs or expenditures incurred from the state account or the Hazardous Substance Cleanup Fund pursuant to this chapter in response to a hazardous substance release shall not be brought against an owner of property unless the department first certifies that, as found by the department, one of the following situations applies:

(1) The hazardous substance release occurred on or after the date that the owner acquired the property.

(2) The hazardous substance release occurred before the date that the owner acquired the property and, at the time of the acquisition, the owner knew, or had reason to know, of the hazardous substance release.

(3) The environmental assessment applicable to the property was not properly carried out, was fraudulently completed, or involves the negligent or intentional nondisclosure of information.

(4) The hazardous substance release was discovered on or after the date of acquisition and the owner failed to exercise due care with respect to the release, taking into consideration the characteristics of the hazardous substance in light of all relevant facts and circumstances.

(d) Notwithstanding any other provision of this chapter, this section governs liability pursuant to this chapter for an owner of property, as defined in subdivision (a).

(e) This section is applicable only to property which is acquired by the owner on or after January 1, 1995.

CHAPTER 1052

An act to amend Sections 19517, 19581, and 19582 of, and to add Section 19582.5 to, the Business and Professions Code, relating to horseracing.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 19517 of the Business and Professions Code is amended to read:

19517. (a) The board, upon due consideration, may overrule any steward's decision other than a decision to disqualify a horse due to a foul or a riding or a driving infraction in a race, if a preponderance

of the evidence indicates any of the following:

- (1) The steward mistakenly interpreted the law.
- (2) New evidence of a convincing nature is produced.
- (3) The best interests of racing and the state may be better served.

(b) However, any decision pertaining to the finish of a race, as used for purposes of parimutuel fund distribution to winning ticketholders, may not be overruled. Furthermore, any decision pertaining to the distribution of purses may be changed only if a claim is made in writing to the board by one of the involved owners or trainers, and a preponderance of the evidence clearly indicates to the board that one or more of the grounds for protest, as outlined in regulations adopted by the board, has been substantiated. The chairperson of the board may issue a stay of execution pending appeal from a steward's decision if the facts justify the action.

SEC. 1.5. Section 19581 of the Business and Professions Code is amended to read:

19581. No substance of any kind shall be administered by any means to a horse after it has been entered to race in a horserace, unless the board has, by regulation, specifically authorized the use of the substance and the quantity and composition thereof. The board may require that the official veterinarian approve, in writing, the administration of those substances in accordance with the regulations of the board. Any medication or equipment used to dispense medication that is located within the inclosure is subject to search and inspection at the request of any board official.

SEC. 2. Section 19582 of the Business and Professions Code is amended to read:

19582. (a) Violations of Section 19581, as determined by the board, are punishable as set forth in regulations adopted by the board. The board shall classify violations of Section 19581 based upon each class of prohibited drug substances, prior violations within the previous three years, and prior violations within the violator's lifetime. The board may provide for suspensions for not more than three years except as provided in subdivision (b), monetary penalties of not more than ten thousand dollars (\$10,000), and disqualification from purses. The punishment for second and subsequent violations of Section 19581 shall be greater than for first violations for violations of each class of prohibited drug substances.

(b) A third violation of Section 19581 during the lifetime of the licensee, determined by the board to be at a class I or class II level, shall result in the permanent revocation of the person's license.

(c) Any person whose license is suspended or revoked pursuant to this section shall not be entitled to receive any material benefit or remuneration in any capacity or from any business activity permitted or allowed by the license during any period of its suspension or revocation.

(d) The penalties provided by this section are in addition to any other civil, criminal, and administrative penalties or sanctions provided by law, and do not supplant, but are cumulative to, other

penalties or sanctions.

SEC. 2. Section 19582.5 is added to the Business and Professions Code, to read:

19582.5. The board may adopt regulations that prohibit the entry in a race of a horse that tests positive for a drug substance in violation of Section 19581. Upon a finding of a prohibited drug substance in an official test sample, a horse may be summarily disqualified from the race in connection with which the drug sample was taken. Upon the disqualification of a horse pursuant to these regulations, any purse, prize, award, or record for that race shall be forfeited.

CHAPTER 1053

An act to amend Section 11202 of, and to add Section 11216.2 to, the Vehicle Code, relating to traffic schools.

[Approved by Governor September 28, 1994. Filed with Secretary of State September 29, 1994.]

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

SECTION 1. The Legislature finds and declares that individuals who are deaf and hard-of-hearing may require the services of a sign language interpreter or other communication aids in order to obtain access to traffic violator schools. The Legislature further finds and declares that the expense of a sign language interpreter can be high in relation to the direct costs otherwise incurred in providing instruction to these individuals. Therefore, the Legislature encourages all licensed traffic violator schools to pool their resources in order to help defray the costs of providing sign language interpreter services and other communicative aids, as appropriate, for the deaf and hard-of-hearing students.

SEC. 2. Section 11202 of the Vehicle Code is amended to read: 11202. (a) Except as provided in subdivision (c), a traffic violator school owner shall meet all of the following criteria before a license may be issued for the traffic violator school:

(1) Maintain an established place of business in this state which is open to the public. No office or place of business of a traffic violator school, including any traffic violator school branch or classroom location, may be situated within 500 feet of any court of law, unless the owner was established at the location on or before July 1, 1984.

(2) Conform to standards established by regulation of the department. In adopting the standards, the department shall consider those practices and instructional programs which may reasonably foster the knowledge, skills, and judgment necessary for compliance with traffic laws. The standards may include, but are not limited to, school personnel, equipment, curriculum, procedures for the testing and evaluation of students, recordkeeping, and business

practices.

(3) Procure and file with the department a bond of two thousand dollars (\$2,000) executed by an admitted surety and conditioned upon the applicant not practicing any fraud or making any fraudulent representation which will cause a monetary loss to a person taking instruction from the applicant or to the state or any local authority.

(4) Have a classroom approved by the department and the proper equipment necessary for giving instruction to traffic violators.

(5) Have a lesson plan approved by the department and provide not less than the minimum instructional time specified in the plan. An approved lesson plan shall provide a minimum of 400 minutes of instruction, except that a lesson plan for instructing persons under the age of 18 may provide a minimum of 600 minutes of instruction.

(6) (A) Execute and file with the department an instrument designating the director as agent of the applicant for service of process, as provided in this paragraph, in any action commenced against the applicant arising out of any claim for damages suffered by any person by the applicant's violation of any provision of this code committed in relation to the specifications of the applicant's traffic violator school or any condition of the bond required by paragraph (3).

(B) The applicant shall stipulate in the instrument that any process directed to the applicant, when personal service cannot be made in this state after due diligence, may be served instead upon the director or, in the director's absence from the department's principal offices, upon any employee in charge of the office of the director, and this substituted service is of the same effect as personal service on the applicant. The instrument shall further stipulate that the agency created by the designation shall continue during the period covered by the license issued pursuant to this section and so long thereafter as the applicant may be made to answer in damages for a violation of this code for which the surety may be made liable or any condition of the bond.

(C) The instrument designating the director as agent for service of process shall be acknowledged by the applicant before a notary public.

(D) If the director or an employee of the department, in lieu of the director, is served with a summons and complaint on behalf of the licensee, one copy of the summons and complaint shall be left with the director or in the director's office in Sacramento or mailed to the office of the director in Sacramento. A fee of five dollars (\$5) shall also be paid to the director or employee at the time of service of the copy of the summons and complaint, or shall be included with a summons and complaint served by mail.

(E) The service on the director or department employee pursuant to this paragraph is sufficient service on the licensee if a notice of the service and a copy of the summons and complaint is, on the same day as the service or mailing of the summons and

complaint, sent by registered mail by the plaintiff or his or her attorney to the licensee. A copy of the summons and complaint shall also be mailed by the plaintiff or plaintiff's attorney to the surety on the licensee's bond at the address of the surety given in the bond, postpaid and registered with request for return receipt.

(F) The director shall keep a record of all processes served pursuant to this paragraph showing the day and hour of service, and shall retain the documents served in the department's files.

(G) If the licensee is served with process by service upon the director or a department employee in lieu of the director, the licensee has 30 days after that service within which to answer any complaint or other pleading filed in the cause. For purposes of venue, if the licensee is served with process by service upon the director or a department employee in lieu of the director, the service is considered to have been made upon the licensee in the county in which the licensee has or last had his or her established place of business.

(7) Meet the requirements of Section 11202.5 and subdivision (b) of Section 11208, relating to traffic violator school operators, if the owner is also the operator of the traffic violator school. If the owner is not the operator of the traffic violator school, the owner shall designate an operator who shall meet the requirements of Section 11202.5.

(8) Provide the department with a written assurance that the school will comply with the applicable provisions of Subchapter II or III of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101, et seq.), and any other federal and state laws prohibiting discrimination against individuals with disabilities. Compliance may include providing sign language interpreters or other accommodations for students with disabilities.

(b) The qualifying requirements specified in subdivision (a) shall be met within one year from the date of application for a license, or a new application and fee is required.

(c) Paragraphs (3) and (6) of subdivision (a) do not apply to public schools or other public agencies, which shall also not be required to post a cash deposit pursuant to Section 11203.

(d) Paragraph (7) of subdivision (a) does not apply to public schools or other public educational institutions.

(e) A notice approved by the department shall be posted in every traffic violator school, branch, and classroom location stating that any person involved in the offering of, or soliciting for, a completion certificate for attendance at a traffic violator school program in which the person does not attend or does not complete the minimum amount of instruction time provided by subdivision (a) may be guilty of violating Section 134 of the Penal Code.

SEC. 3. Section 11216.2 is added to the Vehicle Code, to read:

11216.2. Any license issued to the owner or operator of a traffic violator school under this chapter shall be automatically suspended for 30 days by the department if the department has been notified

that more than one final determination has been made that the traffic violator school has violated a student's rights under the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101, et seq.) or any other federal or state law prohibiting discrimination against individuals with disabilities. The final determination shall be made by a federal or state court of competent jurisdiction or an appropriate federal or state administrative agency, including, but not limited to, the Department of Fair Employment and Housing, or any combination thereof.

(b) For the purpose of this subdivision, "final determination" means that no further appeal of a determination can be taken to any court because the time period for the appeal has expired.

(c) If the traffic violator school subject to suspension under this section is operated by a traffic school operator licensed pursuant to Section 11202.5 who is operating other traffic schools, the licenses of the owners of those traffic schools operated by that traffic school operator shall also be suspended for the 30-day period.

CHAPTER 1054

An act to amend Section 25144 of the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

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

(a) The exemption provided by subdivision (c) of Section 25144 of the Health and Safety Code involves the recovery of oil from various process streams and waste waters by physical separation. The recovered oil is combined with normal process streams for further processing within the refinery.

(b) The recovery of oil from oil-bearing materials at petroleum refineries and related offsite locations and the subsequent beneficial use of the oil to produce fuel or other refined products should be encouraged, since it maximizes the amount of useful products produced per barrel refined. The exemption provided by subdivision (c) of Section 25144 of the Health and Safety Code from hazardous waste requirements will encourage the recovery of materials for return to the manufacturing process, thereby facilitating waste minimization.

(c) The exemption provided by subdivision (c) of Section 25144 of the Health and Safety Code is consistent with the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Sec. 6901 et seq.). In addition, the oil recovery units exempted under subdivision (c)

of Section 25144 of the Health and Safety Code are subject to regulation by the California regional water quality control boards, which are authorized to take actions to abate releases from those units and to otherwise ensure that any further releases from the units do not recur.

SEC. 2. Section 25144 of the Health and Safety Code is amended to read:

25144. (a) For purposes of this section, the following terms have the following meaning:

(1) "Oil" means crude oil, or any fraction thereof, which is liquid at 60 degrees Fahrenheit and 14.7 pounds per square inch absolute pressure. "Oil" does not include any of the following, unless it is exempt from regulation under paragraph (1) of subdivision (g) of Section 279.10 or paragraph (5) of subdivision (g) of Section 279.10 of Part 279 of Title 40 of the Code of Federal Regulations:

(A) Spent lubricating fluids which have been removed from an engine crankcase, transmission, gearbox, or differential of an automobile, bus, truck, vessel, heavy equipment, or machinery powered by an internal combustion engine.

(B) Spent industrial oils, including compressor, turbine, and bearing oil, hydraulic oil, metal-working oil, refrigeration oil, and railroad drainings.

(2) "Oil-bearing materials" means any liquid or semisolid material containing oil, partially refined petroleum products, or petroleum products. Soil from remediation projects is not oil-bearing material for purposes of subdivision (c).

(3) "Oil recovery operations" means the physical separation of oil from oil-bearing materials by means of gravity separation, centrifugation, filter pressing, or other dewatering processes, with or without the addition of heat, chemical flocculants, air, or natural gas to enhance separation.

(4) "Petroleum refinery" means an establishment that has the Standard Industrial Classification Code 2911 and which is not subject to the permit requirements for the recycling of used oil imposed pursuant to Article 9 (commencing with Section 25200).

(b) (1) Except as provided in paragraph (2), a biological process on the property of the producer treating oil, its products, and water, which meets the definition of a non-RCRA waste, and which produces an effluent that is continuously discharged to navigable waters in compliance with a permit issued pursuant to Section 402 of the Federal Water Pollution Control Act (33 U.S.C. Sec. 1342), is exempt from this chapter.

(2) Residues produced in the treatment process and subsequently removed that conform to any criterion adopted pursuant to Section 25141 are not exempt.

(c) To the extent consistent with the applicable provisions of the federal act, units, including associated piping, that are part of a system used for the recovery of oil from oil-bearing materials, and the associated storage of oil-bearing materials and the recovered oil,

are exempt from this chapter, if all of the following conditions are met:

(1) The oil recovery operations are conducted at a petroleum refinery, or at another facility owned or operated by the corporate entity that owns or operates the refinery, or a corporate parent or subsidiary of the corporate entity.

(2) The oil-bearing materials are generated at the refinery or at another facility owned or operated by the corporate entity that owns or operates the refinery, or a corporate parent or subsidiary of the corporate entity.

(3) The recovered oil is combined with normal process streams at the petroleum refinery to produce fuel or other refined petroleum products.

(4) The recovered oil is not stored in a surface impoundment or accumulated speculatively at the refinery or at an offsite facility.

(5) Any residual materials removed from a unit that is exempt under this subdivision are managed in accordance with all other applicable laws.

(6) The oil-bearing materials are excluded from classification as a waste pursuant to, or otherwise meet the requirements for an exemption under, Section 25143.2, notwithstanding subparagraph (C) of paragraph (2) of subdivision (c) of Section 25143.2, or Section 25143.9 or 25143.10.

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

CHAPTER 1055

An act to add Section 731.2 to the Welfare and Institutions Code, relating to juveniles.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 731.2 is added to the Welfare and Institutions Code, to read:

731.2. (a) The Department of the Youth Authority and Fresno County may enter into a partnership for the establishment and

maintenance of a pilot program juvenile boot camp similar to the program described in Section 731.6, but developed primarily by the county with the Department of the Youth Authority and the county sharing the costs equally, except as specified in subdivision (b).

(b) Under the partnership, the Department of the Youth Authority shall bear all the costs of retrofitting a facility, which is to be provided by the county at county expense.

(c) The implementation of this pilot program shall be contingent upon the appropriation of funds to the Department of the Youth Authority for the pilot program in either the Budget Act of 1996 or subsequent legislation.

CHAPTER 1056

An act to amend Section 4059 of the Family Code, relating to family law.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 4059 of the Family Code is amended to read:
4059. The annual net disposable income of each parent shall be computed by deducting from his or her annual gross income the actual amounts attributable to the following items or other items permitted under this article:

(a) The state and federal income tax liability resulting from the parties' taxable income. Federal and state income tax deductions shall bear an accurate relationship to the tax status of the parties (that is, single, married, married filing separately, or head of household) and number of dependents. State and federal income taxes shall be those actually payable (not necessarily current withholding) after considering appropriate filing status, all available exclusions, deductions, and credits. Unless the parties stipulate otherwise, the tax effects of spousal support shall not be considered in determining the net disposable income of the parties for determining child support, but shall be considered in determining spousal support consistent with Chapter 3 (commencing with Section 4330) of Part 3.

(b) Deductions attributed to the employee's contribution or the self-employed worker's contribution pursuant to the Federal Insurance Contributions Act (FICA), or an amount not to exceed that allowed under FICA for persons not subject to FICA, provided that the deducted amount is used to secure retirement or disability benefits for the parent.

(c) Deductions for mandatory union dues and retirement benefits, provided that they are required as a condition of

employment.

(d) Deductions for health insurance or health plan premiums for the parent and for any children the parent has an obligation to support and deductions for state disability insurance premiums.

(e) Any child or spousal support actually being paid by the parent pursuant to a court order, to or for the benefit of any person who is not a subject of the order to be established by the court. In the absence of a court order, any child support actually being paid, not to exceed the amount established by the guideline, for natural or adopted children of the parent not residing in that parent's home, who are not the subject of the order to be established by the court, and of whom the parent has a duty of support. Unless the parent proves payment of the support, no deduction shall be allowed under this subdivision.

(f) Job-related expenses, if allowed by the court after consideration of whether the expenses are necessary, the benefit to the employee, and any other relevant facts.

(g) A deduction for hardship, as defined by Sections 4070 to 4073, inclusive, and applicable published appellate court decisions. The amount of the hardship shall not be deducted from the amount of child support, but shall be deducted from the income of the party to whom it applies. In applying any hardship under paragraph (2) of subdivision (a) of Section 4071, the court shall seek to provide equity between competing child support orders. The Judicial Council shall develop a formula for calculating the maximum hardship deduction and shall submit it to the Legislature for its consideration on or before July 1, 1995.

CHAPTER 1057

An act to add and repeal Section 18901.5 of the Government Code, relating to the State Personnel Board.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 18901.5 is added to the Government Code to read:

18901.5. (a) Notwithstanding subdivision (a) of Section 18901, the board may authorize the retention of eligibles on an employment list for up to six years based on the following factors:

(1) The number of names remaining on the list in relation to the anticipated number of vacancies.

(2) The qualifications of the eligibles.

(3) The gender, ethnic, and disability composition of the eligibles remaining on the list.

(4) The lack of unreasonable denial of a competitive opportunity for potential applicants.

(5) The availability of alternative appointment options.

(6) The modifications that have been made in the duties, responsibilities, and qualifications in the class specifications since the establishment of the eligible list.

(b) This section shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date.

CHAPTER 1058

An act to amend Section 21080.10 of the Public Resources Code, relating to environmental quality.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 21080.10 of the Public Resources Code is amended to read:

21080.10. This division does not apply to any of the following:

(a) An extension of time, granted pursuant to Section 65361 of the Government Code, for the preparation and adoption of one or more elements of a city or county general plan.

(b) Actions taken by the Department of Housing and Community Development or the California Housing Finance Agency to provide financial assistance or insurance for the development and construction of residential housing for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, if the project which is the subject of the application for financial assistance or insurance will be reviewed pursuant to this division by another public agency.

(c) (1) Any development project which consists of the construction, conversion, or use of residential housing for agricultural employees, as defined in paragraph (2), that is affordable to lower-income households, as defined in Section 50079.5 of the Health and Safety Code, if there is no public financial assistance for the development project and the developer of the development project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for lower-income households for a period of at least 15 years, or any development project that consists of the construction, conversion, or use of residential housing for agricultural employees, as defined in paragraph (2) that is affordable to low- and moderate-income households, as defined in paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code,

if there is public financial assistance for the development project and the developer of the development project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for low- and moderate-income households for a period of at least 15 years, if either type of development project meets all of the following requirements:

(A) (i) If the development project is proposed for an urbanized area, it is located on a project site which is adjacent, on at least two sides, to land that has been developed, and consists of not more than 45 units, or is housing for a total of 45 or fewer agricultural employees if the housing consists of dormitories, barracks, or other group living facilities.

(ii) If the development project is proposed for a nonurbanized area, it is located on a project site zoned for general agricultural use, and consists of not more than 20 units, or is housing for a total of 20 or fewer agricultural workers if the housing consists of dormitories, barracks, or other group living facilities.

(B) The development project is consistent with the jurisdiction's general plan as it existed on the date that the application was deemed complete.

(C) The development project is consistent with the zoning designation, as specified in the zoning ordinance as it existed on the date that the application was deemed complete, unless the zoning is inconsistent with the general plan because the local agency has not rezoned the property to bring it into conformity with the general plan.

(D) The development project site is not more than five acres in area, except that a project site located in an area with a population density of at least 1,000 persons per square mile shall not be more than two acres in area.

(E) The development project site can be adequately served by utilities.

(F) The development project site has no value as a wildlife habitat.

(G) The development project site is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.

(H) The development project will not involve the demolition of, or any substantial adverse change, in any structure that is listed, or is determined to be eligible for listing, in the California Register of Historic Resources.

(2) As used in paragraph (1), "residential housing for agricultural employees" means housing accommodations for an agricultural employee, as defined in subdivision (b) of Section 1140.4 of the Labor Code.

(3) As used paragraph (1), "urbanized area" means either of the following:

(A) An area with a population density of at least 1,000 persons per square mile.

(B) An area with a population density of less than 1,000 persons per square mile that is identified as an urban area in a general plan adopted by a local government, and was not designated, on the date that the application was deemed complete, as an area reserved for future urban growth.

(4) This division shall apply to any development project described in this subdivision if a public agency which is carrying out or approving the development project determines that there is a reasonable possibility that the project, if completed, would have a significant effect on the environment due to unusual circumstances, or that the cumulative impact of successive projects of the same type in the same area over time would be significant.

SEC. 2. It is the intent of the Legislature that by 1997 the Office of Planning and Research include in its annual survey questions relating to the impact of the exemption to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) for specified types of agricultural employee housing that is provided pursuant to subdivision (c) of Section 21080.10 of the Public Resources Code, as amended by Section 1 of this act, on lead agencies that are considering the approval of agricultural employee housing development projects. It is the intent of the Legislature that the survey include questions relating to the ability of the lead agency to address potential adverse environmental effects that may result from the proposed development, the conversion of agricultural lands to urban uses, the ability of the lead agency to impose conditions on the proposed project, the time necessary for the lead agency to consider and act on the proposed project, and an estimate of the time necessary for the lead agency to consider and act on the development project if subdivision (c) of Section 21080.10 of the Public Resources Code were not in effect.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1059

An act to add Article 10 (commencing with Section 591) to Chapter 3 of Part 1 of Division 1 of the Food and Agricultural Code, relating to agriculture, and making an appropriation therefor.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Article 10 (commencing with Section 591) is added to Chapter 3 of Part 1 of Division 1 of the Food and Agricultural Code, to read:

Article 10. Agricultural Chemical Reduction Pilot Demonstration
Projects

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

(a) There is a need for a pilot demonstration project to demonstrate and expand the use of integrated farming systems that have been proven to decrease the use of farm chemicals.

(b) For the purposes of the pilot demonstration project, these farming systems provide fertility and pest control through integration of the following elements:

(1) Relying on biological and cultural control to protect crops from pest outbreaks.

(2) Creating on-farm habitats that harbor populations of beneficial insects and mites.

(3) Using cover crops to provide some or all of the nitrogen needed by the crop plants.

(4) Directing overall attention to soil building practices.

(5) Reducing the reliance upon chemicals.

(c) Farmers who are accomplished in managing biologically integrated farming systems are often willing and able to act as mentors for other farmers who wish to reduce their use of agricultural chemicals.

592. (a) The Legislature hereby requests the University of California to establish a program of pilot demonstration projects designed to provide extension services, training, and financial incentives for participating farmers to reduce their use of chemicals for agricultural production.

(b) If the program is established by the University of California, it is the intent of the Legislature that all of the following occur:

(1) The program should consist of up to five pilot demonstration projects, each project involving a different commodity or cropping system and each located in a different county.

(2) The program should be designed to extend integrated farming

systems through the proven technique of farmer-to-farmer communication, with technical support provided by farm advisers, scientists, and pest control advisers.

(3) The structure of each pilot demonstration project should be patterned, to the degree feasible, after the successful Biologically Integrated Orchard Systems (BIOS) program coordinated by the Community Alliance with Family Farmers in Merced County.

(4) Pilot demonstration projects should be selected through a competitive process that supports the goals specified in Section 591. The proposals for the projects selected should demonstrate the applicant's experience in the farming systems described in subdivision (b) of Section 591, should contain documented financial and technical support, and should provide for a breadth of private sector cost sharing.

(5) Funding for the program should consist of a combination of federal, state, and private sector funds. If the program is established by the University of California, the Department of Pesticide Regulation shall provide fiscal oversight and shall allocate all program funds received, less 2 percent for administrative costs, to the University of California for purposes of implementing the program of pilot demonstration projects.

593. (a) It is the intent of the Legislature that the University of California establish a program advisory review board consisting of 13 members, appointed by the President of the University of California, or his or her designee, as follows:

(1) Ten members who are knowledgeable regarding the farming systems described in subdivision (b) of Section 591, as follows:

(A) Two representatives from the University of California.

(B) Two representatives from relevant federal agencies.

(C) Three growers.

(D) Two representatives of nonprofit organizations.

(E) One licensed pest control adviser.

(2) One member from each of the following:

(A) The Department of Pesticide Regulation.

(B) The Department of Food and Agriculture.

(C) The Pest Management Advisory Committee. This member shall be a public member who is not a government employee.

(b) The members of the review board shall serve without compensation but shall be paid necessary and proper expenses incurred in the performance of official duties.

594. It is the intent of the Legislature that the Regents of the University of California select an appropriate program whose director, in consultation with the program advisory review board, shall perform the following duties:

(a) Develop policies and procedures to guide the implementation of the pilot demonstration projects. These policies and procedures shall include, but shall not be limited to, a mechanism for monitoring and summarizing pesticide and fertilizer use for each project with an assessment of overall reductions in pesticides and fertilizer use on

each project.

(b) Develop and issue requests for proposals for the pilot demonstration projects.

(c) Review and select the proposals to be funded.

(d) Annually review pilot demonstration projects and determine which projects shall be renewed.

595. The Pest Management Advisory Committee of the Department of Pesticide Regulation and the Department of Food and Agriculture shall provide the program advisory review board with a list of cropping systems that would benefit from the pilot demonstration projects. The board shall consider this list when it deliberates regarding which proposals to recommend for funding.

596. The contract for a pilot project shall be for a period of three years and shall be evaluated annually by the director of the program and the program advisory review board. The evaluation shall be based on an annual report submitted by the pilot project supervisor that documents changes in agricultural practices, agrichemical use, crop yields, and monitoring data involved in the pilot project. Funding for subsequent years of the contract shall be contingent upon adequate progress in those documented criteria, as determined by the director with the advice of the board, and continued grower participation in the pilot project.

597. Not later than January 1, 1997, and biennially thereafter, the University of California shall report to the Pest Management Advisory Committee, appropriate policy and fiscal committees of the Legislature, and, upon request, any Members of the Legislature on the status of each of the pilot demonstration projects. The report shall include, but shall not be limited to, an analysis of the monitoring activities, summary and assessment data on pesticide and fertilizer use on each pilot demonstration project, and an analysis of the success of each project in meeting the standards for integrated farming systems set forth in this article.

598. All moneys allocated by the Department of Pesticide Regulation to the University of California for facilitating this program shall be used for the following purposes:

(a) Contracting with pilot demonstration project supervisors. No member of the program advisory review board shall participate in such a project.

(b) Rebates to project participants for materials used to implement the alternative systems composing the pilot demonstration projects, and assistance with purchasing or leasing equipment.

(c) The University of California's administrative costs, which shall not exceed 10 percent of the total costs of the pilot demonstration projects.

599. This article shall become operative only (a) upon the adoption of a resolution by the Regents of the University of California by April 1, 1995, as specified in Section 600 and (b) upon a determination by the university that sufficient funding is available to

carry out the purposes of this article.

600. No provision of this article shall apply to the University of California unless the regents of the university, by resolution, make that provision applicable. No new pilot demonstration projects shall be commenced on or after December 31, 2001. Until all funds available for the projects are encumbered, the University of California may continue to use available funds for projects that it commenced prior to December 31, 2001.

SEC. 2. (a) The sum of two hundred fifty thousand dollars (\$250,000) is hereby appropriated from the Food Safety Account in the Department of Pesticide Regulation Fund to the Department of Pesticide Regulation for allocation to the University of California for expenditure for the purposes of Article 10 (commencing with Section 591) of Chapter 3 of Part 1 of Division 1 of the Food and Agricultural Code.

(b) If Article 10 (commencing with Section 591) of Chapter 3 of Part 1 of Division 1 of the Food and Agricultural Code does not become operative as specified in Section 599 of the Food and Agricultural Code by April 1, 1995, the moneys appropriated pursuant to subdivision (a) shall revert to the Food Safety Account in the Department of Pesticide Regulation Fund.

CHAPTER 1060

An act to amend Section 4035 of the Business and Professions Code, and to add Section 1261.5 to the Health and Safety Code, relating to pharmacy.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 4035 of the Business and Professions Code is amended to read:

4035. Pharmacy is an area, place, or premises in which the profession of pharmacy is practiced and where prescriptions are compounded. "Pharmacy" includes, but is not limited to, any area, place, or premises described in a permit issued by the board by reference to plans filed with and approved by the board wherein controlled substances or dangerous drugs or dangerous devices, as they are herein defined, are stored, possessed, prepared, manufactured, derived, compounded, or repackaged, and from which the controlled substances or dangerous drugs or dangerous devices are furnished, sold, or dispensed at retail.

"Pharmacy" shall not include any area in a facility licensed by the State Department of Health Services where floor supplies, ward supplies, operating room supplies, or emergency room supplies of

drugs or dangerous devices are stored or possessed solely for treatment of patients registered for treatment in the facility or for treatment of patients receiving emergency care in the facility.

“Controlled substances or dangerous drugs or dangerous devices” as used in this section shall include, but is not limited to, all controlled substances, drugs, or devices that are included within one or more of the following classifications:

(a) Drugs or devices bearing the legend, “Caution, federal law prohibits dispensing without prescription,” or words of similar import.

(b) Controlled substances as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code.

(c) Drugs or devices enumerated in Section 4211.

(d) Hypodermic syringes and needles, or other drugs or devices, the sale of which is restricted by law to a registered pharmacist.

Neither this section nor any other provision of law shall be construed as prohibiting a pharmacy from furnishing a prescription drug or device to a licensed health facility for storage in a secured emergency pharmaceutical supplies container maintained within the facility in accordance with facility regulations of the State Department of Health Services set forth in Title 22 of the California Code of Regulations and the requirements set forth in Section 1261.5 of the Health and Safety Code. These emergency supplies shall be approved by the facility’s patient care policy committee or pharmaceutical service committee and shall be readily available to each nursing station. Section 1261.5 of the Health and Safety Code limits the number of oral dosage form or suppository form drugs in these emergency supplies to 24.

SEC. 2. Section 1261.5 is added to the Health and Safety Code, to read:

1261.5. Notwithstanding Section 72377 of Title 22 of the California Code of Regulations, the number of oral dosage form or suppository form drugs provided by a pharmacy to a health facility licensed pursuant to subdivision (c), (d), or both (c) and (d), of Section 1250 for storage in a secured emergency supplies container, pursuant to Section 4035 of the Business and Professions Code, shall be limited to 24. The State Department of Health Services may limit the number of doses of each drug available to not more than four doses of any separate drug dosage form in each emergency supply.

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

CHAPTER 1061

An act to add Section 3296 to the Civil Code, relating to punitive damages.

[Approved by Governor September 28, 1994. Filed with Secretary of State September 29, 1994.]

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

SECTION 1. Section 3296 is added to the Civil Code, to read:
3296. (a) Whenever a judgment for punitive damages is entered against an insurer or health care service plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, the plaintiff in the action shall, within 10 days of entry of judgment, provide all of the following to the Commissioner of the Department of Insurance or the Commissioner of Corporations, whichever commissioner has regulatory jurisdiction over the insurer or health care service plan:

- (1) A copy of the judgment.
- (2) A brief recitation of the facts of the case.
- (3) Copies of relevant pleadings, as determined by the plaintiff.

(b) The willful failure to comply with this section may, at the discretion of the trial court, result in the imposition of sanctions against the plaintiff or his or her attorney.

(c) This section shall apply to all judgments entered on or after January 1, 1995.

(d) "Insurer," for purposes of this section, means any person or entity transacting any of the classes of insurance described in Chapter 1 (commencing with Section 100) of Part 1 of Division 1 of the Insurance Code.

CHAPTER 1062

An act to amend Section 128.5 of, to amend, repeal, and add Section 446 of, to add Section 128.6 to, to add and repeal Section 128.7 of, and to repeal Section 447 of, the Code of Civil Procedure, relating to civil procedure.

[Approved by Governor September 28, 1994. Filed with Secretary of State September 29, 1994.]

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

SECTION 1. Section 128.5 of the Code of Civil Procedure is amended to read:

128.5. (a) Every trial court may order a party, the party's attorney, or both to pay any reasonable expenses, including

attorney's fees, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. This section also applies to judicial arbitration proceedings under Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3.

(b) For purposes of this section:

(1) "Actions or tactics" include, but are not limited to, the making or opposing of motions or the filing and service of a complaint or cross-complaint only if the actions or tactics arise from a complaint filed, or a proceeding initiated, on or before December 31, 1994. The mere filing of a complaint without service thereof on an opposing party does not constitute "actions or tactics" for purposes of this section.

(2) "Frivolous" means (A) totally and completely without merit or (B) for the sole purpose of harassing an opposing party.

(c) Expenses pursuant to this section shall not be imposed except on notice contained in a party's moving or responding papers; or the court's own motion, after notice and opportunity to be heard. An order imposing expenses shall be in writing and shall recite in detail the conduct or circumstances justifying the order.

(d) In addition to any award pursuant to this section for conduct described in subdivision (a), the court may assess punitive damages against the plaintiff upon a determination by the court that the plaintiff's action was an action maintained by a person convicted of a felony against the person's victim, or the victim's heirs, relatives, estate, or personal representative, for injuries arising from the acts for which the person was convicted of a felony, and that the plaintiff is guilty of fraud, oppression, or malice in maintaining the action.

(e) The liability imposed by this section is in addition to any other liability imposed by law for acts or omissions within the purview of this section.

SEC. 2. Section 128.6 is added to the Code of Civil Procedure, to read:

128.6. (a) Every trial court may order a party, the party's attorney, or both to pay any reasonable expenses, including attorney's fees, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. This section also applies to judicial arbitration proceedings under Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3.

(b) For purposes of this section:

(1) "Actions or tactics" include, but are not limited to, the making or opposing of motions or the filing and service of a complaint or cross-complaint. The mere filing of a complaint without service thereof on an opposing party does not constitute "actions or tactics" for purposes of this section.

(2) "Frivolous" means (A) totally and completely without merit or (B) for the sole purpose of harassing an opposing party.

(c) Expenses pursuant to this section shall not be imposed except

on notice contained in a party's moving or responding papers; or the court's own motion, after notice and opportunity to be heard. An order imposing expenses shall be in writing and shall recite in detail the conduct or circumstances justifying the order.

(d) In addition to any award pursuant to this section for conduct described in subdivision (a), the court may assess punitive damages against the plaintiff upon a determination by the court that the plaintiff's action was an action maintained by a person convicted of a felony against the person's victim, or the victim's heirs, relatives, estate, or personal representative, for injuries arising from the acts for which the person was convicted of a felony, and that the plaintiff is guilty of fraud, oppression, or malice in maintaining the action.

(e) The liability imposed by this section is in addition to any other liability imposed by law for acts or omissions within the purview of this section.

(f) This section shall become operative on January 1, 1999, unless a statute that becomes effective on or before this date extends or deletes the repeal date of Section 128.7.

SEC. 3. Section 128.7 is added to the Code of Civil Procedure, to read:

128.7. (a) Every pleading, petition, written notice of motion, or other similar paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise provided by law, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, petition, written notice of motion, or other similar paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following conditions are met:

(1) It is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

(3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

(4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation. In determining what sanctions, if any, should be ordered, the court shall consider whether a party seeking sanctions has exercised due diligence.

(1) A motion for sanctions under this section shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). Notice of motion shall be served as provided in Section 1010, but shall not be filed with or presented to the court unless, within 30 days after service of the motion, or such other period as the court may prescribe, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(2) On its own motion, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b), unless, within 30 days of service of the order to show cause, the challenged paper, claim, defense, contention, allegation, or denial is withdrawn or appropriately corrected.

(d) A sanction imposed for violation of subdivision (b) shall be limited to what is sufficient to deter repetition of this conduct or comparable conduct by others similarly situated. Subject to the limitations in paragraphs (1) and (2), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation.

(1) Monetary sanctions may not be awarded against a represented party for a violation of paragraph (2) of subdivision (b).

(2) Monetary sanctions may not be awarded on the court's motion unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(e) When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this section and explain the basis for the sanction imposed.

(f) In addition to any award pursuant to this section for conduct described in subdivision (b), the court may assess punitive damages against the plaintiff upon a determination by the court that the plaintiff's action was an action maintained by a person convicted of a felony against the person's victim, or the victim's heirs, relatives,

estate, or personal representative, for injuries arising from the acts for which the person was convicted of a felony, and that the plaintiff is guilty of fraud, oppression, or malice in maintaining the action.

(g) This section shall not apply to disclosures and discovery requests, responses, objections, and motions.

(h) A motion for sanctions brought by a party or a party's attorney primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, shall itself be subject to a motion for sanctions. It is the intent of the Legislature that courts shall vigorously use its sanctions authority to deter such improper conduct or comparable conduct by others similarly situated.

(i) This section shall apply to a complaint or petition filed on or after January 1, 1995, and any other pleading, written notice of motion, or other similar paper filed in such a matter.

(j) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 1999, deletes or extends that date.

SEC. 4. Section 446 of the Code of Civil Procedure is amended to read:

446. (a) When the state, any county thereof, city, school district, district, public agency, or public corporation, or any officer of the state, or of any county thereof, city, school district, district, public agency, or public corporation, in his or her official capacity, is plaintiff, the answer shall be verified, unless an admission of the truth of the complaint might subject the party to a criminal prosecution, or, unless a county thereof, city, school district, district, public agency, or public corporation, or an officer of the state, or of any county, city, school district, district, public agency, or public corporation, in his or her official capacity, is defendant. When the complaint is verified, the answer shall be verified. In all cases of a verification of a pleading, the affidavit of the party shall state that the same is true of his own knowledge, except as to the matters which are therein stated on his or her information or belief, and as to those matters that he or she believes it to be true; and where a pleading is verified, it shall be by the affidavit of a party, unless the parties are absent from the county where the attorney has his or her office, or from some cause unable to verify it, or the facts are within the knowledge of his or her attorney or other person verifying the same. When the pleading is verified by the attorney, or any other person except one of the parties, he or she shall set forth in the affidavit the reasons why it is not made by one of the parties.

When a corporation is a party, the verification may be made by any officer thereof. When the state, any county thereof, city, school district, district, public agency, or public corporation, or an officer of the state, or of any county thereof, city, school district, district, public agency, or public corporation, in his or her official capacity is plaintiff, the complaint need not be verified; and if the state, any county thereof, city, school district, district, public agency, or public

corporation, or an officer of such state, county, city, school district, district, public agency, or public corporation, in his or her official capacity is defendant, its or his or her answer need not be verified.

When the verification is made by the attorney for the reason that the parties are absent from the county where he or she has his or her office, or from some other cause are unable to verify it, or when the verification is made on behalf of a corporation or public agency by any officer thereof, the attorney's or officer's affidavit shall state that he or she has read the pleading and that he or she is informed and believes the matters therein to be true and on that ground alleges that the matters stated therein are true. However, in those cases the pleadings shall not otherwise be considered as an affidavit or declaration establishing the facts therein alleged.

A person verifying a pleading need not swear to the truth or his or her belief in the truth of the matters stated therein but may, instead, assert the truth or his or her belief in the truth of those matters "under penalty of perjury."

(b) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

SEC. 5. Section 446 is added to the Code of Civil Procedure, to read:

446. (a) Every pleading shall be subscribed by the party or his or her attorney. When the state, any county thereof, city, school district, district, public agency, or public corporation, or any officer of the state, or of any county thereof, city, school district, district, public agency, or public corporation, in his or her official capacity, is plaintiff, the answer shall be verified, unless an admission of the truth of the complaint might subject the party to a criminal prosecution, or, unless a county thereof, city, school district, district, public agency, or public corporation, or an officer of the state, or of any county, city, school district, district, public agency, or public corporation, in his or her official capacity, is defendant. When the complaint is verified, the answer shall be verified. In all cases of a verification of a pleading, the affidavit of the party shall state that the same is true of his own knowledge, except as to the matters which are therein stated on his or her information or belief, and as to those matters that he or she believes it to be true; and where a pleading is verified, it shall be by the affidavit of a party, unless the parties are absent from the county where the attorney has his or her office, or from some cause unable to verify it, or the facts are within the knowledge of his or her attorney or other person verifying the same. When the pleading is verified by the attorney, or any other person except one of the parties, he or she shall set forth in the affidavit the reasons why it is not made by one of the parties.

When a corporation is a party, the verification may be made by any officer thereof. When the state, any county thereof, city, school district, district, public agency, or public corporation, or an officer of the state, or of any county thereof, city, school district, district, public

agency, or public corporation, in his or her official capacity is plaintiff, the complaint need not be verified; and if the state, any county thereof, city, school district, district, public agency, or public corporation, or an officer of such state, county, city, school district, district, public agency, or public corporation, in his or her official capacity is defendant, its or his or her answer need not be verified.

When the verification is made by the attorney for the reason that the parties are absent from the county where he or she has his or her office, or from some other cause are unable to verify it, or when the verification is made on behalf of a corporation or public agency by any officer thereof, the attorney's or officer's affidavit shall state that he or she has read the pleading and that he or she is informed and believes the matters therein to be true and on that ground alleges that the matters stated therein are true. However, in those cases the pleadings shall not otherwise be considered as an affidavit or declaration establishing the facts therein alleged.

A person verifying a pleading need not swear to the truth or his or her belief in the truth of the matters stated therein but may, instead, assert the truth or his or her belief in the truth of those matters "under penalty of perjury."

(b) This section shall become operative on January 1, 1999, unless a statute that becomes effective on or before this date extends or deletes the repeal date of Section 446, as amended by Assembly Bill 3594 of the 1993-94 Regular Session.

SEC. 6. Section 447 of the Code of Civil Procedure is repealed.

SEC. 7. On January 1, 1998, the Judicial Council shall provide a report to the Legislature that details the number of sanctions motions filed, the types of cases and the frequency to which those types of cases are subjected to a sanctions motion, the numbers of pleadings, motions, or similar papers withdrawn or corrected within the 30-day period for withdrawal or correction, the numbers of sanctions motions granted and denied, and the forms of sanctions imposed when sanctions are assessed.

CHAPTER 1063

An act to amend Sections 443.30 and 443.31 of the Health and Safety Code, relating to health facilities.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 443.30 of the Health and Safety Code is amended to read:

443.30. (a) Effective January 1, 1986, the Office of Statewide Health Planning and Development shall be the single state agency

designated to collect the following health facility or clinic data for use by all state agencies:

- (1) That data required by the office pursuant to Section 439.2.
- (2) That data required in the Medi-Cal cost reports pursuant to Section 14170 of the Welfare and Institutions Code.
- (3) Those data items formerly required by the California Health Facilities Commission that are listed in Sections 443.31 and 443.32. Information collected pursuant to subdivision (g) of Section 443.31 shall be made available to the State Department of Health Services. The state department shall ensure that the patient's rights to confidentiality shall not be violated in any manner. The state department shall comply with all applicable policies and requirements involving review and oversight by the State Committee for the Protection of Human Subjects.

(b) The office shall consolidate any and all of the reports listed under this section or Sections 443.31 and 443.32, to the extent feasible, to minimize the reporting burdens on hospitals. Provided, however, that the office shall neither add nor delete data items from the Hospital Discharge Abstract Data Record or the quarterly reports without prior authorizing legislation, unless specifically required by federal law or regulation or judicial decision.

SEC. 2. Section 443.31 of the Health and Safety Code is amended to read:

443.31. Every organization that operates, conducts, or maintains a health facility and the officers thereof, shall make and file with the office, at the times as the office shall require, all of the following reports on forms specified by the office that shall be in accord where applicable with the systems of accounting and uniform reporting required by this part, except the reports required pursuant to subdivision (g) shall be limited to hospitals:

(a) A balance sheet detailing the assets, liabilities, and net worth of the health facility at the end of its fiscal year.

(b) A statement of income, expenses, and operating surplus or deficit for the annual fiscal period, and a statement of ancillary utilization and patient census.

(c) A statement detailing patient revenue by payer, including, but not limited to, Medicare, Medi-Cal, and other payers, and revenue center except that hospitals authorized to report as a group pursuant to subdivision (d) of Section 443.34 are not required to report revenue by revenue center.

(d) A statement of cash-flows, including, but not limited to, ongoing and new capital expenditures and depreciation.

(e) A statement reporting the information required in subdivisions (a), (b), (c), and (d) for each separately licensed health facility operated, conducted, or maintained by the reporting organization, except those hospitals authorized to report as a group pursuant to subdivision (d) of Section 443.34.

(f) The office shall consult with the County Hospital Committee of the California Hospital Association, the County Supervisors

Association of California, and the California Association of Public Hospitals to improve the accuracy of indigent care revenue reporting and shall present legislative or regulatory recommendations for such improvements by March 30, 1985.

(g) A Hospital Discharge Abstract Data Record that includes all of the following:

- (1) Date of birth.
- (2) Sex.
- (3) Race.
- (4) ZIP Code.
- (5) Patient social security number, if it is contained in the patient's medical record.
- (6) Prehospital care and resuscitation, if any, including all of the following:
 - (A) "Do not resuscitate" (DNR) order at admission.
 - (B) "Do not resuscitate" (DNR) order after admission.
- (7) Admission date.
- (8) Source of admission.
- (9) Type of admission.
- (10) Discharge date.
- (11) Principal diagnosis and whether the condition was present at admission.
- (12) Other diagnoses and whether the conditions were present at admission.
- (13) External cause of injury.
- (14) Principal procedure and date.
- (15) Other procedures and dates.
- (16) Total charges.
- (17) Disposition of patient.
- (18) Expected source of payment.

(h) No person reporting data pursuant to this section shall be liable for damages in any action based on the use or misuse of patient-identifiable data that has been mailed or otherwise transmitted to the office pursuant to the requirements of subdivision (g).

A hospital or its designee shall semiannually file the Hospital Discharge Abstract Data Record not later than six months after the end of each semiannually period, commencing six months after January 1, 1986. A hospital may submit the Hospital Discharge Abstract Data Record in a computer tape format, and a hospital shall use coding from the International Classification of Diseases in reporting diagnoses and procedures.

CHAPTER 1064

An act to amend Sections 316, 500, 502, 503, 506, and 25116 of the Corporations Code, relating to corporations.

[Approved by Governor September 28, 1994. Filed with Secretary of State September 29, 1994.]

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

SECTION 1. Section 316 of the Corporations Code is amended to read:

316. (a) Subject to the provisions of Section 309, directors of a corporation who approve any of the following corporate actions shall be jointly and severally liable to the corporation for the benefit of all of the creditors or shareholders entitled to institute an action under subdivision (c):

(1) The making of any distribution to its shareholders to the extent that it is contrary to the provisions of Sections 500 to 503, inclusive.

(2) The distribution of assets to shareholders after institution of dissolution proceedings of the corporation, without paying or adequately providing for all known liabilities of the corporation, excluding any claims not filed by creditors within the time limit set by the court in a notice given to creditors under Chapters 18 (commencing with Section 1800), 19 (commencing with Section 1900) and 20 (commencing with Section 2000).

(3) The making of any loan or guaranty contrary to Section 315.

(b) A director who is present at a meeting of the board, or any committee thereof, at which action specified in subdivision (a) is taken and who abstains from voting shall be considered to have approved the action.

(c) Suit may be brought in the name of the corporation to enforce the liability (1) under paragraph (1) of subdivision (a) against any or all directors liable by the persons entitled to sue under subdivision (b) of Section 506, (2) under paragraph (2) or (3) of subdivision (a) against any or all directors liable by any one or more creditors of the corporation whose debts or claims arose prior to the time of any of the corporate actions specified in paragraph (2) or (3) of subdivision (a) and who have not consented to the corporate action, whether or not they have reduced their claims to judgment, or (3) under paragraph (3) of subdivision (a) against any or all directors liable by any one or more holders of shares outstanding at the time of any corporate action specified in paragraph (3) of subdivision (a) who have not consented to the corporate action, without regard to the provisions of Section 800.

(d) The damages recoverable from a director under this section shall be the amount of the illegal distribution (or if the illegal distribution consists of property, the fair market value of that

property at the time of the illegal distribution) plus interest thereon from the date of the distribution at the legal rate on judgments until paid, together with all reasonably incurred costs of appraisal or other valuation, if any, of that property or loss suffered by the corporation as a result of the illegal loan or guaranty, as the case may be, but not exceeding the liabilities of the corporation owed to nonconsenting creditors at the time of the violation and the injury suffered by nonconsenting shareholders, as the case may be.

(e) Any director sued under this section may implead all other directors liable and may compel contribution, either in that action or in an independent action against directors not joined in that action.

(f) Directors liable under this section shall also be entitled to be subrogated to the rights of the corporation:

(1) With respect to paragraph (1) of subdivision (a), against shareholders who received the distribution.

(2) With respect to paragraph (2) of subdivision (a), against shareholders who received the distribution of assets.

(3) With respect to paragraph (3) of subdivision (a), against the person who received the loan or guaranty. Any director sued under this section may file a cross-complaint against the person or persons who are liable to the director as a result of the subrogation provided for in this subdivision or may proceed against them in an independent action.

SEC. 2. Section 500 of the Corporations Code is amended to read:

500. Neither a corporation nor any of its subsidiaries shall make any distribution to the corporation's shareholders (Section 166) except as follows:

(a) The distribution may be made if the amount of the retained earnings of the corporation immediately prior thereto equals or exceeds the amount of the proposed distribution.

(b) The distribution may be made if immediately after giving effect thereto:

(1) The sum of the assets of the corporation (exclusive of goodwill, capitalized research and development expenses and deferred charges) would be at least equal to $1\frac{1}{4}$ times its liabilities (not including deferred taxes, deferred income and other deferred credits); and

(2) The current assets of the corporation would be at least equal to its current liabilities or, if the average of the earnings of the corporation before taxes on income and before interest expense for the two preceding fiscal years was less than the average of the interest expense of the corporation for those fiscal years, at least equal to $1\frac{1}{4}$ times its current liabilities; provided, however, that in determining the amount of the assets of the corporation profits derived from an exchange of assets shall not be included unless the assets received are currently realizable in cash; and provided, further, that for the purpose of this subdivision "current assets" may include net amounts which the board has determined in good faith may reasonably be expected to be received from customers during

the 12-month period used in calculating current liabilities pursuant to existing contractual relationships obligating those customers to make fixed or periodic payments during the term of the contract or, in the case of public utilities, pursuant to service connections with customers, after in each case giving effect to future costs not then included in current liabilities but reasonably expected to be incurred by the corporation in performing those contracts or providing service to utility customers. Paragraph (2) of subdivision (b) is not applicable to a corporation which does not classify its assets into current and fixed under generally accepted accounting principles.

(c) The amount of any distribution payable in property shall, for the purposes of this chapter, be determined on the basis of the value at which the property is carried on the corporation's financial statements in accordance with generally accepted accounting principles.

(d) For the purpose of applying this section to a distribution by a corporation of cash or property in payment by the corporation in connection with the purchase of its shares, there shall be added to retained earnings all amounts that had been previously deducted therefrom with respect to obligations incurred in connection with the corporation's repurchase of its shares and reflected on the corporation's balance sheet, but not in excess of the principal of the obligations that remain unpaid immediately prior to the distribution. In addition, there shall be deducted from liabilities all amounts that had been previously added thereto with respect to the obligations incurred in connection with the corporation's repurchase of its shares and reflected on the corporation's balance sheet, but not in excess of the principal of the obligations that will remain unpaid after the distribution, provided that no addition to retained earnings or deduction from liabilities under this subdivision shall occur on account of any obligation that is a distribution to the corporation's shareholders (Section 166) at the time the obligation is incurred.

(e) This section does not apply to a corporation licensed as a broker-dealer under Chapter 2 (commencing with Section 25210) of Part 3 of Division 1 of Title 4, if immediately after giving effect to any distribution the corporation is in compliance with the net capital rules of the Commissioner of Corporations and the Securities and Exchange Commission.

SEC. 3. Section 502 of the Corporations Code is amended to read:

502. Neither a corporation nor any of its subsidiaries shall make any distribution to the corporation's shareholders (Section 166) on any shares of its stock of any class or series that are junior to outstanding shares of any other class or series with respect to distribution of assets on liquidation if, after giving effect thereto, the excess of its assets (exclusive of goodwill, capitalized research and development expenses and deferred charges) over its liabilities (not including deferred taxes, deferred income and other deferred credits) would be less than the liquidation preference of all shares having a preference on liquidation over the class or series to which

the distribution is made; provided, however, that for the purpose of applying this section to a distribution by a corporation of cash or property in payment by the corporation in connection with the purchase of its shares, there shall be deducted from liabilities all amounts that had been previously added thereto with respect to obligations incurred in connection with the corporation's repurchase of its shares and reflected on the corporation's balance sheet, but not in excess of the principal of the obligations that will remain unpaid after the distribution; provided, further, that no deduction from liabilities shall occur on account of any obligation that is a distribution to the corporation's shareholders (Section 166) at the time the obligation is incurred.

SEC. 4. Section 503 of the Corporations Code is amended to read:

503. Neither a corporation nor any of its subsidiaries shall make any distribution to the corporation's shareholders (Section 166) on any shares of its stock of any class or series that are junior to outstanding shares of any other class or series with respect to payment of dividends unless the amount of the retained earnings of the corporation immediately prior thereto equals or exceeds the amount of the proposed distribution plus the aggregate amount of the cumulative dividends in arrears on all shares having a preference with respect to payment of dividends over the class or series to which the distribution is made; provided, however, that for the purpose of applying this section to a distribution by a corporation of cash or property in payment by the corporation in connection with the purchase of its shares, there shall be added to retained earnings all amounts that had been previously deducted therefrom with respect to obligations incurred in connection with the corporation's repurchase of its shares and reflected on the corporation's balance sheet, but not in excess of the principal of the obligations that remain unpaid immediately prior to the distribution; provided, further, that no addition to retained earnings shall occur on account of any obligation that is a distribution to the corporation's shareholders (Section 166) at the time the obligation is incurred.

SEC. 5. Section 506 of the Corporations Code is amended to read:

506. (a) Any shareholder who receives any distribution prohibited by this chapter with knowledge of facts indicating the impropriety thereof is liable to the corporation for the benefit of all of the creditors or shareholders entitled to institute an action under subdivision (b) for the amount so received by the shareholder with interest thereon at the legal rate on judgments until paid, but not exceeding the liabilities of the corporation owed to nonconsenting creditors at the time of the violation and the injury suffered by nonconsenting shareholders, as the case may be. For purposes of this chapter, in the event that any shareholder receives any distribution of the corporation's property that is prohibited by this chapter, the shareholder receiving that illegal distribution shall be liable to the corporation for an amount equal to the fair market value of the property at the time of the illegal distribution plus interest thereon

from the date of the distribution at the legal rate on judgments until paid, together with all reasonably incurred costs of appraisal or other valuation, if any, of that property, but not exceeding the liabilities of the corporation owed to nonconsenting creditors at the time of the violation and the injury suffered by nonconsenting shareholders, as the case may be.

(b) Suit may be brought in the name of the corporation to enforce the liability (1) to creditors arising under subdivision (a) for a violation of Section 500 or 501 against any or all shareholders liable by any one or more creditors of the corporation whose debts or claims arose prior to the time of the distribution to shareholders and who have not consented thereto, whether or not they have reduced their claims to judgment, or (2) to shareholders arising under subdivision (a) for a violation of Section 502 or 503 against any or all shareholders liable by any one or more holders of preferred shares outstanding at the time of the distribution who have not consented thereto, without regard to the provisions of Section 800.

(c) Any shareholder sued under this section may implead all other shareholders liable under this section and may compel contribution, either in that action or in an independent action against shareholders not joined in that action.

(d) Nothing contained in this section affects any liability which any shareholder may have under Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil Code.

SEC. 6. Section 25116 of the Corporations Code is amended to read:

25116. An evidence of indebtedness issued pursuant to a qualification under this chapter or Chapter 3 (commencing with Section 25120), and its purchaser, shall be exempt from the usury provisions of the Constitution, subject to compliance by the issuer and purchaser with the terms and requirements that may be imposed by the commissioner as a condition of the qualification. This section creates and authorizes a class of persons pursuant to Section 1 of Article XV of the Constitution.

CHAPTER 1065

An act to add Sections 53060.1, 53208.5, and 53217.5 to the Government Code, relating to public officers.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 53060.1 is added to the Government Code, to read:

53060.1. (a) It is the intent of the Legislature in enacting this

section, to provide a uniform limit on the retirement benefits for the members of the legislative bodies of all political subdivisions of the state, including charter cities and charter counties. The Legislature finds and declares that uneven, conflicting, and inconsistent retirement benefits for legislative bodies distort the statewide system of intergovernmental finance. The Legislature further finds and declares that the inequities caused by these problems extend beyond the boundaries of individual public agencies.

Therefore, the Legislature finds and declares that these problems are not merely municipal affairs or matters of local interest and that they are truly matters of statewide concern that require the direct attention of the state government. In providing a uniform limit on the retirement benefits for the legislative bodies of all political subdivisions of the state, the Legislature has provided a solution to a statewide problem that is greater than local in its effect.

(b) Notwithstanding any other provision of law, the retirement benefits of any member of a legislative body of any city, including a charter city, county, including a charter county, city and county, special district, school district, or any other political subdivision of the state shall be no greater than that received by nonsafety employees of that public agency. In the case of agencies with different benefit structures, the benefits of members of the legislative body shall not be greater than the most generous schedule of benefits being received by any category of nonsafety employees.

(c) Notwithstanding any other provision of law, members of the legislative body of a city, including a charter city, county, including a charter county, city and county, special district, school district, or any other political subdivision of the state shall not be eligible to accrue multiple retirement benefits greater than the most generous schedule of benefits being received by any category of nonsafety employees from two or more public agencies for concurrent service except in the case of a member who serves as a regular full-time employee in a separate public agency.

(d) This section shall be applicable to any member of a legislative body whose first service commences on and after January 1, 1995.

SEC. 2. Section 53208.5 is added to the Government Code, to read:

53208.5. (a) It is the intent of the Legislature in enacting this section, to provide a uniform limit on the health and welfare benefits for the members of the legislative bodies of all political subdivisions of the state, including charter cities and charter counties. The Legislature finds and declares that uneven, conflicting, and inconsistent health and welfare benefits for legislative bodies distort the statewide system of intergovernmental finance. The Legislature further finds and declares that the inequities caused by these problems extend beyond the boundaries of individual public agencies.

Therefore, the Legislature finds and declares that these problems are not merely municipal affairs or matters of local interest and that

they are truly matters of statewide concern that require the direct attention of the state government. In providing a uniform limit on the health and welfare benefits for the legislative bodies of all political subdivisions of the state, the Legislature has provided a solution to a statewide problem that is greater than local in its effect.

(b) Notwithstanding any other provision of law, the health and welfare benefits of any member of a legislative body of any city, including a charter city, county, including a charter county, city and county, special district, school district, or any other political subdivision of the state shall be no greater than that received by nonsafety employees of that public agency. In the case of agencies with different benefit structures, the benefits of members of the legislative body shall not be greater than the most generous schedule of benefits being received by any category of nonsafety employees.

(c) Notwithstanding any other provision of law, members of the legislative body of a city, including a charter city, county, including a charter county, city and county, special district, school district, or any other political subdivision of the state shall not be eligible to accrue multiple health and welfare benefits greater than the most generous schedule of benefits being received by any category of nonsafety employees from two or more public agencies for concurrent service except in the case of a member who serves as a regular full-time employee in a separate public agency.

(d) This section shall be applicable to any member of a legislative body whose first service commences on and after January 1, 1995.

SEC. 3. Section 53217.5 is added to the Government Code, to read:

53217.5. (a) It is the intent of the Legislature in enacting this section, to provide a uniform limit on the pension trust benefits for the members of the legislative bodies of all political subdivisions of the state, including charter cities and charter counties. The Legislature finds and declares that uneven, conflicting, and inconsistent pension trust benefits for legislative bodies distort the statewide system of intergovernmental finance. The Legislature further finds and declares that the inequities caused by these problems extend beyond the boundaries of individual public agencies.

Therefore, the Legislature finds and declares that these problems are not merely municipal affairs or matters of local interest and that they are truly matters of statewide concern that require the direct attention of the state government. In providing a uniform limit on the pension trust benefits for the legislative bodies of all political subdivisions of the state, the Legislature has provided a solution to a statewide problem that is greater than local in its effect.

(b) Notwithstanding any other provision of law, the pension trust benefits of any member of a legislative body of any city, including a charter city, county, including a charter county, city and county, special district, school district, or any other political subdivision of the state shall be no greater than that received by nonsafety

employees of that public agency. In the case of agencies with different benefit structures, the benefits of members of the legislative body shall not be greater than the most generous schedule of benefits being received by any category of nonsafety employees.

(c) Notwithstanding any other provision of law, members of the legislative body of a city, including a charter city, county, including a charter county, city and county, special district, school district, or any other political subdivision of the state shall not be eligible to accrue multiple pension trust benefits greater than the most generous schedule of benefits being received by any category of nonsafety employees from two or more public agencies for concurrent service except in the case of a member who serves as a regular full-time employee in a separate public agency.

(d) This section shall be applicable to any member of a legislative body whose first service commences on and after January 1, 1995.

CHAPTER 1066

An act to amend Section 1163 of the Harbors and Navigation Code, relating to pilots, and making an appropriation therefor.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 1163 of the Harbors and Navigation Code is amended to read:

1163. (a) (1) (A) Each retired pilot and inland pilot, who has completed 25 full years of service as a pilot or inland pilot, or both, shall receive, as a target monthly pension, an amount that is initially equal to 46 percent of an amount which is an average of the highest three of the last five years of audited annual average net income per pilot, prior to the pilot's or inland pilot's retirement, divided by 12, which initial target monthly pension amount shall be subject to periodic adjustment pursuant to Section 1167. Pilots or inland pilots with other than 25 full years of service as a pilot or inland pilot, or both, shall receive a monthly pension in an amount that is determined by multiplying the above calculated target monthly pension by a fraction, the numerator of which shall be the number of full years of service that the pilot or inland pilot has rendered and the denominator of which shall be 25 years, which initial monthly pension amount shall be subject to periodic adjustment pursuant to Section 1167.

(B) Each disabled pilot or inland pilot shall receive as an initial target monthly pension an amount that is based on 46 percent of the greater of the following, which amount shall be subject to periodic adjustment pursuant to Section 1167:

(i) An amount that is the average of the highest three of the last five years of audited annual average net income per pilot divided by 12 and multiplied by a fraction, the numerator of which shall be the number of full years of service that the pilot or inland pilot has rendered and the denominator of which shall be 25 years.

(ii) The audited annual average net income per pilot, for the last year prior to the pilot's or inland pilot's disability, divided by 12 and multiplied by a fraction, the numerator of which shall be the number of full years of service that the pilot or inland pilot has rendered and the denominator of which shall be 25 years.

(C) Each pilot who retired before January 1, 1985, shall receive as an initial target monthly pension an amount that is one hundred seventy-eight dollars (\$178) multiplied by the number of full years of service he or she performed as a pilot licensed under this division, which amount shall be subject to periodic adjustment pursuant to Section 1167.

(D) Each pilot who retired on or after January 1, 1985, or each inland pilot who retired after January 1, 1993, shall receive as an initial target monthly pension an amount that is the greater of the following, which amount shall be subject to periodic adjustment pursuant to Section 1167:

(i) An amount that is calculated by multiplying one hundred seventy-eight dollars (\$178) by the number of full years of service the pilot or inland pilot performed as a pilot or inland pilot licensed under this division.

(ii) An amount that is 46 percent of the average of the highest three of the last five years of audited annual average net income per pilot, prior to the pilot's or inland pilot's retirement, divided by 12 and multiplied by a fraction, the numerator of which is the pilot's or inland pilot's actual number of full years of service and the denominator of which is 25 years.

(2) A pilot or inland pilot who retires or becomes disabled shall not begin to receive a pension until the beginning of the benefit payment period next following the date on which the pilot or inland pilot retires or becomes disabled.

(3) A pilot or inland pilot shall not receive any benefits pursuant to the pension plan in any benefit payment period unless the pilot's or inland pilot's resignation as an active pilot or inland pilot specifying a proposed date of retirement was submitted, in writing, to the board, prior to November if the pilot's or inland pilot's retirement is to be effective the first day of the following January, prior to February if the pilot's or inland pilot's retirement is to be effective the first day of the following April, prior to May if the pilot's or inland pilot's retirement is to be effective the first day of the following July, or prior to August if the pilot's or inland pilot's retirement is to be effective the first day of the following October. The pilot's or inland pilot's resignation as an active pilot or inland pilot shall become effective on either January 1, April 1, July 1, or October 1, as specified in the written resignation.

(4) If a retired or disabled pilot or inland pilot who is receiving a pension dies without a surviving spouse, the pilot's or inland pilot's successor in interest shall receive the monthly pension for the remainder of the benefit payment period within which the death occurs, after which time the monthly pension shall cease.

(b) (1) The surviving spouse of a deceased pilot who is eligible for a pension pursuant to paragraph (1) of subdivision (e) of Section 1164 and the surviving spouse of a deceased inland pilot who is eligible for a pension pursuant to paragraph (2) of subdivision (e) of Section 1164 shall each receive, as a monthly pension, three-fourths of the amount that the deceased pilot or inland pilot would have received as a monthly pension pursuant to this section had the pilot or inland pilot lived, calculated as if the deceased pilot or inland pilot had been disabled pursuant to subparagraph (B) of paragraph (1) of subdivision (a).

(2) If a retired or disabled pilot or inland pilot who was receiving a pension dies, the surviving spouse shall continue to receive the full amount of the monthly pension to which the deceased pilot or inland pilot was entitled for the balance of the benefit payment period within which the death occurs, after which the surviving spouse shall receive the amount specified in paragraph (1).

(3) If a surviving spouse receiving a pension dies, the surviving spouse's successor in interest shall receive the monthly pension for the remainder of the benefit payment period within which the death occurs, after which time the monthly pension shall cease.

(c) For the purpose of the computations described in paragraph (1) of subdivision (a), six months or more of service by a pilot or inland pilot shall be considered a full year.

(d) Except as provided otherwise in this section and paragraph (4) of subdivision (e) of Section 1164, monthly pension amounts payable pursuant to this section to retired pilots and inland pilots and to their surviving spouses are payable for the life of that retired pilot, inland pilot, or spouse.

(e) To determine an inland pilot's full years of service under this chapter, any periods of service that an inland pilot has performed as a pilot shall be added to any service time performed as an inland pilot after January 1, 1993.

(f) In calculating the benefits of a retired or disabled pilot who was issued an original pilot's license in 1985 and who was not thereafter issued an inland pilot's license, or in calculating the benefits of the widow of such a pilot who is deceased, the number of years of service used in the calculation shall be the greater of the following:

(i) The actual number of full years of service the pilot has rendered.

(ii) Ten years.

CHAPTER 1067

An act to amend Sections 5080.17 and 5080.32 of, and to add Sections 5080.23 and 5080.26 to, the Public Resources Code, relating to the state park system, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1994. Filed with Secretary of State September 29, 1994.]

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

SECTION 1. It is the intent of the Legislature in enacting Sections 2, 3, and 4 of this act to provide a greater opportunity for persons or entities to participate in the request for proposal process for concession contracts for units of the state park system.

SEC. 2. Section 5080.17 of the Public Resources Code is amended to read:

5080.17. (a) Every contract awarded pursuant to the bidding requirements of this article, pursuant to the request for proposal process specified in Section 5080.23, or negotiated or renegotiated pursuant to Section 5080.16, shall be submitted to the Attorney General for approval for legal sufficiency and to the Director of General Services for approval pursuant to Section 11005.2 of the Government Code, the requirements of which are the only requirements applicable to the approval of contracts entered into pursuant to this article. The concession contract is not binding on the state until approved by the Attorney General and the Director of General Services.

(b) Notwithstanding Section 11005.2 of the Government Code and subdivision (a) of this section, the approval of a concession contract by the Director of General Services shall not be required unless the concession contract authorizes occupancy of a unit of the state park system for a period of more than one year.

SEC. 3. Section 5080.23 is added to the Public Resources Code, to read:

5080.23. (a) Notwithstanding any other provision of this article, with respect to concession contracts entered into on and after October 1, 1994, if the director determines that it is in the best interests of the state, the director may, upon giving notice to the State Park and Recreation Commission, in lieu of the process for awarding contracts otherwise prescribed in this article, award contracts authorizing occupancy of any portion of the state park system for a period of more than two years to the best responsible person or entity submitting a proposal for a concession contract.

(b) For any concession contract authorizing occupancy by the concessionaire for a period of more than two years of any portion of the state park system that is entered into pursuant to this section, the department shall prepare a request for proposal, which shall include

the terms and conditions of the concession sufficient to enable a person or entity to submit a proposal for the operation of the concession on the basis of the best benefit to the state. Proposals shall be completed only on the basis of the request for proposal.

(c) Any concession contract entered into pursuant to this section which is expected to involve a total investment or gross sales in excess of five hundred thousand dollars (\$500,000) shall comply with the requirements for entry into contract that are set forth in Section 5080.20.

(d) For purposes of this section, "best responsible person or entity submitting a proposal" means the person or entity submitting a proposal, as determined by specific standards established by the department, that will operate the concession in the best interests of the state and the public.

SEC. 4. Section 5080.26 is added to the Public Resources Code, to read:

5080.26. (a) Notwithstanding Sections 11080 and 11081 of the Government Code, public notice of a request for proposal shall be given to persons or entities for the purpose of soliciting proposals for any concession contract authorizing the occupancy of property in the state park system for a period of more than two years that is entered into pursuant to Section 5080.23, as follows:

(1) The department shall advertise the notice through appropriate public media to the extent that the department determines is sufficient to provide adequate coverage.

(2) The department shall publish an advertisement for a proposal at least once a week for two consecutive weeks in a newspaper of general circulation in the county in which the concession is to operate and in a major daily newspaper in the closest metropolitan area.

(3) If the director determines that, in view of the type of concession involved, the public interest would be best served by the solicitation of proposals from out-of-state persons or entities, the director shall give such additional notice as the director finds is best suited to attract proposals from out-of-state persons or entities.

(b) The published notice shall state where forms for proposals may be obtained, the time and place for the receipt and review of proposals, and shall describe, in general terms, the concession to be operated.

SEC. 4. Section 5080.32 of the Public Resources Code is amended to read:

5080.32. (a) Except as provided in subdivision (b), revenues received from lands subject to an operating agreement entered into pursuant to this article shall be available to the department only for the care, maintenance, operation, administration, improvement, or development of the unit of the state park system in which the lands from which the revenues were derived are located and any recreational trail providing access to those lands.

(b) (1) As to operating agreements that are in force on

September 30, 1994, if a local agency operates more than one unit of the state park system under the operating agreement, revenues received in excess of the care, maintenance, operation, administration, improvement, or development of one unit may be utilized for those purposes at other units of the state park system operated by the local agency.

(2) As to operating agreements entered into, renewed, or renegotiated on and after October 1, 1994, revenues received from lands subject to an operating agreement in excess of the cost, maintenance, operation, administration, improvement, or development of those lands, as determined by the department, shall be available to the department, upon appropriation by the Legislature in the Budget Act, for expenditure for support of the department.

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

In order to protect the interests of California's residents in preserving the state's park system by increasing revenues, as soon as possible, to the Department of Parks and Recreation, it is necessary that this act take effect immediately.

CHAPTER 1068

An act to add Section 5070 to the Vehicle Code, relating to vehicles.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. (a) The Legislature finds and declares as follows:

(1) The American Heritage Rodeo Foundation is a tax-exempt, nonprofit organization created to educate the public about, and to advance positive images of, the ethnic American West.

(2) The foundation has sponsored numerous educational exhibitions and special events, including the "Juneteenth" celebration of the emancipation proclamation, the American Heritage Invitational Rodeo, and symposiums on the buffalo soldier.

(3) The foundation also is involved in collecting, preserving, and exhibiting artifacts of California and the American West and in researching and promoting the participation and influence of various cultures in California's history.

(b) It is the intent of the Legislature, in enacting Section 5070 of the Vehicle Code, to provide a means to make funds available to the American Heritage Rodeo Foundation so that it may continue and expand its valuable research, educational, and promotional work on

the diverse history of California and the American West.

SEC. 2. Section 5070 is added to the Vehicle Code, to read:

5070. (a) The department, in consultation with the American Heritage Rodeo Foundation, shall design and make available for issuance pursuant to Section 5060 special interest license plates depicting a significant historical feature of California or the American West and may be issued in a combination of numbers or letters, or both, as requested by the applicant for the plates. Any person described in Section 5101 may, upon payment of the additional fees set forth in subdivision (b), apply for and be issued a set of special interest license plates.

(b) In addition to the regular fees for an original registration or renewal of registration, the following additional fees shall be paid for the issuance, renewal, retention, or transfer of the special interest license plates authorized pursuant to this section:

- (1) For the original issuance of the plates, fifty dollars (\$50).
- (2) For a renewal of registration of the plates or the retention of the plates if renewal is not required, forty dollars (\$40).
- (3) For transfer of the plates to another vehicle, fifteen dollars (\$15).
- (4) For each substitute replacement plate, thirty-five dollars (\$35).
- (5) In addition, for the issuance of an environmental license plate, as defined in Section 5103, the additional fees prescribed in Sections 5106 and 5108, which shall be deposited in the Environmental License Plate Fund.

(c) Except as provided in paragraph (5) of subdivision (b), all fees collected under this section shall, after deduction of the department's costs in administering this section, be deposited in the American Heritage Rodeo Foundation License Plate Account, which is hereby created in the General Fund. The funds in the account shall be used by the American Heritage Rodeo Foundation, upon appropriation by the Legislature, to educate the public about the ethnic American West and to preserve important cultural and historical artifacts and features of California and the American West.

CHAPTER 1069

An act to amend Sections 31, 32, 1625, 1626, 1749, 1749.3, and 1750 of, to add Section 1749.02 to, and to add and repeal Section 1631.1 of, the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 31 of the Insurance Code is amended to read:

31. "Insurance agent" means a person authorized, by and on behalf of an insurer, to transact all classes of insurance other than life insurance.

An insurance agent is also authorized to transact 24-hour care coverage, as defined in Section 1749.02.

SEC. 1.5. Section 32 of the Insurance Code is amended to read:

32. A life agent means an insurance agent authorized, by and on behalf of a life, disability or life and disability insurer, to transact life, disability or life and disability insurance.

A life agent may be authorized to transact 24-hour care coverage, as defined in Section 1749.02, pursuant to the requirements of subdivision (b) of Section 1749 or subdivision (h) of Section 1749.3.

SEC. 2. Section 1625 of the Insurance Code is amended to read:

1625. A fire and casualty licensee is a person authorized to act as an insurance agent, broker, or solicitor, and a fire and casualty broker-agent license is a license so to act.

A fire and casualty licensee is also authorized to transact 24-hour care coverage, as defined in Section 1749.02.

SEC. 3. Section 1626 of the Insurance Code is amended to read:

1626. A life licensee is a person authorized by and on behalf of a life, disability, or life and disability insurer to transact life, disability, or life and disability insurance, and a life agent license is a license so to act.

A life licensee is also authorized to transact 24-hour care coverage, as defined in Section 1749.02, pursuant to the requirements of subdivision (b) of Section 1749 or subdivision (h) of Section 1749.3.

SEC. 3.5. Section 1631.1 is added to the Insurance Code, to read:

1631.1. The department shall establish a task force to be comprised of representatives of consumer groups, trade associations representing insurers, property and casualty broker-agents, life agents, and agents selling health insurance to make recommendations to the Legislature by July 1, 1995, on the creation of a single license for insurance agents and brokers.

This section shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date.

SEC. 4. Section 1749 of the Insurance Code is amended to read:

1749. On and after January 1, 1992, the department shall require all new applicants for license as a fire and casualty broker-agent or as a life agent to meet prelicensing education standards as follows:

(a) Require a minimum of 40 hours of prelicensing classroom study as a prerequisite to qualification for a fire and casualty

broker-agent license. The curriculum for satisfying this requirement shall be approved by the curriculum board and submitted to the commissioner for final approval. Any additions to the minimum requirements provided by this section shall be approved by the curriculum board pursuant to Section 1749.1 and certified by the department.

(b) Require a minimum of 40 hours of prelicensing classroom study as a prerequisite for qualification for a life agent license. The curriculum for satisfying this requirement shall be approved by the curriculum board and submitted to the commissioner for final approval. Any additions to the minimum requirements provided by this section shall be approved by the curriculum board pursuant to Section 1749.1 and certified by the department. Beginning on January 1, 1995, this curriculum shall also include instruction in workers' compensation and general principles of employers' liability.

(c) In addition to the 40 hours prelicensing education required to qualify for a license as a broker-agent or life agent, the department shall require 12 hours of study on ethics and this code. Where an applicant seeks a license for both the broker-agent license and the life license, the applicant shall only be required to complete one 12-hour course on ethics and this code. The curriculum for satisfying this requirement shall be approved by the curriculum board and submitted to the commissioner for final approval.

(d) An applicant for a life agent license or a fire and casualty broker-agent license who is currently licensed as such in another state and who has completed 40 hours of prelicensing education as a requirement for licensing in that state shall be required to complete only the course of study on ethics and the Insurance Code, as required by Section 1749. Additionally, any applicant for such a license holding one or more of the designations specified in subdivisions (a) to (e), inclusive, of Section 1749.4 shall be exempted from any requirement for courses in general insurance that would otherwise be a condition of issuance of the license.

(e) This section shall not apply to persons licensed as of December 31, 1991.

SEC. 5. Section 1749.02 is added to the Insurance Code, to read: 1749.02. "Twenty-four hour coverage" is the joint issuance of a workers' compensation policy with a disability insurance policy, health care service plan contract, or other medical insurance coverage for nonoccupational injuries and illnesses. This product shall not include a life insurance policy.

SEC. 6. Section 1749.3 of the Insurance Code is amended to read: 1749.3. An individual licensed as either a life agent or a fire and casualty broker-agent, but not as both, shall complete those courses, programs of instruction, or seminars approved by the commissioner for the type of license held. The minimum number of hours required is as follows:

(a) During each of the first four 12-month periods following the date of original issue, a minimum of 25 hours.

(b) Any licensee who has held a license prior to the effective date of this section, or who has complied with subdivision (a), shall satisfactorily complete 30 hours of instruction prior to renewal of the license. These hours of instruction may be completed at any time prior to renewal of the license.

(c) Notwithstanding subdivision (b), those licensees whose licenses expire in 1993 shall be required to satisfactorily complete 15 hours of continuing education prior to the 1993 license renewal.

(d) An individual whose license expires in 1992 shall not be required to show compliance with the requirements of subdivisions (a) and (b) until the next license renewal date.

(e) An individual licensed as both a fire and casualty broker-agent and as a life agent shall satisfy the requirements of this section by demonstrating completion of the courses, programs of instruction, or seminars approved by the commissioner for either license.

(f) Nothing in this section shall preclude an individual from taking courses, programs of instruction, or seminars approved by the commissioner and accumulating credits for completion thereof prior to the application of this section to the individual's license.

(g) A licensee who is employed by a licensed automobile dealer to offer only collision coverage, involuntary unemployment insurance, or credit life and disability insurance products shall not be required to meet the requirements of this section until the license renewal date next following December 31, 1993.

(h) Any life agent who wishes to sell 24-hour care coverage, as defined in Section 1749.02, shall complete a course, program of instruction, or seminar of an approved continuing education provider on workers' compensation and general principles of employer liability, which shall be completed by examination approved by the commissioner as part of the continuing education course, program of instruction, or seminar prior to selling this coverage. The required number of instruction hours shall be equal to but no greater than that required by the curriculum board for the prelicensing requirements of a fire and casualty broker-agent on these subjects. This requirement shall be part of, and not in addition to, the continuing education requirement of this section. The department shall complete this curriculum approval within 60 days of the effective date of the amendments to this section made at the 1994 portion of the 1993-94 Regular Session and shall approve any examinations within 20 days of receipt. If the department does not complete the curriculum and examination approval by the date required by this section, life agents may sell 24-hour care coverage, as defined in Section 1626, commencing on that date. However, once the department approves the curriculum and examination, life agents shall complete them within 90 days of their approval in order to continue selling 24-hour care coverage, as defined in Section 1749.02. Nothing in this section shall be deemed to allow a life agent to satisfy the obligations set forth in this section by other than a proctored examination administered or approved by the

department.

SEC. 7. Section 1750 of the Insurance Code is amended to read:

1750. The commissioner shall require in advance as a fee for filing application for the hereinafter designated licenses, renewals thereof, or changes in outstanding licenses, an amount calculated as set forth herein. The fee is determined by multiplying the number of license years in the period of the license applied for or the remaining period of an existing license counting any initial fractional license year of that period as one year for that purpose, as follows:

- (a) Fire and casualty broker-agent, fifty-six dollars (\$56).
- (b) Life agent, resident, fifty-six dollars (\$56).
- (c) Life agent, nonresident, fifty-six dollars (\$56).

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to permit insurance agents to sell a 24-hour medical care policy as soon as possible that lowers the cost of workers' compensation and health insurance coverage for employers in California, it is necessary for this act to take effect immediately.

CHAPTER 1070

An act to add Section 4011.2 to the Penal Code, relating to inmate medical costs.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 4011.2 is added to the Penal Code, to read:

4011.2. (a) Notwithstanding Section 4011.1, a sheriff, chief or director of correction, or chief of police is authorized to charge a fee in the amount of three dollars (\$3) for each inmate-initiated medical visit of an inmate confined in a county or city jail.

(b) The fee shall be charged to the inmate's personal account at the facility. If the inmate has no money in his or her personal account, there shall be no charge for the medical visit.

(c) An inmate shall not be denied medical care because of a lack of funds in his or her personal account at the facility.

(d) The medical provider may waive the fee for any inmate-initiated treatment and shall waive the fee in any life-threatening or emergency situation, defined as those health services required for alleviation of severe pain or for immediate diagnosis and treatment of unforeseen medical conditions that if not immediately diagnosed and treated could lead to disability or death.

(e) Followup medical visits at the direction of the medical staff

shall not be charged to the inmate.

(f) All moneys received by a sheriff, chief or director of correction, or chief of police pursuant to this section shall be transferred to the county or city general fund.

CHAPTER 1071

An act relating to small business, and making an appropriation therefor.

[Approved by Governor September 28, 1994. Filed with Secretary of State September 29, 1994.]

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

SECTION 1. (a) Notwithstanding Article 5 (commencing with Section 14030) of Chapter 1 of Part 5 of Division 3 of Title 1 of the Corporations Code or any other provision of law, the Secretary of Trade and Commerce shall use one hundred forty-five thousand dollars (\$145,000) of the revenues transferred to the Small Business Expansion Fund pursuant to paragraph (10) of subdivision (a) of Section 7102 of the Revenue and Taxation Code for the purposes of contracting with SAFE-BIDCO for the establishment of a small business development corporation expansion center on the north coast of California to serve the northern area of the County of Mendocino and the Counties of Del Norte and Humboldt.

(b) The one hundred forty-five thousand dollars (\$145,000) allocated by this act shall be used to fund the operation of the SAFE-BIDCO expansion center in Eureka for two years.

CHAPTER 1072

An act to amend Section 1250.9 of the Health and Safety Code, relating to health facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1994. Filed with Secretary of State September 29, 1994.]

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

SECTION 1. Section 1250.9 of the Health and Safety Code is amended to read:

1250.9. (a) The Office of Statewide Health Planning and Development shall conduct a demonstration project to evaluate the accommodation of postsurgical care patients for periods not exceeding two days, except that the attending physician and surgeon

may require that the stay be extended to no more than three days.

(b) (1) The demonstration project shall operate for a period not to exceed six years, for no more than 12 project sites, one of which shall be located in Fresno County. However, the demonstration project shall be extended an additional three years, to September 30, 1997, only for those project sites that were approved by the office and operational prior to January 1, 1994.

(2) Any of the 12 project sites may be distinct parts of health facilities, or any of those sites may be physically freestanding from health facilities. None of the project sites that are designated as distinct parts of health facilities, shall be located in the service area of any one of the six freestanding project sites. None of the project sites that are designated as distinct parts of health facilities shall have a service area that overlaps with any one or more service areas of the freestanding pilot sites. For the purposes of this section, service area shall be defined by the office.

(c) (1) The office shall establish standards for participation, commensurate with the needs of postsurgical care patients requiring temporary nursing services following outpatient surgical procedures.

(2) In preparing the standards for participation, the office may, as appropriate, consult with the state department and with a technical advisory committee which may be appointed by the Director of the Office of Statewide Health Planning and Development. The committee shall have no more than eight members, all of whom shall be experts in health care, as determined by the director of the office. One of the members of the committee shall, as determined by the director of the office, have specific expertise in the area of pediatric surgery and recovery care.

(3) If a technical advisory committee is established by the director of the office, members of the committee shall be reimbursed for any actual and necessary expenses incurred in connection with their duties as members of the committee.

(d) Not later than six months prior to the conclusion of the demonstration project, the office shall submit an evaluation of the demonstration project to the Legislature on the effectiveness and safety of the demonstration project in providing recovery services to patients receiving outpatient surgical services. The office, as part of the evaluation, shall include recommendations regarding the establishment of a new license category or amendment of existing licensing standards.

(e) The office shall establish and administer the demonstration project in facilities with no more than 20 beds which continuously meet the standards of skilled nursing facilities licensed under subdivision (c) of Section 1250, except that the office may, as appropriate and unless a danger to patients would be created, eliminate or modify the standards. This section shall not prohibit general acute care hospitals from participating in the demonstration project. The office may waive those building standards applicable to a project site which is a distinct part of a health facility which are

inappropriate, as determined by the office, to the demonstration project. Notwithstanding health facility licensing regulations contained in Division 5 (commencing with Section 70001) of Title 22 of the California Code of Regulations, a project site which is a distinct part of a health facility shall comply with all standards for participation established by the office and with all regulations adopted by the office to implement this section. A project site which is a distinct part of a health facility shall not, for the duration of the pilot project, be subject to Division 5 (commencing with Section 70001) of Title 22 of the California Code of Regulations which conflict, as determined by the office, with the demonstration project standards or regulations.

(f) The department shall issue a facility identification number to each facility selected for participation in the demonstration project.

(g) Persons who wish to establish recovery care programs shall make application to the office for inclusion in the pilot program. Applications shall be made on forms provided by the office and shall contain sufficient information determined as necessary by the office.

(h) As a condition of participation in the pilot program, each applicant shall agree to provide statistical data and patient information that the office deems necessary for effective evaluation. It is the intent of the Legislature that the office shall develop procedures to assure the confidentiality of patient information and shall only disclose patient information, including name identification, as is necessary pursuant to this section or any other law.

(i) Any authorized officer, employee, or agent of the office or the state department may, upon presentation of proper identification, enter and inspect any building or premises and any records, including patient records, of a pilot project participant at any reasonable time to review compliance with, or to prevent any violation of, this section or the regulations and standards adopted thereunder.

(j) The office may suspend or withdraw approval of any or all pilot projects with notice, but without hearing if it determines that patient safety is being jeopardized.

(k) The office may charge applicants and participants in the program a reasonable fee to cover its actual cost of administering the pilot program and the cost of any committee created under this section.

(l) The office may contract with a medical consultant or other advisers as necessary, as determined by the office. Due to the necessity to expedite the demonstration project and its extremely specialized nature, the contracts shall be exempt from Section 10373 of the Public Contract Code, and shall be considered sole-source contracts.

(m) The office may adopt emergency regulations to implement this section in accordance with Section 11346.1 of the Government Code, except that the regulations shall be exempt from the

requirements of subdivisions (e), (f), and (g) of that section. The regulations shall be deemed an emergency for the purposes of Section 11346.1.

Applications to establish any of the four project sites authorized by the amendments made to this section during the 1987-88 Regular Session of the California Legislature shall be considered by the office from among the applications submitted to it in response to its initial request for proposal process.

(n) Any administrative opinion, decision, waiver, permit, or finding issued by the office prior to July 1, 1990, with respect to any of the demonstration projects approved by the office prior to July 1, 1990, shall automatically be extended by the office to remain fully effective as long as the demonstration projects are required to operate pursuant to this section.

(o) The office shall not grant approval to a postsurgical recovery care facility, as defined in Section 97500.111 of Title 22 of the California Code of Regulations, which is freestanding, as defined in Section 97500.49 of Title 22 of the California Code of Regulations, to begin operation as a participating demonstration project if it is located in the County of Solano.

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

In order to prevent the closure of postsurgical centers which provide necessary health care, it is necessary for this act to take effect immediately.

CHAPTER 1073

An act to add Sections 317.5 and 317.6 to the Welfare and Institutions Code, relating to minors.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 317.5 is added to the Welfare and Institutions Code, to read:

317.5. (a) All parties who are represented by counsel at dependency proceedings shall be entitled to competent counsel.

(b) Each minor who is the subject of a dependency proceeding is a party to that proceeding.

SEC. 2. Section 317.6 is added to the Welfare and Institutions Code, to read:

317.6. (a) On or before January 1, 1996, the Judicial Council shall, after consulting with representatives from the State Bar of

California, county counsels, district attorneys, public defenders, county welfare directors, and children's advocacy groups, adopt rules of court regarding the appointment of competent counsel in dependency proceedings, including, but not limited to, the following:

- (1) The screening and appointment of competent counsel.
- (2) Establishing minimum standards of experience and education necessary to qualify as competent counsel to represent a party in dependency proceedings.
- (3) Procedures for handling client complaints regarding attorney performance, including measures to inform clients of the complaint process.
- (4) Procedures for informing the court of any interests of the minor which may need to be protected in other proceedings.

(b) On or before July 1, 1996, each superior court shall, after consulting with representatives from the State Bar of California, the local offices of the county counsel, district attorney, public defender, county welfare department, and children's advocacy groups, adopt local rules of court regarding the conduct of dependency proceedings that address items such as procedures and timeframes for the presentation of contested issues and witness lists to eliminate unnecessary delays in dependency hearings.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1074

An act to amend Section 21672 of, and to add Section 17539.35 to, the Business and Professions Code, and to add Section 319.3 to the Penal Code, relating to crimes.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 17539.35 is added to the Business and Professions Code, to read:

17539.35. No person shall advertise, offer, or operate any contest, as defined in subdivision (e) of Section 17539.3, in which any prize, including any money, property, service, or other matter of value, may be awarded or transferred if the opportunity to win that prize is conditioned on a minimum number of entries or contest participants.

SEC. 2. Section 21672 of the Business and Professions Code is amended to read:

21672. (a) Any person, or agent thereof, who knowingly manufactures, produces, or distributes unlicensed or counterfeit sports trading cards with the intent to deceive, injure, or defraud another, is guilty of a misdemeanor.

Any person, or agent thereof, who violates this subdivision shall do both of the following:

(1) Refund to the buyer the full amount paid for the unlicensed or counterfeit sports trading card or the full retail value of any nonmonetary consideration received in exchange for the unlicensed or counterfeit sports trading card, or both.

(2) Be liable to the buyer for a civil penalty not to exceed one thousand dollars (\$1,000) for each violation. Each card sold represents a separate and distinct violation.

(b) Any person who knowingly sells a cut, unlicensed sports trading card that has been produced by cutting the card from a publication in which unlicensed sports trading cards are bound, without disclosing the source and the means of producing the card, with the intent to deceive, injure, or defraud another, is guilty of a misdemeanor.

Any person who violates this subdivision shall do both of the following:

(1) Refund to the buyer the full consideration paid or furnished for the cut, unlicensed sports trading card.

(2) Be liable to the buyer for a civil penalty not to exceed one thousand dollars (\$1,000) for each violation. Each card sold represents a separate and distinct violation.

This provision does not apply to a sports trading card that is excluded from the definition of "unlicensed sports trading card" pursuant to subdivision (d) of Section 21670 of the Business and Professions Code by reason of being bound in a publication.

SEC. 3. Section 319.3 is added to the Penal Code, to read:

319.3. (a) In addition to Section 319, a lottery also shall include a grab bag game which is a scheme whereby, for the disposal or distribution of sports trading cards by chance, a person pays valuable consideration to purchase a sports trading card grab bag with the understanding that the purchaser has a chance to win a designated prize or prizes listed by the seller as being contained in one or more, but not all, of the grab bags.

(b) For purposes of this section, the following definitions shall apply:

(1) "Sports trading card grab bag" means a sealed package which

contains one or more sports trading cards that have been removed from the manufacturer's original packaging. A "sports trading card grab bag" does not include a sweepstakes, or procedure for the distribution of any sports trading card of value by lot or by chance, which is not unlawful under other provisions of law.

(2) "Sports trading card" means any card produced for use in commerce that contains a company name or logo, or both, and an image, representation, or facsimile of one or more players or other team member or members in any pose, and that is produced pursuant to an appropriate licensing agreement.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1075

An act to amend Sections 66453, 66455, 66455.1, and 66455.7 of the Government Code, relating to subdivisions.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 66453 of the Government Code is amended to read:

66453. (a) A local agency may make recommendations concerning proposed subdivisions in any adjoining city, or in any adjoining unincorporated territory provided that the proposed subdivisions are within three miles of the exterior boundary of the requesting local agency. A local agency wishing to make recommendations concerning proposed subdivisions shall file with the local agency having jurisdiction over the subdivisions a map indicating the territory for which it wishes to make recommendations. The local agency having jurisdiction shall issue a receipt for the territorial map.

(b) Within five days of a tentative map application being determined to be complete pursuant to Section 65943 for a proposed subdivision located, in whole or in part, within the territory outlined on the territorial map, the local agency shall transmit one copy of the proposed tentative map to the requesting local agency.

(c) Within 15 days of receiving a copy of a proposed subdivision map, the requesting local agency may submit recommendations to the local agency having jurisdiction. The local agency having jurisdiction shall consider these recommendations before acting on the tentative map.

SEC. 2. Section 66455 of the Government Code is amended to read:

66455. (a) The Department of Transportation may file with the legislative body of any local agency having jurisdiction, a map or an amended map of any territory within one mile on either or both sides of any state highway routing if the department believes the subdivision would have an effect upon an existing or a future state highway in that territory, the route of which has been adopted by the California Transportation Commission. The local agency having jurisdiction shall issue a receipt for the territorial map.

(b) Within five days of a tentative map application being determined to be complete pursuant to Section 65943 for a proposed subdivision located, in whole or in part, within the territory outlined on the territorial map, the local agency shall transmit one copy of the proposed tentative map to the district office of the department in which the proposed subdivision is located.

(c) Within 15 days after receiving a copy of the proposed subdivision map, the department may make recommendations to the local agency regarding the effect of the proposed subdivision upon the highway or highway route. The local agency shall consider these recommendations before acting on the tentative map.

SEC. 3. Section 66455.1 of the Government Code is amended to read:

66455.1. (a) The Department of Water Resources may file with the legislative body of any local agency having jurisdiction, a map or amended map of any territory within one mile on either or both sides of any facility of the State Water Resources Development System, if the department believes a proposed subdivision may have an effect upon any existing or planned future facility of the State Water Resources Development System in that territory. The local agency having jurisdiction shall issue a receipt for the territorial map.

(b) Within five days of a tentative map application being determined to be complete pursuant to Section 65943 for a proposed subdivision located, in whole or in part, within the territory outlined on the territorial map, the local agency shall transmit one copy of the proposed tentative map to the office of the department nearest the subdivision, unless the department specifies a different office on the territorial map filed with the local agency.

(c) Within 15 days after receiving a copy of a proposed subdivision map, the department may make recommendations to the local agency regarding the effect of the proposed subdivision upon the State Water Resources Development System or proposed additions to the system. The local agency having jurisdiction shall consider any recommendations before acting on the tentative map.

SEC. 4. Section 66455.7 of the Government Code is amended to read:

66455.7. (a) Within five days of a tentative map application being determined to be complete pursuant to Section 65943, the local agency shall send a notice of this determination to the governing board of any elementary school, high school, or unified school district within the boundaries of which the subdivision is proposed to be located. The notice shall identify information about the location of the proposed subdivision, the number of units, density, and any other information which would be relevant to the affected school district.

(b) Within 15 days after receiving the notice, the school district may make recommendations to the local agency regarding the effect of the proposed subdivision upon the school district. If the school district fails to respond within 15 days, the failure to respond shall be deemed approval of the proposed subdivision. The local agency having jurisdiction shall consider any recommendations before acting on the tentative subdivision map.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1076

An act to amend Sections 1033, 1034, and 10506 of, and to add Section 10506.4 to, the Insurance Code, relating to insurance.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 1033 of the Insurance Code is amended to read:

1033. (a) Claims allowed in a proceeding under this article shall be given preference in the following order:

- (1) Expense of administration.
- (2) Unpaid charges due under the provisions of Section 736.
- (3) Taxes due to the State of California.
- (4) Claims having preference by the laws of the United States and by laws of this state.
- (5) All claims of the California Insurance Guarantee Association or the California Life and Health Insurance Guaranty Association, and associations or entities performing a similar function in other

states, together with claims for refund of unearned premiums and all claims of policyholders of an insolvent insurer that are not covered claims.

Claims excluded by paragraphs (3) (except claims for refund of unearned premiums), (4), (5), (7), and (8) of subdivision (c) of Section 1063.1, subdivisions (h) and (i) of Section 1063.2, and paragraph (2) of subdivision (b) of Section 1067.02, shall be excluded from this priority.

(6) All other claims.

(b) (1) Every claim allowed under a separate account policy, contract, or agreement providing, in effect, that the assets allocated to the separate account shall not be chargeable with liabilities arising out of any other business of the insurer, shall be satisfied out of the assets properly allocated to and maintained in the separate account, excluding amounts allocated or transferred to the separate account by the insurer pursuant to subdivision (b) of Section 10506, equal to the reserves maintained in the separate account for the policies, contracts, or agreements. No liabilities of the insurer arising out of any other business of the insurer shall be satisfied from assets properly allocated to and maintained in a separate account except (1) from amounts allocated or transferred to the separate account pursuant to subdivision (b) of Section 10506 and (2) from any assets allocated to the separate account which exceed the reserves under the separate account policies, contracts, or agreements. For the purposes of this subdivision, "separate account policies, contracts, or agreements" shall mean any policies, contracts, or agreements that provide for separate accounts as contemplated by Section 10506, 10506.3, 10506.4, or 10541. Any valid and allowed claim against the general account for contractual benefits under an obligation authorized by Section 10506.4 shall be included as a claim within paragraph (5) of subdivision (a).

(2) Notwithstanding any other provision of law, to the extent that any assets of a life insurer, other than those assets properly allocated to, and maintained in, a separate account, have been used to fund or pay any expenses, taxes, or policyholder benefits that are attributable to a separate account policy, contract, or agreement which should have been paid by a separate account prior to the commencement of delinquency proceedings, then upon the commencement of delinquency proceedings, the separate accounts which benefited from this payment or funding shall first be used to repay or reimburse the company's general assets or account for any unreimbursed net sums due at the commencement of delinquency proceedings prior to the application of the separate account assets to the satisfaction of liabilities of the corresponding separate account policies, contracts, and agreements.

(c) Upon the issuance of an order appointing a conservator or liquidator for any person under the provisions of either Section 1011 or 1016 or both these sections, the lien of taxes due to the State of California imposed by Article 4 (commencing with Section 12491) of

Chapter 4 of Part 7 of Division 2 of the Revenue and Taxation Code shall become subordinate to the reasonable administrative expenses of the proceeding under the order.

SEC. 2. Section 1034 of the Insurance Code is amended to read:

1034. After the issuance of an order of liquidation under Section 1016, any of the following transactions occurring within four months prior to the application for the order shall be voidable by the commissioner if the transaction has the effect of giving to or enabling any creditor of the person to obtain a preference over any other creditor of the same class, or a greater percentage of his or her debt than any other creditor of the same class:

- (a) A transfer of property of the person.
- (b) The creation of a lien on the property of the person.
- (c) The suffering of a judgment against the person.
- (d) The transfers or other payments by the person pursuant to subdivision (f) of Section 10506 in support of guarantees contemplated by Section 10506.4.

SEC. 3. Section 10506 of the Insurance Code is amended to read:

10506. (a) Any domestic life insurance company may, after adoption of a resolution by its board of directors, allocate to one or more separate accounts, in accordance with the terms of a written agreement, any amounts which are paid to the company in connection with a pension, retirement, retirement medical benefits, or profit-sharing plan, or program for one or more persons, or with an individual or group variable life insurance policy, and which are to be, or may be, applied in payment or in making provision for payment of proceeds or benefits under the company's policies, contracts, or agreements of retirement benefits, and other benefits incidental thereto, in fixed or variable dollar amounts, or both. The income, if any, and gains or losses, realized or unrealized, on each account shall be credited to or charged against the amount allocated to the account in accordance with the agreement, without regard to the other income, gains or losses of the company. The amounts allocated to the accounts and accumulations thereon, by any life insurance company shall be invested and reinvested as specified in the policy, contract, or agreement without regard to any requirements or limitations prescribed by the laws of this state governing the investments of insurance companies, provided that the amounts allocated to separate accounts for which the insurer has issued guarantees of benefits as to dollar amount and duration or of funds as to all or part of the principal amount thereof or stated rate of interest, and the accumulations thereon pursuant to Section 10506.4, shall be invested in the types of investments permitted to life insurance companies for investments held in the insurer's general account as described in Article 3 (commencing with Section 1170), Article 4 (commencing with Section 1190), and Article 4.6 (commencing with Section 1211) of Chapter 2 of Part 2 of Division 1 (excluding Section 1212 thereof), except that the approved method of operations and applicable policy, contract, or agreement

provisions shall govern the amount of these investments held in the separate account. However, with regard to variable life insurance separate accounts and accumulations thereon, the separate accounts shall have sufficient net investment income and readily marketable assets to meet anticipated obligations under policies funded by the account. The limitations contained in Sections 1192.4 and 1198 are not applicable to these investments. These investments shall not be included in determining the propriety of other investments of the company. The liability of the company with respect thereto, but only to the extent prescribed in the agreement, shall be shown on the statement of the company in the manner prescribed by the commissioner. Amounts allocated by an insurance company to separate accounts in the exercise of the power granted by this section shall be owned by the company, but shall not be chargeable with liabilities arising out of any other business the company may conduct except and to the extent provided in the policy, contract, or agreement. The company shall not hold itself out to be a trustee in respect to these amounts.

(b) In addition to amounts otherwise allocated to separate accounts, a domestic life insurer may allocate to the account or accounts amounts which otherwise would be subject to investment in accordance with Article 4 (commencing with Section 1190) of Chapter 2 of Part 2 of Division 1. The aggregate of these additional amounts shall not, however, exceed 1 percent of its admitted assets as of the preceding December 31, or 5 percent of the excess of its admitted assets over its liabilities and required reserves as of the preceding December 31, whichever is the smaller. The company shall be entitled to withdraw at any time, in whole or in part, its participation in any separate account to which funds have been allocated as provided in this subdivision and to receive, upon withdrawal, its proportionate share of the value of the assets of the separate account at the time of withdrawal.

(c) In addition to the allocations to separate accounts provided for in subdivision (a) of this section, a domestic insurer may, at the request of a policyholder or contractholder or the beneficiary of a policy or contract, allocate to any such separate account or accounts death payments, proceeds of matured endowments, dividends, or surrender values.

(d) Except as otherwise provided in Section 10506.4, or with the approval of the commissioner, and under such conditions as to investments and other matters as he or she may prescribe, which shall recognize the guaranteed nature of the benefits provided, reserves for (1) benefits guaranteed as to dollar amount and duration and (2) funds guaranteed as to principal amount or stated rate of interest, shall not be maintained in a separate account that, as provided under applicable policy, contract, or agreement, is or is not chargeable with liabilities arising out of any other business the company may conduct.

(e) Unless otherwise approved by the commissioner, assets

allocated to a separate account shall be valued at their market value, or at amortized cost if it approximates market value within the limits and constraints imposed by the United States Securities and Exchange Commission, on the date of valuation, or, if there is no readily available market, then as provided under the terms of the contract or the rules or other written agreement applicable to the separate account. Unless otherwise approved by the commissioner, the portion of any of the assets of the separate account equal to the company's reserve liability with regard to the guaranteed benefits and funds referred to in subdivision (d) shall be valued in accordance with the rules otherwise applicable to the company's assets.

(f) (1) Except as provided in paragraph (2) of subdivision (f), a sale, exchange, or other transfer of assets may not be made by a company between any of its separate accounts, or between any other of its investment accounts and one or more of its separate accounts unless, in case of a transfer into a separate account, the transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made, and unless the transfer, whether into or from a separate account is made (1) by a transfer of cash, or (2) by a transfer of securities having a readily determinable market value, and the transfer of securities is approved by the commissioner. The commissioner may approve other transfers among the accounts if, in his or her opinion, the transfer would not be inequitable.

(2) Transfers from an insurer's general account to one or more of its separate accounts to establish and maintain reserves for the guarantees authorized by Section 10506.4 shall only be made in cash in accordance with methods of operations approved pursuant to subdivision (c) of Section 10506.4. A transfer shall not operate to increase the amounts permitted to be allocated by an insurer to the separate accounts pursuant to this subdivision or by subdivision (b) of Section 10506, and the provisions of that subdivision shall not limit these transfers.

(g) Any domestic life insurance company which establishes one or more separate accounts pursuant to this section may provide for special voting rights and procedures for participants in the separate account relating to investment policy, investment advisory services, and selection of certified public accountants in relation to the administration of the assets in any the separate account. The voting rights shall be in addition to, and shall not affect, voting rights of mutual insurers.

(h) The purpose and intent of this section is to permit the issuance and delivery of policies or contracts, in connection with a pension, retirement, retirement medical benefits, or profit-sharing plan, or program for one or more persons, or policies of variable life insurance, providing for the payment of benefits in fixed or variable amounts, or both, and the establishment of separate accounts by domestic companies for the administration of and investments under these agreements. To protect the public and policyholders located in

this state from hazardous operation by domestic and foreign companies, and to further the purpose and provision of this section, no domestic or foreign life insurance company shall undertake the issuance of any contract providing for variable benefits until the company has satisfied the commissioner that its condition or method of operation in connection with the issuance of these contracts shall not be such as would render its operation hazardous to the public or its policyholders in this state and, in the case of a foreign or alien insurer, that it meets the conditions prescribed in Section 716, for the issuance of a certificate of authority. In determining the qualification of a company requesting authority to issue contracts providing for variable benefits within this state the commissioner shall consider among other things, (1) the history of the company; (2) the character, responsibility, and general fitness of the officers and directors of the company; (3) the regulation of a foreign company by its state of domicile; (4) the adequacy of the investment management which the company is providing; and (5) the company's arrangements for the supervision of the marketing of the contracts. The commissioner may make reasonable rules and regulations as he or she considers necessary, proper, and advisable concerning the issuance and delivery of these policies and contracts and the payment of benefits thereunder and the manner in which the separate accounts shall be administered and which types of policies and contracts, if any, shall be subject to his or her approval prior to issue.

However, no company may provide variable benefits in its contracts unless it is an admitted insurer having and maintaining a combined capital and surplus of at least ten million dollars (\$10,000,000).

(i) (1) Any contract providing benefits payable in variable amounts delivered or issued for delivery in this state on or after the effective date of the amendments to this section enacted at the 1971 Regular Session of the Legislature shall contain a statement of the essential features of the procedures to be followed by an insurance company in determining the dollar amount of these variable benefits. Any contract under which the benefits vary to reflect investment experience, including a group contract and any certificate in evidence of variable benefits issued thereunder, shall state that the dollar amount shall so vary, and shall contain on its first page a statement to the effect that the benefits thereunder are on a variable basis. Except for Article 3a (commencing with Section 10159.1) of Chapter 1 of Part 2 of Division 2, in the case of a variable life insurance policy, and except as otherwise provided in this section, all pertinent provisions of this code shall apply to separate accounts and contracts relating thereto. Any variable life insurance contract, delivered or issued for delivery in this state on or after the effective date of the amendments to this section enacted at the 1992 Regular Session of the Legislature, shall contain such nonforfeiture provisions as are appropriate to such a contract.

(2) The reserve liability for variable contracts shall be established in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

(j) No insurer shall issue anywhere any group variable life insurance policy for which the master contractholder or any covered party is an individual residing in this state or is a corporation, association, trust, or other legal entity that is either domiciled in or has its principal place of business in this state, unless the insurer has become qualified to issue variable life insurance policies and its group master policy form together with all forms of certificates or notices thereunder have been approved by the commissioner. Group variable life insurance policies shall be issued only to groups referred to in Chapter 2 (commencing with Section 10200) of Part 2 of Division 2.

SEC. 4. Section 10506.4 is added to the Insurance Code, to read:

10506.4. (a) An admitted life insurer that is financially qualified pursuant to subdivision (b) and complies with the provisions of this section and those of Section 10506 that expressly refer to this section or are not inconsistent with it, may guarantee, pursuant to an approved policy, contract, or agreement, the value of the assets allocated to a separate account, which as provided under the applicable policy, contract, or agreement is not chargeable with liabilities arising out of any other business the company may conduct, or the investment results thereof, or the income thereon, or the benefits payable pursuant to the approved policy, contract, or agreement, and may transfer to the separate account cash to maintain its reserves for those guarantees pursuant to paragraph (2) of subdivision (f) of Section 10506. The general account of the insurer shall be paid reasonable and sufficient compensation not less frequently than quarterly, for risks and other expenses incurred, from any separate account that receives a guarantee authorized by this section.

(b) For the purposes of this section “approved policy, contract, or agreement” means a policy, contract, or agreement, the form of which has been approved by the commissioner, for issue or marketing in this state, and which in addition to meeting the requirements of all pertinent provisions of this code, meets the requirements of one, and only one, of the following paragraphs:

(1) A policy, contract, or agreement meets the requirements of this paragraph if it satisfies and is expected to satisfy over the full life of the policy, contract, or agreement all of the following conditions:

(A) The weighted asset valuation reserve factor for the assets held in the separate account pursuant to the terms of the policy, contract, or agreement shall not exceed 2 percent.

(B) Guarantees of interest which extend beyond 14 months at any time shall be no greater than 3 percent per annum.

(C) Any reserves required because the contract value is less than the reserves required for the policy, contract, or agreement shall be maintained in a separate identified segment of the insurer’s general

account or otherwise segregated within the general account, or be held in a separate account all of the assets of which shall also be chargeable with liabilities arising out of other business of the insurer.

(D) In the event the policy, contract, or agreement provides for withdrawals (other than those resulting from an election by a participant under a pension, retirement, retirement medical benefit, or profit-sharing plan) of amounts prior to the conversion date, if any, such withdrawals shall be made in either of the following manners:

(i) In a lump sum in an amount not to exceed the market value.

(ii) In one or more contract value installments the present value of which is equal to or less than the market value of the aggregate withdrawal.

(2) A policy, contract, or agreement meets the requirements of this paragraph if it satisfies and is expected to satisfy over the full life of the policy, contract, or agreement all of the following conditions:

(A) The weighted asset valuation reserve factor for the assets held in the separate account pursuant to the terms of the policy, contract, or agreement shall not exceed 4 percent.

(B) The market value of the assets held in the separate account plus any reserves described in subparagraph (C) shall exceed the current aggregate liabilities determined by discounting the guaranteed benefit liability cash-flows at the rate of 105 percent of the then current yields as quoted on United States Government issued securities having substantially similar maturities by the following applicable amount:

(i) For assets consisting of debt instruments, an amount equal to the asset valuation reserve "maximum reserve factor," provided, however, that such factor shall be reduced by 50 percent for the purpose of this calculation if the difference in durations of the assets and liabilities (as confirmed in the actuarial statement referred to in subparagraph (B) of paragraph (1) of subdivision (d) are one year or less.

(ii) For assets which are not debt instruments, 20 percent.

(C) Any reserves required because the contract value is less than the reserves required for the policy, contract, or agreement shall be maintained in a separate identified segment of the insurer's general account or otherwise segregated within the general account, or be held in a separate account all of the assets of which shall also be chargeable with liabilities arising out of other business of the insurer.

(D) In the event the policy, contract, or agreement provides for withdrawals (other than those resulting from an election by a participant under a pension, retirement, retirement medical benefit, or profit-sharing plan) of amounts prior to the conversion date, if any, such withdrawals shall be made in either of the following manners:

(i) In a lump sum in an amount not to exceed the market value.

(ii) In one or more contract value installments the present value of which is equal to or less than the market value of the aggregate

withdrawal.

(3) A policy, contract, or agreement meets the requirements of this paragraph if it satisfies and is expected to satisfy over the full life of the policy, contract, or agreement all of the following conditions:

(A) The guarantees contained in the policy, contract, or agreement applicable to the value of the assets held in the separate account by the insurer shall be based upon a publicly available interest rate series or an index of the aggregate market value of a group of publicly traded financial instruments, such interest rate series or index to be specified in the policy, contract, or agreement.

(B) Assets held in the separate account and the accumulations thereon shall be invested in accordance with the requirements of subdivision (a) of Section 10506 applicable to policies, contracts, or agreements governed by this section and shall comply with all of the following:

(i) Interest-bearing bonds, notes, or other obligations shall be publicly traded or meet applicable requirements of the United States Securities and Exchange Commission enabling such securities to be publicly traded.

(ii) Investments in capital stock shall be traded on an exchange regulated by the United States Securities and Exchange Commission, and investments in any futures contracts with respect thereto shall be traded on an exchange regulated under the Commodities Exchange Act (Title 7, United States Code).

(iii) Issuers of interest-bearing obligations held in the separate account must be rated by an independent nationally recognized financial rating agency approved by the commissioner or by the Securities Valuation Office of the National Association of Insurance Commissioners.

(iv) With respect to any investments in shares of investment companies registered under the federal Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.) the assets of such entity must qualify as investments directly allowed for separate accounts pursuant to the requirements of subdivision (a) of Section 10506 applicable to policies, contracts, or agreements governed by this section.

(v) The type, quality, industry diversification, prepayment characteristics, expected duration, and other factors pertaining to investments shall be set forth in the approved method of operations which shall contain a demonstration satisfactory to the commissioner that such investments are likely to achieve the performance of the applicable index or interest rate series.

(C) The period between the commencement date of the guaranty of the value of the assets held in the separate account and the conversion date, if any, shall not exceed five years.

(D) Any reserves required because the contract value is less than the reserves required for the policy, contract, or agreement shall be maintained in a separate identified segment of the insurer's general account or otherwise segregated within the general account, or be

held in a separate account all of the assets of which shall also be chargeable with liabilities arising out of other business of the insurer.

(E) In the event the policy, contract, or agreement provides for withdrawals (other than those resulting from an election by a participant under a pension, retirement, retirement medical benefit, or profit-sharing plan) of amounts prior to the conversion date, if any, such withdrawals shall be made in either of the following manners:

(i) In a lump sum in an amount not to exceed the market value.

(ii) In one or more contract value installments the present value of which is equal to or less than the market value of the aggregate withdrawal.

(4) For the purposes of this section, "conversion date" means the date, if any, specified in the policy, contract, or agreement upon which the assets held pursuant to it shall be converted or applied to the purchase of annuities or returned to the owner of the policy, contract, or agreement, or its designee.

(5) For the purposes of this section, the "asset valuation reserve factor" for each asset will be determined by the application of the asset valuation reserve factor, "maximum reserve factor," as contained in the National Association of Insurance Commissioners (NAIC) Life, Accident and Health Annual Statement Instructions (Instructions) and Valuation of Securities Manual, or if not contained therein, an asset valuation reserve factor of 20 percent shall be assigned. To determine the weighted asset valuation reserve factor, the asset valuation reserve factor shall be applied to the market value of each asset.

(6) For the purposes of this section, "market value" means the policy, contract, or agreement's proportionate share of the actual market value of the separate account at the time of withdrawal or if the determination of market value is by formula, the formula shall be set forth in the policy, contract, or agreement and shall be designed to closely match actual market value.

(c) No admitted life insurer may issue or market in this state, nor may any domestic life insurer issue or market anywhere, a policy, contract, or agreement, or coverage thereunder by certificate or otherwise, which contains the guarantees referred to in subdivision (a) unless both of the following apply:

(1) It has received from the commissioner authority to issue policies or contracts providing for the payment of variable benefits pursuant to subdivision (h) of Section 10506.

(2) The commissioner has determined after application by the insurer in the form and content as the commissioner may require, review of the insurer's applicable proposed method of operations relating to policies, contracts, or agreements containing the guarantees authorized by subdivision (a), payment of fees specified in Section 736 and consideration of the matters set forth in subdivision (h) of Section 10506, that the insurer is financially qualified to issue policies, contracts, or agreements which contain the

guarantees referred to in subdivision (a) including by meeting or exceeding the financial standards in subdivision (d).

(d) (1) No admitted life insurer that has been financially qualified pursuant to subdivision (c) may issue or market or continue to issue or market in this state, nor may any domestic life insurer issue or market anywhere or continue to issue or market anywhere, policies, contracts, or agreements, or coverage thereunder by certificate or otherwise, providing the guarantees referred to in subdivision (a) unless all of the following apply:

(A) It has at least one billion dollars (\$1,000,000,000) of admitted assets or at least one hundred million dollars (\$100,000,000) of aggregate capital and surplus.

(B) It annually complies with the requirement to furnish an actuarial statement in addition to the statement required by Section 10489.15, which actuarial statement is in form and substance satisfactory to the commissioner, and states that, after taking into account risk charges payable from the assets of the separate account with respect to the guarantee, the assets in the separate account, together with any reserves in excess of the contract value, make good and sufficient provision for the liabilities of the insurer with respect thereto, and further states that the pricing of any general account guarantees and other fees for administration paid to the general account are reasonable and sufficient, which opinion shall be accompanied by a memorandum, also in form and substance satisfactory to the commissioner, of the qualified actuary describing the calculations made in support of the opinion and assumptions used in the calculations.

(C) Its ratio of aggregate capital and surplus to its aggregate liabilities is not lower than 75 percent of such ratio as of the December 31 prior to its receiving financial qualification from the commissioner except as allowed under paragraph (4) of subdivision (d).

For the purposes of this section, "capital and surplus" includes capital and surplus plus the asset valuation reserve and one-half of the liability for dividends, all as reflected on the most recent financial statement on file with the commissioner. "Liabilities" means the total liabilities as reflected on such financial statement excluding therefrom liabilities for policies, contracts, and agreements issued in connection with separate accounts, liabilities in connection with contracts issued pursuant to this section and excluding both of the following:

- (i) The liability for any asset valuation reserve.
- (ii) One-half the liability for dividends.

(2) If the commissioner, following notice to the insurer and a hearing, determines that an insurer which has received financial qualification pursuant to subdivision (c) no longer maintains the financial strength needed to initially receive such qualification, the commissioner may issue an order requiring the insurer to cease issuing new policies, contracts, or agreements providing for

guarantees contemplated by subdivision (a).

(3) In the event an insurer which has received financial qualification pursuant to subdivision (c) determines that it does not meet the requirements of subdivision (d), it shall promptly comply with paragraph (2) as if an order had been issued by the commissioner after notice and hearing, and within 45 days, notify the commissioner in writing at the place designated by the commissioner that it has ceased to meet the requirements specified in such written notice.

(4) In the event the insurer thereafter meets or exceeds all of the requirements of subdivision (d), it may notify the commissioner at the place designated by the commissioner, in writing, and upon the passage of 45 days following receipt by the commissioner of such notice, may resume issuing policies, contracts, or agreements that provide for guarantees contemplated by subdivision (a) as long as it meets the requirements of subdivision (d), provided, however, that if the insurer believes that the resumption of the issuance of the policies, contracts, or agreements that provide for the guarantees contemplated by subdivision (a) would not be hazardous to its policyholders or the citizens of California even though it does not meet the requirements specified in subparagraph (C) of paragraph (1), the insurer shall include in such notice a demonstration that the issuance of policies, contracts, or agreements containing the guarantees referred to in subdivision (a) is not hazardous to its policyholders or the citizens of California. Within the 45-day period, the commissioner may issue an order containing the requirements of paragraph (2) if, in the commissioner's opinion, any of the requirements of subdivision (d) are not met, or resumption would violate any provision of this code or, such resumption may be hazardous to the insurer, policyholders, creditors, or the public. The failure to issue an order within 45 days shall not be deemed an approval of such activities. The order shall specify the grounds upon which the commissioner is basing the order. The insurer may, within 10 days of the order, request a hearing. The hearing shall be a private hearing and shall commence not less than 10 days, nor more than 20 days, after the request for hearing is served on the commissioner.

(e) Policies, contracts, and agreements containing guarantees referred to in subdivision (a), that are not otherwise subject to filing under applicable law and regulation, shall be filed, before being marketed or issued in this state, by the insurer with the commissioner. If the commissioner finds that the policies, contracts, or agreements submitted pursuant to subdivision (a) contemplate practices that are unfair or unreasonable or otherwise inconsistent with the provisions of this code, he or she may disapprove of the forms of policies, contracts, or agreements specifying in what regard such policies, contracts, or agreements are unfair or unreasonable or otherwise inconsistent with the provisions of this code.

(f) The commissioner may issue a bulletin setting forth reasonable requirements for insurers issuing policies, contracts, or agreements

containing guarantees referred to in subdivision (a) relating to all of the following:

(1) The reserves to be maintained by insurers for those policies, contracts, or agreements.

(2) The accounting and reporting of funds credited under those policies, contracts, or agreements.

(3) The disclosure of information to be given to holders and prospective holders of those policies, contracts, or agreements.

(4) The qualification of persons selling those policies, contracts, or agreements on behalf of the insurers.

(5) The filing of those policies, contracts, or agreements with the commissioner.

(6) Such other matters relating to those policies, contracts, and agreements as the commissioner considers necessary, proper, and advisable that are not inconsistent with this section.

The bulletin authorized by this subdivision shall have the same force and effect, and may be enforced by the commissioner to the same extent and degree, as regulations issued by the commissioner until such time as the commissioner issues additional or amended regulations.

(g) The authority granted in this section is in addition to the authority granted to life insurers by other provisions of this code and the requirements of this section shall not contravene such authority. No policy, contract, or agreement that constitutes investment return assurance pursuant to Section 10203.10 or Section 10507 may be issued pursuant to this section.

(h) Guarantees authorized by this section may only be made in connection with policies, contracts, or agreements issued to an owner which is not a natural person, and is an "accredited investor" as defined in Regulation D-Rules Governing the Limited Offer and Sale of Securities Without Registration Under the Securities Act of 1933, 17 Code of Federal Regulations Section 230.501 et seq., as promulgated by the United States Securities and Exchange Commission, in transactions where the aggregate single premium or deposit for all policies, contracts, or agreements (excluding certificates issued under a group or master policy) issued to the owner containing guarantees authorized by this section is at least one million dollars (\$1,000,000). Notwithstanding the foregoing, an insurer may issue policies, contracts, or agreements qualifying under paragraph (1) of subdivision (b) above, to a pension, retirement, or retirement medical benefit or profit-sharing plan reasonably expected to receive contributions in excess of two hundred fifty thousand dollars (\$250,000) within the first 12 months following issuance of the policy, contract, or agreement and which has more than 10 participants. Policies, contracts, or agreements providing coverage in this state, by certificate or otherwise, that contain guarantees authorized by this section issued on a group basis shall be issued only to groups referred to in Chapter 2 (commencing with Section 10200) of Part 2 of Division 2.

SEC. 5. The provisions of Section 10506.4 of the Insurance Code do not affect the classification, rights, remedies, privileges, or priorities in a delinquency proceeding of the holders, owners, or beneficiaries of, or any other person claiming any interest in, any policy, contract, or agreement which was issued by any life insurer for which an order under Section 1011 of the Insurance Code was issued prior to the effective date of the act.

CHAPTER 1077

An act to amend Sections 5070, 5070.7, 5134, and 5152 of, and to add Section 5152.1 to, the Business and Professions Code, relating to accountants.

[Approved by Governor September 28, 1994. Filed with Secretary of State September 29, 1994.]

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

SECTION 1. Section 5070 of the Business and Professions Code is amended to read:

5070. Permits to engage in the practice of public accountancy in this state shall be issued by the board only to holders of the certificate of certified public accountant issued under this chapter and to those partnerships, corporations, and other persons who, upon application approved by the board, are registered with the board under this chapter. All applicants for registration shall furnish satisfactory evidence that the applicant is entitled to registration and shall pay the fee as provided in Article 8 (commencing with Section 5130). Every partnership, corporation, and other person to whom a permit is issued after December 31, 1962, shall, in addition to any other fee which may be payable, pay the initial permit fee provided in Article 8 (commencing with Section 5130).

Each partnership, corporation, and other person issued a permit by the board to practice as a certified public accountant or as a public accountant shall be furnished with a suitable certificate evidencing such registration.

SEC. 2. Section 5070.7 of the Business and Professions Code is amended to read:

5070.7. (a) A permit that is not renewed within five years following its expiration may not be renewed, restored, or reinstated thereafter, and the certificate of the holder of the permit shall be canceled immediately upon expiration of the five-year period, except as provided in subdivision (e).

(b) A partnership or corporation whose certificate has been canceled by operation of this section may obtain a new certificate and permit only if it again meets the requirements set forth in this chapter relating to registration and pays the registration fee and

initial permit fee.

(c) A certified public accountant whose certificate is canceled by operation of this section may apply for and obtain a new certificate and permit if the applicant:

(1) Is not subject to denial of a certificate and permit under Section 480.

(2) Pays all of the fees that would be required of him or her if he or she were then applying for the certificate and permit for the first time.

(3) Takes and passes the examination which would be required of him or her if he or she were then applying for the certificate for the first time. The examination may be waived in any case in which the applicant establishes to the satisfaction of the board that, with due regard for the public interest, he or she is qualified to engage in practice as a certified public accountant.

(d) The board may, by appropriate regulation, provide for the waiver or refund of all or any part of the application fee in those cases in which a certificate is issued without an examination under this section.

(e) Revoked permits may not be renewed, but may be reinstated by the board, without regard to the length of time that has elapsed since the permit was revoked, and with conditions and restrictions as the board shall determine.

SEC. 3. Section 5134 of the Business and Professions Code is amended to read:

5134. The amount of fees prescribed by this chapter is as follows:

(a) The fee to be charged to each applicant for the certified public accountant examination shall be fixed by the board at an amount to equal the actual cost to the board of the purchase or development of the written examination, plus the estimated cost to the board of administering the written examination and shall not exceed two hundred fifty dollars (\$250). The board may charge a reexamination fee equal to the actual cost to the board of the purchase or development of the written examination or any of its component parts, plus the estimated cost to the board of administering the written examination and not to exceed fifty dollars (\$50) for each part that is subject to reexamination.

(b) The fee to be charged to out-of-state candidates for the certified public accountant examination shall be fixed by the board at an amount equal to the estimated cost to the board of administering the examination and shall not exceed one hundred fifty dollars (\$150) per candidate.

(c) The application fee to be charged to each applicant for issuance of a certified public accountant certificate shall be fixed by the board at an amount equal to the estimated administrative cost to the board of processing and issuing the certificate and shall not exceed two hundred fifty dollars (\$250).

(d) The application fee to be charged to each applicant for issuance of a certified public accountant certificate by waiver of

examination shall be fixed by the board at an amount equal to the estimated administrative cost to the board of processing and issuing the certificate and shall not exceed two hundred fifty dollars (\$250).

(e) The fee to be charged to each applicant for registration shall be fixed by the board and shall not exceed one hundred fifty dollars (\$150).

(f) The board shall fix the biennial renewal fee so that, together with the estimated amount from revenue other than that generated by subdivisions (a) to (d), inclusive, the reserve balance in the board's contingent fund shall be equal to approximately three months of annual authorized expenditures. Any increase in the renewal fee made after July 1, 1990, shall be effective upon a determination by the board, by regulation adopted pursuant to subdivision (k), that additional moneys are required to fund authorized expenditures other than those specified in subdivisions (a) to (d), inclusive, and maintain the board's contingent fund reserve balance equal to three months of estimated annual authorized expenditures in the fiscal year in which the expenditures will occur. The biennial fee for the renewal of each of the permits to engage in the practice of public accountancy specified in Section 5070 shall not exceed two hundred fifty dollars (\$250).

(g) The delinquency fee shall be 50 percent of the accrued renewal fee.

(h) The initial permit fee is an amount equal to the renewal fee in effect on the last regular renewal date before the date on which the permit is issued, except that, if the permit is issued one year or less before it will expire, then the initial permit fee is an amount equal to 50 percent of the renewal fee in effect on the last regular renewal date before the date on which the permit is issued. The board may, by regulation, provide for the waiver or refund of the initial permit fee where the permit is issued less than 45 days before the date on which it will expire.

(i) The fee to be charged for filing of sponsor agreements for continuing education courses shall be fixed by the board at not more than one hundred dollars (\$100). Universities, colleges, or other four-year institutions of learning accredited by a regional or national accrediting agency or association included in a list of those agencies or associations published by the United States Commissioner of Education under the requirements of Section 253 of the Veterans' Readjustment Assistance Act of 1952, known as Public Law 550 of the 82nd Congress, as amended, are exempted from the payment of this filing fee.

(j) The actual and estimated costs referred to in this section shall be calculated every two years using a survey of all costs attributable to the applicable subdivision.

(k) Upon the effective date of this section the board shall fix the fees in accordance with the limits of this section and, on and after July 1, 1990, any increase in any fee fixed by the board shall be pursuant to regulation duly adopted by the board in accordance with the limits

of this section.

(l) Fees collected pursuant to subdivisions (a) to (d), inclusive, shall be fixed by the board in amounts necessary to recover the actual costs of providing the service for which the fee is assessed, as projected for the fiscal year commencing on the date the fees become effective.

(m) The application fee to be charged to each applicant for issuance of a retired certified public accountant seal or a retired public accountant seal pursuant to Section 5070.1 shall be fixed by the board at an amount equal to the estimated administrative cost to the board of processing and issuing the seal and shall not exceed one hundred twenty-five dollars (\$125).

SEC. 4. Section 5152 of the Business and Professions Code is amended to read:

5152. Each accountancy corporation shall file with the board at the times the board may require a report containing information pertaining to qualification and compliance with the statutes, rules and regulations of the board as the board may determine. All reports shall be signed and verified by an officer of the corporation.

SEC. 5. Section 5152.1 is added to the Business and Professions Code, to read:

5152.1. Each accountancy corporation shall renew its permit to practice biennially and shall pay the renewal fee fixed by the board in accordance with Section 5134.

CHAPTER 1078

An act to amend Section 40453 of the Health and Safety Code, relating to air pollution.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 40453 of the Health and Safety Code is amended to read:

40453. (a) By July 1, 1991, and every three years thereafter, the south coast district board shall contract with an independent auditor to conduct a performance audit that will assess all of the following:

(1) Whether the objectives of proposed, new, or ongoing programs established by the Legislature or another authorizing body, are being, or will be, achieved.

(2) The effectiveness of the individual programs and activities of the south coast district.

(3) Whether the south coast district has complied with the laws, rules, and regulations applicable to the program.

(4) Whether there exist alternatives for carrying out the south

coast district program that might yield desired results more effectively and efficiently, albeit at lower or higher cost.

(b) The performance audit shall include an assessment of policies, procedures, and productivity, as feasible, and shall make recommendations for changes that would enable the south coast district to meet its statutory mandates in a cost-effective manner.

(c) Prior to entering into a contract pursuant to subdivision (a), the district shall draft a request for proposals to be issued to qualified independent firms, which shall be reviewed by the Legislative Analyst prior to issuance.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1079

An act to add Division 1.1 (commencing with Section 4000) to the Financial Code, relating to financial institutions.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Division 1.1 (commencing with Section 4000) is added to the Financial Code, to read:

DIVISION 1.1. THE SETTING OF FEES IN CONSUMER CREDIT AGREEMENTS AND RELATED CONSUMER PROTECTIONS

4000. (a) For purposes of this division, the following terms have the following meanings:

(1) "Charge cardholder" and "charge card issuer" have the meaning defined in Section 1748.21 of the Civil Code and "charge card" means those cards defined in subdivision (a) of Section 1748.21 of the Civil Code and upon which the full balance is due and payable in each billing cycle.

(2) "Consumer" means a natural person.

(3) "Consumer credit agreement" means any written instrument providing for an extension of unsecured open-end credit for personal, family, or household purposes, that governs the relationship between a supervised financial organization and one or

more consumers.

(4) "Charge card agreement" means the written instrument that creates and governs the relationship between a charge card issuer and one or more consumers.

(5) "Minimum payment" means that amount of money recited on a billing statement for an open-end credit account that must be received by the supervised financial institution by a specified due date.

(6) "Open-end credit" has the meaning set forth in Section 226.2(a)(20) of Regulation Z.

(7) "Regulation Z" means any rule, regulation, or interpretation promulgated by the Board of Governors of the Federal Reserve System under the federal Truth in Lending Act, as amended (15 U.S.C. Sec. 1601 et seq.), and any interpretation or approval issued by an official or employee of the Federal Reserve System duly authorized by the board under the Truth in Lending Act, as amended, to issue interpretations or approvals.

(8) "Security interest" has the meaning set forth in Section 226.2(a)(25) of Regulation Z.

(9) "Supervised financial organization" means a state or federally regulated bank, savings association, savings bank, or credit union, or a subsidiary of any of the above.

(10) "Unsecured" means that the supervised financial organization is not granted a security interest in personal or real property under the consumer credit agreement.

(b) Notwithstanding any other provisions of law, the definitions contained in this section shall control transactions governed by this division.

4001. (a) A supervised financial organization or charge card issuer may not charge more than any of the following amounts:

(1) If set forth in the consumer credit or charge card agreement, one of the following fees:

(A) Seven dollars (\$7) with respect to any monthly billing cycle as a late payment charge on the minimum payment due that is not paid within five days after the date the payment is due.

(B) Ten dollars (\$10) with respect to any monthly billing cycle as a late payment charge on the minimum payment due that is not paid within 10 days after the date the payment is due.

(C) Fifteen dollars (\$15) with respect to any monthly billing cycle as a late payment charge on the minimum payment due that is not paid within 15 days after the date the payment is due.

(2) In lieu of the fee permitted by paragraph (1), if the consumer has already incurred two late payment fees during the preceding 12-month period, the fee charged may be no more than ten dollars (\$10) with respect to any monthly billing cycle as a late payment charge on the minimum payment due that is not paid within five days after the date the payment is due.

(3) Ten dollars (\$10) with respect to any charge that causes the outstanding balance to exceed the credit limit by five hundred

dollars (\$500) or 120 percent, whichever is less. No overlimit fee may be charged unless the charge causes the outstanding balance to exceed the credit limit by five hundred dollars (\$500) or 120 percent, whichever is less. Not more than one overlimit charge may be assessed with respect to any monthly billing cycle.

(b) In addition to imposing a fee for any late payment or overlimit as authorized by subdivision (a), a supervised financial organization may assess a finance charge at the rates set forth in the consumer credit agreement on the outstanding balance, which may include any late payment or overlimit fee charged on a prior billing statement.

(c) Whenever a consumer fails to make a minimum payment on or before the due date specified in the billing statement, plus the applicable late payment grace period, a late payment fee may be assessed by the supervised financial organization or charge card issuer. A supervised financial organization or charge card issuer may impose no more than one late payment fee with respect to any monthly billing cycle. All payments by the consumer shall be applied by a supervised financial organization to satisfaction of scheduled payments in the order that they become due. A charge card issuer shall apply all payments made by the consumer to satisfaction of unpaid amounts in the order that they become due.

(d) A supervised financial organization shall provide a minimum number of days between the monthly billing statement date and the date upon which the minimum payment is due, exclusive of the applicable late payment grace period provided for in paragraph (1) of subdivision (a), and a charge card issuer shall provide a minimum number of days between the monthly billing statement date and the date upon which the applicable late payment grace period provided for in paragraph (1) of subdivision (a) begins to run, of at least:

(1) Twenty-three days, on an average basis over a calendar year or other consecutive 12-month period, for any organization or issuer charging the fee authorized by subparagraph (A) of paragraph (1) of subdivision (a).

(2) Twenty days, on an average basis over a calendar year or other consecutive 12-month period, for any organization or issuer charging the fee authorized by subparagraph (B) or (C) of paragraph (1) of subdivision (a).

(e) (1) The applicable late payment grace period and fee shall be disclosed in the consumer credit agreement. The late payment grace period shall be disclosed in the consumer credit or charge card agreement but need not be disclosed in any monthly or other billing statement. The amount and conditions for imposition of any fee for overlimit activity shall also be disclosed in the consumer credit or charge card agreement.

(2) If a consumer credit or charge card agreement contains a provision for a late payment fee or overlimit fee, each monthly or other billing statement shall disclose the amount of the late payment and overlimit fee and the date the minimum payment is due.

CHAPTER 1080

An act to add Article 3.5 (commencing with Section 4161) to Chapter 6 of Part 3 of Division 3 of the Food and Agricultural Code, and to amend Section 6546 of the Government Code, relating to district agricultural associations, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1994. Filed with Secretary of State September 29, 1994.]

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

SECTION 1. Article 3.5 (commencing with Section 4161) is added to Chapter 6 of Part 3 of Division 3 of the Food and Agricultural Code, to read:

Article 3.5. 25th District Agricultural Association

4161. (a) The 25th District Agricultural Association may enter into a joint powers agreement pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code with the City of Napa for the purpose of establishing and operating a Napa Center for Wine, Food, and the Arts facility. In addition to those powers specifically authorized to be exercised by Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, the joint powers agency may accept the donation of, acquire, own, or lease, real property, and may plan, finance by the sale of revenue bonds, construct, equip, and furnish the facility, and parking facilities, and any betterments, improvements, and facilities related thereto, including a bridge to provide access to the facility across the Napa River. The joint powers agency may make and enter into contracts and employ agents and employees. The joint powers agency may manage, maintain, and operate the facility, or may enter into management contracts for the operation of the facility.

(b) The state is not liable for any debt incurred by the joint powers agency in the event of any default on revenue bonds issued by the agency. This disclaimer shall be deemed a provision of the joint powers agreement.

4162. The 25th District Agricultural Association may accept the donation of any real property suitable for the location of the Napa Center of Wine, Food, and the Arts facility, and may lease the property to the joint powers agency.

SEC. 2. Section 6546 of the Government Code is amended to read:

6546. In addition to other powers, any agency, commission, or board provided for by a joint powers agreement pursuant to Article 1 (commencing with Section 6500) may issue revenue bonds pursuant to this article to pay the cost and expenses of acquiring or

constructing a project or conducting a program for any or all of the following purposes:

(a) An exhibition building or other place for holding fairs or exhibitions for the display of agricultural, livestock, industrial, or other products, including movable equipment, entertainment facilities, and other facilities to be used in conjunction with holding a fair or exposition in several locations including those projects and facilities specified in paragraph (1) of subdivision (a) of Section 19606.1 of the Business and Professions Code, that project and facility authorized by Article 3.5 (commencing with Section 4161) of Chapter 6 of Part 3 of Division 3 of the Food and Agricultural Code, and for those purposes specified in an agreement pursuant to Section 6516 of the Government Code.

(b) A coliseum, a stadium, a sports arena or sports pavilion or other building for holding sports events, athletic contests, contests of skill, exhibitions, spectacles, and other public meetings.

(c) Any other public buildings, including, but not limited to, general administrative facilities of a city, county, city and county, special district, or authority.

(d) A regional or local public park, recreational area, or recreational center, and all facilities and improvements related thereto.

(e) A facility for the generation or transmission of electrical energy for public or private uses and all rights, properties, and improvements necessary therefor, including fuel and water facilities and resources. As used in this chapter, "transmission of electric energy" does not include the final distribution of electric energy to the consumer.

(f) A facility for the disposal, treatment, or conversion to energy and reusable materials of solid or hazardous waste or toxic substances.

(g) Facilities for the production, storage, transmission, or treatment of water or waste water.

(h) Local streets, roads, and bridges.

(i) Bridges and major thoroughfares construction pursuant to Sections 50029 and 66484.3.

(j) Mass transit facilities or vehicles.

(k) Publicly owned or operated commercial or general aviation airports and airport-related facilities.

(l) Police or fire stations.

(m) Public works facilities, including corporation yards.

(n) Public health facilities owned or operated by a city, county, city and county, special district, or authority.

(o) Criminal justice facilities, including court buildings, jails, juvenile halls, and juvenile detention facilities.

(p) Public libraries.

(q) Publicly owned or operated parking garages.

(r) Low-income housing projects owned or operated by a city, county, city and county, or housing authority.

(s) Public improvements authorized in a project area created pursuant to the Community Redevelopment Law, Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code.

(t) Public improvements authorized pursuant to the Improvement Act of 1911, Division 7 (commencing with Section 5000) of the Streets and Highways Code, the Improvement Bond Act of 1915, Division 10 (commencing with Section 8500) of the Streets and Highways Code, the Municipal Improvement Act of 1913, Division 12 (commencing with Section 10000) of the Streets and Highways Code, and the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5.

(u) Telecommunication systems or service, including, but not limited to, the installation, provision, or maintenance of that system or service.

(v) Programs, facilities, rights, properties, and improvements for the management, conservation, reuse, or recycling of electric capacity or energy, natural gas, water, waste water, or recycled water, including demand side or load management and other programs and facilities designed to reduce the demand for, or permit or promote the efficient use of, those resources.

“Programs,” for the purpose of this subdivision, shall include activities only to the extent the costs thereof may be charged to a capital account under applicable generally accepted accounting principles or are of a type required to be charged to a capital account by entities subject to regulation by the Public Utilities Commission or other regulatory body of the state.

(w) Equipment necessary to support the above-listed facilities or necessary to deliver public services therefrom, including, but not limited to, telecommunications equipment, computers, and service vehicles.

Bonds may be issued pursuant to this article if the joint powers entity, or its individual parties which contract pursuant to Section 6547.5, 6547.6, or 6547.7 to make payments to be applied to the payment of the indebtedness, have the power to acquire, construct, maintain, or operate one or more of the projects specified in this section.

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

This project is critical to the economic and social livelihood of the North Bay Area, and is ready to proceed. Therefore, it is necessary that this enabling legislation take effect immediately.

CHAPTER 1081

An act to amend Section 1812.5095 of the Civil Code, relating to employment.

[Approved by Governor September 28, 1994. Filed with Secretary of State September 29, 1994.]

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

SECTION 1. Section 1812.5095 of the Civil Code is amended to read:

1812.5095. (a) For purposes of this section, the term "employment agency" means an employment agency, as defined in paragraph (3) of subdivision (a) of Section 1812.501, or a domestic agency, as defined in subdivision (h) of Section 1812.501.

(b) An employment agency is not the employer of a domestic worker for whom it procures, offers, refers, provides, or attempts to provide work, if all of the following factors characterize the nature of the relationship between the employment agency and the domestic worker for whom the agency procures, offers, refers, provides, or attempts to provide domestic work:

(1) There is a signed contract or agreement between the employment agency and the domestic worker that contains, at a minimum, provisions that specify all of the following:

(A) That the employment agency shall assist the domestic worker in securing work.

(B) How the employment agency's referral fee shall be paid.

(C) That the domestic worker is free to sign an agreement with other employment agencies and to perform domestic work for persons not referred by the employment agency.

(2) The domestic worker informs the employment agency of any restrictions on hours, location, conditions, or type of work he or she will accept and the domestic worker is free to select or reject any work opportunity procured, offered, referred, or provided by the employment agency.

(3) The domestic worker is free to renegotiate with the person hiring him or her the amount proposed to be paid for the work.

(4) The domestic worker does not receive any training from the employment agency with respect to the performance of domestic work. However, an employment agency may provide a voluntary orientation session in which the relationship between the employment agency and the domestic worker, including the employment agency's administrative and operating procedures, and the provisions of the contract or agreement between the employment agency and the domestic worker are explained.

(5) The domestic worker performs domestic work without any direction, control, or supervision exercised by the employment agency with respect to the manner and means of performing the

domestic work. An employment agency shall not be deemed to be exercising direction, control, or supervision when it takes any of the following actions:

(A) Informs the domestic worker about the services to be provided and the conditions of work specified by the person seeking to hire a domestic worker.

(B) Contacts the person who has hired the domestic worker to determine whether that person is satisfied with the agency's referral service.

(C) Informs the domestic worker of the time during which new referrals are available.

(D) Requests the domestic worker to inform the employment agency if the domestic worker is unable to perform the work accepted.

(6) The employment agency does not provide tools, supplies, or equipment necessary to perform the domestic work.

(7) The domestic worker is not obligated to pay the employment agency's referral fee, and the employment agency is not obligated to pay the domestic worker if the person for whom the services were performed fails or refuses to pay for the domestic work.

(8) Payments for domestic services are made directly to either the domestic worker or to the employment agency. Payments made directly to the employment agency shall be deposited into a trust account until payment can be made to the domestic worker.

(9) The relationship between a domestic worker and the person for whom the domestic worker performs services may only be terminated by either of those parties and not by the employment agency that referred the domestic worker. However, an employment agency may decline to make additional referrals to a particular domestic worker, and the domestic worker may decline to accept a particular referral.

(c) The fee charged by an employment agency for its services shall be reasonable, negotiable, and based on a fixed percentage of the job cost.

(d) An employment agency referring a domestic worker to a job shall inform that domestic worker, in writing, on or before the signing of the contract pursuant to paragraph (1) of subdivision (b), that the domestic worker may be obligated to obtain business permits or licenses, where required by any state or local law, ordinance, or regulation, and that he or she is not eligible for unemployment insurance, state disability insurance, social security, or workers' compensation benefits through an employment agency complying with subdivision (b). The employment agency referring a domestic worker shall also inform that domestic worker, if the domestic worker is self-employed, that he or she is required to pay self-employment tax, state tax, and federal income taxes.

(e) An employment agency referring a domestic worker to a job shall verify the worker's legal status or authorization to work prior to providing referral services in accordance with procedures

established under federal law.

(f) An employment agency referring a domestic worker to a job shall orally communicate to the person seeking domestic services the disclosure set forth below prior to the referral of the domestic worker the following disclosure statement:

“(Name of agency) is not the employer of the domestic worker it referred to you. Depending on your arrangement with the domestic worker, you may have employer responsibilities.”

Within three business days after the employment agency refers a domestic worker to the person seeking domestic services, the following statement printed in not less than 10-point type shall be mailed to the person seeking domestic services:

“(Name of agency) is not the employer of the domestic worker it referred to you. The domestic worker may be your employee or an independent contractor depending on the relationship you have with him or her. If you direct and control the manner and means by which the domestic worker performs his or her work you may have employer responsibilities, including employment taxes and workers’ compensation, under state and federal law. For additional information contact your local Employment Development Department and the Internal Revenue Service.”

(g) An employment agency referring a domestic worker to a job shall not specify that a worker is self-employed or an independent contractor in any notice, advertisement, or brochure provided to either the worker or the customer.

(h) Every employment agency referring a domestic worker to a job and who is not the employer of the domestic worker being referred, shall in any paid telephone directory advertisement or any other promotional literature or advertising distributed or placed by such an employment agency, on or after January 1, 1995, insert the following statement, in no less than 6-point type which shall be in print which contrasts with the background of the advertisement so as to be easily legible:

“(Name of agency) is a referral agency.”

(i) An employment agency may not refer, in its advertising, soliciting, or other presentments to the public, to any bond required to be filed pursuant to this chapter.

(j) An employment agency may not refer, in its advertising, soliciting, or other presentments to the public, to any licensure acquired by the agency.

(k) Any violation of this section with the intent to directly or indirectly mislead the public on the nature of services provided by an employment agency shall constitute unfair competition which includes any unlawful, unfair, or fraudulent business acts or practices and unfair, deceptive, untrue, or misleading advertising. Any person or entity that engages in unfair competition shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation.

CHAPTER 1082

An act to add and repeal Article 4.7 (commencing with Section 742.20) to Chapter 1 of Part 2 of Division 1 of, the Insurance Code, relating to insurance.

[Approved by Governor September 28, 1994. Filed with Secretary of State September 29, 1994.]

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

SECTION 1. Article 4.7 (commencing with Section 742.20) is added to Chapter 1 of Part 2 of Division 1 of the Insurance Code, to read:

Article 4.7. Multiple Employer Welfare Arrangements

742.20. The Legislature finds and declares the following:

(a) An alternative to insurance programs, health care maintenance organizations, and panel provider organizations was established by Congress in 1974 through the Employee Retirement Income Security Act (ERISA). Among the various employee benefit programs established and governed by ERISA are multiple employer welfare arrangements (MEWA), which are subject as well to state regulatory and fiscal standards not inconsistent with ERISA. MEWAs permit employer members of trade associations to create trust funds for the purpose of offering and providing health care benefits to their employees. MEWAs can be created as fully insured or self-funded or partially self-funded benefit programs.

(b) The Legislature recognizes that some MEWAs provide an alternative mechanism to traditional health insurance for small employers. It is the intent of the Legislature to ensure the financial integrity of those MEWA programs that are already in existence by requiring self-funded or partially self-funded MEWAs to obtain a certificate of compliance from the Department of Insurance. In order for the Department of Insurance to grant a certificate of compliance, the MEWA must adhere to standards set forth in this act which are not inconsistent with the provisions of ERISA. Further, it is the intent of the Legislature to provide the Department of Insurance with the authority to levy monetary penalties and to revoke certificates of compliance from MEWAs that violate the provisions of this act.

(c) The Legislature has passed significant reforms in the area of small group health insurance. This article, in no manner, circumvents these reforms nor is it intended to be a precedent to do so. Therefore, the small group reform legislation applies to MEWAs to the extent it is not inconsistent with ERISA.

(d) The provisions of this article are consistent with and authorized by ERISA, which confers upon the states limited

authority to regulate MEWAs.

742.21. "Multiple employer welfare arrangement" as used in this article has the same meaning as that contained in Section 1002(40) (A) of Title 29 of the United States Code. "Employee welfare benefit plan," as used in this article, has the same meaning as that contained in Section 1002(1) of Title 29 of the United States Code. A multiple employer welfare arrangement shall comply with the criteria set forth for an employee welfare benefit plan in order to qualify to obtain a certificate of compliance.

742.215. As used in this article, "self-funded" means a multiple employer welfare arrangement that undertook at all times and for a continuous period of five years to reimburse health benefit costs incurred by covered persons pursuant to the benefits and coverages provided by their plan exclusively from plan assets. "Partially self-funded" means a multiple employer welfare arrangement that undertook at all times and for a continuous period of five years to reimburse health benefit costs incurred by covered persons pursuant to the benefits and coverages provided by their plan exclusively from plan assets, provided, however, that these benefits are reimbursable to the multiple employer welfare arrangement by stop loss insurance only to the extent that the benefits exceed fifty thousand dollars (\$50,000) per claim.

742.22. It is the intent of the Legislature in enacting this article to allow a self-funded or partially self-funded multiple employer welfare arrangement to meet the requirements for a certificate of compliance to do business in California. If the self-funded or partially self-funded multiple employer welfare arrangement obtains and maintains a certificate of compliance under these sections, it shall not be considered an unauthorized insurer.

742.23. (a) After December 31, 1995, a self-funded or partially self-funded multiple employer welfare arrangement shall not provide any benefits for any resident of this state without first obtaining a certificate of compliance pursuant to this article, provided, however, that if the commissioner has not issued or denied an application for a certificate of compliance within 180 calendar days of the date of the filing of the completed application, the commissioner shall not take any action against the applicant solely on the basis that the department has not granted the certificate of compliance.

(b) The department may take regulatory action against a MEWA pursuant to all applicable provisions of this code during the period beginning on the effective date of this act and ending on the date on which the MEWA is certified under this article, at which time the provisions of this article shall apply.

742.24. To be eligible for a certificate of compliance, a self-funded or partially self-funded multiple employer welfare arrangement shall meet all of the following requirements:

(a) Be nonprofit.

(b) Be established and maintained by a trade association, industry

association, professional association, or by any other business group or association of any kind that has a constitution or bylaws specifically stating its purpose, and have been organized and maintained in good faith with at least 200 paid members and operated actively for a continuous period of five years, for purposes other than that of obtaining or providing health care coverage benefits to its members. An association is a California mutual benefit corporation comprised of a group of individuals or employers who associate based solely on participation in a specified profession or industry, accepting for membership any individual or employer meeting its membership criteria, which do not condition membership directly or indirectly on the health or claims history of any person, and which uses membership dues solely for and in consideration of the membership and membership benefits.

(c) Be organized and maintained in good faith with at least 2,000 employees and 50 paid employer members and operated actively for a continuous period of five years.

(d) Have been operating in compliance with ERISA on a self-funded or partially self-funded basis for a continuous period of five years pursuant to a trust agreement by a board of trustees that shall have complete fiscal control over the multiple employer welfare arrangement, and that shall be responsible for all operations of the multiple employer welfare arrangement. The trustees shall be selected by vote of the participating employers and shall be owners, partners, officers, directors, or employees of one or more employers participating in the multiple employer welfare arrangement. A trustee may not be an owner, officer, or employee of the insurer, administrator, or service company providing insurance or insurance-related services to the association. The trustees shall have authority to approve applications of association members for participation in the multiple employer welfare arrangement and to contract with an authorized administrator or service company to administer the day-to-day affairs of the multiple employer welfare arrangement.

(e) Benefits shall be offered only to association members.

(f) Benefits may be offered only through life agents, as defined in Section 1622, licensed in the state whose names, addresses, and telephone numbers have been filed with the commissioner as licensed life agents for the multiple employer welfare arrangement.

(g) Be operated in accordance with sound actuarial principles and conform to the requirements of Section 742.31.

(h) File an application with the department for a certificate of compliance no later than June 30, 1995.

(i) The multiple employer welfare arrangement shall at all times maintain aggregate stop loss insurance providing the arrangement with coverage with an attachment point which is not greater than 125 percent of annual expected claims. The commissioner may, by regulation, define "expected claims" for purposes of this subdivision and provide for adjustments in the amount of the percentage in

specified circumstances in which the arrangement specifically provides for and maintains reserves in accordance with sound actuarial principles as provided in Section 742.31.

(j) The multiple employer welfare arrangement shall establish and maintain specific stop loss insurance providing the arrangement with coverage with an attachment point which is not greater than 5 percent of annual expected claims. The commissioner may, by regulation, define "expected claims" for purposes of this subdivision and provide for adjustments in the amount of that percentage as may be necessary to carry out the purposes of this subdivision determined by sound actuarial principles as provided in Section 742.31.

(k) The multiple employer welfare arrangement shall establish and maintain appropriate loss and loss adjustment reserves determined by sound actuarial principles as provided in Section 742.31.

(l) The association has within its own organization adequate facilities and competent personnel to serve the multiple employer welfare arrangement, or has contracted with a licensed third-party administrator to provide those services.

(m) The association has established a procedure for handling claims for benefits in the event of the dissolution of the multiple employer welfare arrangement.

(n) On and after January 1, 1995, in addition to the requirements of this article, maintain a surplus of not less than two hundred fifty thousand dollars (\$250,000); provided, however, that this amount be increased as follows: four hundred thousand dollars (\$400,000) by January 1, 1996; five hundred fifty thousand dollars (\$550,000) by January 1, 1997; seven hundred thousand dollars (\$700,000) by January 1, 1998, if this article is still in effect; eight hundred fifty thousand dollars (\$850,000) by January 1, 1999, if this article is still in effect; and one million dollars (\$1,000,000) by January 1, 2000, if this article is still in effect.

(o) Submit all proposed rate levels to the department for informational purposes no later than 45 days prior to their implementation. The proposed rates shall contain an aggregate benefit structure which has a loss ratio experience of not less than 80 percent. The loss ratio experience shall be calculated as claims paid during the contract period plus a reasonable estimate of claims liability for the contract period at the end of the current year divided by contributions paid or collected for the contract period minus unearned contributions at the end of the current year.

(p) Comply with the investment requirements of Article 3 (commencing with Section 1170) of Chapter 2 of Part 2 of Division 1 and Section 1192.5.

742.25. In determining the qualification of a multiple employer welfare arrangement, the commissioner will consider, among other things:

- (a) The history of the multiple employer welfare arrangement.
- (b) The competency, character, integrity, responsibility, and

general fitness of the management and administration.

(c) Financial stability.

(d) Whether claims were promptly and fairly adjusted and are promptly and fully paid in accordance with the law and the terms of the plan.

(e) Fairness and honesty of methods of doing business.

(f) Hazard to covered employees or creditors.

742.26. The multiple employer welfare arrangement shall issue to each covered employee a certificate evidencing coverage and a summary plan description of benefits and coverages provided. This evidence of the benefits and coverage provided shall contain the following statement: "The benefits and coverages described herein are provided through a trust fund established and funded by the _____ Plan, sponsored by the _____ Association. The trust is a self-funded plan established under ERISA (29 U.S.C. 1001 et seq.). This is not an insurance contract and the plan and trust is not acting as, or deemed to be an insurance company."

742.27. The department shall have the authority to revoke a certificate of compliance to any self-funded or partially self-funded multiple employer welfare arrangement if the department determines any of the following:

(a) The multiple employer welfare arrangement has failed, after written request by the commissioner, to remove or discharge any officer, director, trustee, or other employee who has been convicted of any crime involving fraud, dishonesty, or moral turpitude.

(b) The multiple employer welfare arrangement has unreasonably failed or refused to furnish any report or statement or has unreasonably refused the department access to its books or records as required by this article.

(c) The multiple employer welfare arrangement has failed for an unreasonable period to pay any judgment rendered against it by a court or other applicable regulatory agency or body.

(d) The multiple employer welfare arrangement is conducting business fraudulently or is not meeting its contractual obligations in good faith.

(e) The multiple employer welfare arrangement fails to comply with the provisions of Section 790.03.

(f) The multiple employer welfare arrangement fails to comply with Chapter 14 (commencing with Section 10700) of Part 2 of Division 2.

(g) The multiple employer welfare arrangement fails to comply with Article 3.1 (commencing with Section 1357) of Chapter 2.2 of Division 2 of the Health and Safety Code.

(h) The multiple employer welfare arrangement fails to establish, or at all times maintain, compliance with the requirements of this article, or other laws made applicable to the multiple employer welfare arrangement by this article.

742.28. A self-funded or partially self-funded multiple employer welfare arrangement authorized by this article shall be limited to

providing the following benefits:

(a) Medical, dental, optical, surgical, or other hospital care benefits.

(b) Benefits in the event of sickness, accident, or disability.

(c) Flexible benefits under Section 125 of the Internal Revenue Code. These benefits shall not include loss from liability imposed by law upon employers to compensate employees and their dependents for injury sustained by the employees arising out of and in the course of the employment, irrespective of negligence or the fault of either party.

742.29. An association seeking to establish an employee welfare benefit plan by the use of a self-funded or partially self-funded multiple employer welfare arrangement shall apply for a certificate of compliance on a form prescribed by the commissioner. The application shall be completed and submitted to the commissioner along with all of the following:

(a) Copies of all articles, bylaws, agreements, or other documents or instruments describing the rights and obligations of the employers, employees, and beneficiaries of the association with respect to the multiple employer welfare arrangement.

(b) Current audited financial statements of the association and the multiple employer welfare arrangement, and Internal Revenue Service Form number 5500 for the last five years.

(c) Proof of a fidelity bond in an amount equal to 10 percent of the funds handled annually by the multiple employer welfare arrangement. In no case may the amount of the bond be less than fifty thousand dollars (\$50,000) nor more than five hundred thousand dollars (\$500,000).

(d) A fiduciary liability policy with limits of not less than five hundred thousand dollars (\$500,000).

(e) A statement showing in full detail the benefit plan upon which the association has established and maintained the multiple employer welfare arrangement.

(f) A copy of all contracts or other instruments that it makes with or issues to the association members, together with a copy of its plan description and the printed material which was used in enrolling members during 1993 and 1994.

(g) Proof of aggregate and specific stop loss insurance with an insurer licensed to do business in this state.

(h) A copy of all contracts or other instruments that were used with administrators and producers during 1993 and 1994.

(i) Biographical affidavits for the trustees, plan administrators of the multiple employer welfare arrangement, officers and directors of the association, other persons acting in a fiduciary capacity and any third-party administrators performing services on behalf of the multiple employer welfare arrangement.

742.30. The commissioner shall not issue a certificate of compliance to a self-funded or partially self-funded multiple employer welfare arrangement unless the employers participating in

the multiple employer welfare arrangement are members of a bona fide trade, industrial, or professional association as described in subdivision (b) of Section 742.24.

742.31. Each self-funded or partially self-funded multiple employer welfare arrangement transacting business in the state shall file all of the following with the commissioner:

(a) Within four months and 15 days after the end of each fiscal year, financial statements audited by a certified public accountant, and an actuarial opinion rendered by a qualified actuary. The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board and on any additional standards that the commissioner may, by regulation, prescribe. For the purposes of this section, "qualified actuary" means a member in good standing of the American Academy of Actuaries who meets the requirements set forth in regulations of the commissioner. The qualified actuary shall be liable for damages to any person caused by his or her negligence or other tortious conduct.

(b) Within 60 days after the end of each fiscal quarter, unaudited financial statements, affirmed by an appropriate officer or agent of the multiple employer welfare arrangement.

(c) Within 60 days after the end of each fiscal quarter, a report certifying that the multiple employer welfare arrangement maintains cash or liquid assets in a claim reserve account sufficient to meet its contractual obligations and that it maintains a policy of aggregate and specific stop loss insurance.

742.32. The commissioner or any persons designated by the commissioner shall have the power to examine the affairs of any self-funded or partially self-funded multiple employer welfare arrangement and the association which established and maintains it, and for that purpose shall have access to all books, records, and documents that relate to the business of the multiple employer welfare arrangement, and may examine under oath its trustees, officers, agents, and employees in relation to the affairs, transactions, and condition of the multiple employer welfare arrangement.

742.33. Books, records, and documents pertaining to the business of the multiple employer welfare arrangement shall be maintained by the administrator for a period of five years. "Administrator," as used in this section, has the same meaning as that contained in Section 1002(16) (CA) of Title 29 of the United States Code.

742.34. (a) The following notice shall be provided to employers and employees who obtain coverage from a multiple employer welfare arrangement:

NOTICE

(A) THE MULTIPLE EMPLOYER WELFARE ARRANGEMENT IS NOT AN INSURANCE COMPANY AND DOES NOT PARTICIPATE IN ANY OF THE GUARANTEE

FUNDS CREATED BY CALIFORNIA LAW. THEREFORE, THESE FUNDS WILL NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS IF A MULTIPLE EMPLOYER WELFARE ARRANGEMENT BECOMES INSOLVENT AND IS UNABLE TO MAKE PAYMENTS AS PROMISED.

(B) THE HEALTH CARE BENEFITS THAT YOU HAVE PURCHASED OR ARE APPLYING TO PURCHASE ARE BEING ISSUED BY A MULTIPLE EMPLOYER WELFARE ARRANGEMENT THAT IS LICENSED BY THE STATE OF CALIFORNIA.

(C) FOR ADDITIONAL INFORMATION ABOUT THE MULTIPLE EMPLOYER WELFARE ARRANGEMENT YOU SHOULD ASK QUESTIONS OF YOUR TRUST ADMINISTRATOR OR YOU MAY CONTACT THE CALIFORNIA DEPARTMENT OF INSURANCE AT _____.

(b) Each multiple employer welfare arrangement should include the department's current "800" consumer service telephone number in the blank provided in paragraph (C) of this notice.

742.35. The department may conduct an examination of the financial condition of a self-funded or partially self-funded multiple employer welfare arrangement, and if it determines that the multiple employer welfare arrangement's financial condition does not comply with the requirements of this article, the department may apply any remedies authorized by this code.

742.36. Subject to the annual fee provisions of Section 742.39, every certificate of compliance shall be for an indefinite term and shall expire with the expiration or termination of the existence of the holder thereof. Notwithstanding the provisions of this section, whenever the commissioner shall determine, after notice and hearing, that any person to whom the certificate has been issued is in arrears to the state or to any county or city in the state for fees, licenses, taxes, assessments, fines, or penalties, accrued on business transacted in the state, or is otherwise in default for failure to comply with any of the laws of this state regarding the governmental control of the person by the state, the commissioner may order the certificate holder to comply with those requirements within 30 days of that determination. If the certificate of compliance holder fails to comply within that period, the certificate of compliance may then be revoked, unless the commissioner's order is stayed by a court of appropriate jurisdiction.

742.37. (a) The commissioner may suspend the certificate of compliance of a holder thereof for not exceeding one year whenever he or she finds, after proper hearing following notice, that the person engages in any of the following practices:

- (1) Conducting its business fraudulently.
- (2) Not carrying out its contracts in good faith.
- (3) Habitually and as a matter of ordinary practice and custom compelling claimants under policies, or liability judgment creditors

of the certificate of compliance holder, to either accept less than the amount due under the terms of its contracts or resort to litigation against the certificate of compliance holder to secure the payment of the amount due.

(b) The order of suspension shall prescribe the period of each suspension.

(c) Proceedings under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, except that the hearings shall be conducted by administrative law judges chosen under Section 11502 or appointed by the commissioner.

742.38. The commissioner, in any proceeding under Section 742.37 for any of the violations specified in that section, may by alternative order permit the holder of that certificate of compliance to elect in writing to pay a specified money penalty, within a specified time, in lieu of the suspension of its certificate of compliance. If the holder so elects, the sum of money specified shall be paid to the commissioner for use of the state, and shall not exceed fifty-five thousand dollars (\$55,000). If the holder so electing fails to pay the specified sum within the specified time, the commissioner shall, unless his or her order is stayed, put in effect the alternatives specified in his or her order.

All money received by the commissioner pursuant to this section shall, when appropriated for that purpose by the Legislature, be available for expenditure by the commissioner in accordance with law in administration and enforcement of this code and other insurance laws.

The authority vested in the commissioner by this section shall be additional to and not in lieu of any other authority to enforce any penalties, fines or forfeitures, denials, suspensions, restrictions, or revocations of certificates of compliance unless otherwise authorized by law.

742.39. The commissioner shall require the payment of three thousand five hundred dollars (\$3,500) in advance as a fee for filing an application for each certificate of compliance. Notwithstanding Section 742.36, each holder of a certificate of compliance of indefinite term shall owe and pay an annual fee of two hundred eighty-three dollars (\$283) in advance on account of the certificate until final expiration. In addition, each holder of a certificate of compliance of indefinite term shall owe and pay an annual fee of two hundred eighty-one dollars (\$281) for filing of financial information. These fees shall be for annual periods commencing on July 1 of each year and ending on June 30 of each year, and shall be due on each March 1 and be delinquent on and after April 1.

742.40. A multiple employer welfare arrangement shall offer health care coverage benefits to any new eligible person and his or her dependents under terms and conditions no less favorable to those offered to their employers' existing employees and their dependents, if the newly eligible person had health care benefit coverage with

either the same or a different multiple employer welfare arrangement within 31 days. The new coverage shall comply with existing eligibility rules of the multiple employer welfare arrangement.

742.41. All employer groups who have health care coverage benefits provided by a multiple employer welfare arrangement for their employees and their dependents, regardless of individual condition or history of that employee and their dependents, shall continue to provide coverage thereunder pursuant to the terms and conditions of their multiple employer welfare arrangement, subject to only cancellation for nonpayment of contribution, or in the event of the termination of the multiple employer welfare arrangement.

742.42. The provisions of this code governing domestic incorporated insurers, their business, and their contracts shall, so far as applicable and not inconsistent, govern multiple employer welfare arrangements subject to this article and the business and contracts of these multiple employer welfare arrangements, except that these multiple employer welfare arrangements, their business, and their contracts shall not be subject to Article 14.7 (commencing with Section 1067) of Chapter 1 of Part 2 of Division 1. There shall be a rebuttable presumption that any provision of this code is applicable to multiple employer welfare arrangements.

742.425. The provisions of this article shall not apply to multiple employer welfare arrangements as defined in Section 1144(b) (6) (D) of Title 29 of the United States Code.

742.43. The commissioner may adopt reasonable rules and regulations for the implementation and administration of this article.

742.44. This article shall remain in effect until January 1, 1998, and as of that date is repealed, unless a later enacted statute that is enacted before that date deletes or extends that date.

CHAPTER 1083

An act to amend Sections 328 and 352 of, and to add Sections 328.5 and 352.1 to, the Code of Civil Procedure, relating to prisoners.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

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

(a) Since 1988, the number of civil lawsuits filed against the state by inmates incarcerated with the Department of Corrections has outpaced the increase in California's prison population.

(b) Civil lawsuits make up approximately 55 percent of all lawsuits brought against the state by inmates incarcerated in

California prisons.

(c) In the 1991-92 fiscal year, the state was billed for over 40,000 hours in attorney's fees in defending the state against civil lawsuits brought against the state by inmates.

(d) Aside from civil lawsuits brought against the state, employees of the Department of Corrections are subject to an alarming number of lawsuits brought by inmates.

(e) A large and disproportionate number of the civil law suits brought against the state and employees of the Department of Corrections are frivolous, and without grounds.

(f) It is in the best interest of the state to curtail the number of frivolous lawsuits filed by persons incarcerated with the Department of Corrections.

(g) By enacting this legislation, the Legislature intends to limit the ability to bring lawsuits by prisoners when the facts that give rise to the lawsuit are old, and difficult to prove or disprove.

SEC. 2. Section 328 of the Code of Civil Procedure is amended to read:

328. If a person entitled to commence an action for the recovery of real property, or for the recovery of the possession thereof, or to make any entry or defense founded on the title to real property, or to rents or services out of the property, is at the time title first descends or accrues either under the age of majority or insane, the time, not exceeding 20 years, during which the disability continues is not deemed any portion of the time in this chapter limited for the commencement of the action, or the making of the entry or defense, but the action may be commenced, or entry or defense made, within the period of five years after the disability shall cease, or after the death of the person entitled, who shall die under the disability; but the action shall not be commenced, or entry or defense made, after that period.

SEC. 3. Section 328.5 is added to the Code of Civil Procedure, to read:

328.5. If a person entitled to commence an action for the recovery of real property, or for the recovery of the possession thereof, or to make any entry or defense founded on the title to real property, or to rents or services out of the property, is, at the time the title first descends or accrues, imprisoned on a criminal charge, or in execution upon conviction of a criminal offense, for a term less than life, the time, not exceeding two years, during which imprisonment continues is not deemed any portion of the time in this chapter limited for the commencement of the action, or the making of the entry or defense, but the action may be commenced, or entry or defense made, within the period of five years after the imprisonment ceases, or after the death of the person entitled, who dies while imprisoned; but the action shall not be commenced, or entry or defense made, after that period.

SEC. 4. Section 352 of the Code of Civil Procedure is amended to read:

352. (a) If a person entitled to bring an action, mentioned in Chapter 3 (commencing with Section 335) is, at the time the cause of action accrued either under the age of majority or insane, the time of the disability is not part of the time limited for the commencement of the action.

(b) This section does not apply to an action against a public entity or public employee upon a cause of action for which a claim is required to be presented in accordance with Chapter 1 (commencing with Section 900) or Chapter 2 (commencing with Section 910) of Part 3, or Chapter 3 (commencing with Section 950) of Part 4, of Division 3.6 of Title 1 of the Government Code. This subdivision shall not apply to any claim presented to a public entity prior to January 1, 1971.

SEC. 5. Section 352.1 is added to the Code of Civil Procedure, to read:

352.1. (a) If a person entitled to bring an action, mentioned in Chapter 3 (commencing with Section 335), is, at the time the cause of action accrued, imprisoned on a criminal charge, or in execution under the sentence of a criminal court for a term less than for life, the time of that disability is not a part of the time limited for the commencement of the action, not to exceed two years.

(b) This section does not apply to an action against a public entity or public employee upon a cause of action for which a claim is required to be presented in accordance with Chapter 1 (commencing with Section 900) or Chapter 2 (commencing with Section 910) of Part 3, or Chapter 3 (commencing with Section 950) of Part 4, of Division 3.6 of Title 1 of the Government Code. This subdivision shall not apply to any claim presented to a public entity prior to January 1, 1971.

(c) This section does not apply to an action, other than an action to recover damages or that portion of an action that is for the recovery of damages, relating to the conditions of confinement, including an action brought by that person pursuant to Section 1983 of Title 42 of the United States Code.

CHAPTER 1084

An act to add Section 7514.1 to the Government Code, relating to governmental investments.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 7514.1 is added to the Government Code, to read:

7514.1. Notwithstanding any other provision of law except

Chapter 7 (commencing with Section 16649.80) of Part 2 of Division 4 of Title 2, any state or local public retirement system may invest, subject to and consistent with the standard for prudent investment set forth in Section 17 of Article XVI of the California Constitution, and the state and any political subdivision of the state may invest its assets in rated bonds, notes, or other obligations issued, assumed, or unconditionally guaranteed by the African Development Bank, the Asian Development Bank, the Caribbean Development Bank, the Inter-American Bank, the International Finance Corporation, the International Bank for Reconstruction and Development, the European Bank for Reconstruction and Development, and any other international financial institution that has met the payments of similar bonds, notes, or other obligations when due and in which the United States is a member.

CHAPTER 1085

An act to add Section 933.06 to the Penal Code, relating to grand juries.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 933.06 is added to the Penal Code, to read:
933.06. (a) Notwithstanding Sections 916 and 940, in a county having a population of 20,000 or less, a final report may be adopted and submitted pursuant to Section 933 with the concurrence of a least 10 grand jurors if all of the following conditions are met:

(1) The grand jury consisting of 19 persons has been impaneled pursuant to law, and the membership is reduced from 19 to fewer than 12.

(2) The vacancies have not been filled pursuant to Section 908.1 within 30 days from the time that the clerk of the superior court is given written notice that the vacancy has occurred.

(3) A final report has not been submitted by the grand jury pursuant to Section 933.

(b) Notwithstanding Section 933, no responsible officers, agencies, or departments shall be required to comment on a final report submitted pursuant to this section.

CHAPTER 1086

An act to repeal and amend Sections 1026.2 and 1603 of the Penal Code, relating to criminal procedure.

[Approved by Governor September 28, 1994. Filed with Secretary of State September 29, 1994.]

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

SECTION 1. Section 1026.2 of the Penal Code, as amended by Section 1 of Chapter 1141 of the Statutes of 1993, is repealed.

SEC. 2. Section 1026.2 of the Penal Code, as amended by Section 2 of Chapter 1141 of the Statutes of 1993, is amended to read:

1026.2. (a) An application for the release of a person who has been committed to a state hospital or other treatment facility, as provided in Section 1026, upon the ground that sanity has been restored, may be made to the superior court of the county from which the commitment was made, either by the person, or by the medical director of the state hospital or other treatment facility to which the person is committed or by the community program director where the person is on outpatient status under Title 15 (commencing with Section 1600). The court shall give notice of the hearing date to the prosecuting attorney, the community program director or a designee, and the medical director or person in charge of the facility providing treatment to the committed person at least 15 judicial days in advance of the hearing date.

(b) Pending the hearing, the medical director or person in charge of the facility in which the person is confined shall prepare a summary of the person's programs of treatment and shall forward the summary to the community program director or a designee and to the court. The community program director or a designee shall review the summary and shall designate a facility within a reasonable distance from the court in which the person may be detained pending the hearing on the application for release. The facility so designated shall continue the program of treatment, shall provide adequate security, and shall, to the greatest extent possible, minimize interference with the person's program of treatment.

(c) A designated facility need not be approved for 72-hour treatment and evaluation pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code). However, a county jail may not be designated unless the services specified in subdivision (b) are provided and accommodations are provided which ensure both the safety of the person and the safety of the general population of the jail. If there is evidence that the treatment program is not being complied with or accommodations have not been provided which ensure both the safety of the committed person and the safety of the general population of the jail, the court shall order the person

transferred to an appropriate facility or make any other appropriate order, including continuance of the proceedings.

(d) No hearing upon the application shall be allowed until the person committed has been confined or placed on outpatient status for a period of not less than 180 days from the date of the order of commitment.

(e) The court shall hold a hearing to determine whether the person applying for restoration of sanity would be a danger to the health and safety of others, due to mental defect, disease, or disorder, if under supervision and treatment in the community. If the court at the hearing determines the applicant will not be a danger to the health and safety of others, due to mental defect, disease, or disorder, while under supervision and treatment in the community, the court shall order the applicant placed with an appropriate forensic conditional release program for one year. All or a substantial portion of the program shall include outpatient supervision and treatment. The court shall retain jurisdiction. The court at the end of the one year, shall have a trial to determine if sanity has been restored, which means the applicant is no longer a danger to the health and safety of others, due to mental defect, disease, or disorder. The court shall not determine whether the applicant has been restored to sanity until the applicant has completed the one year in the appropriate forensic conditional release program, unless the community program director sooner makes a recommendation for restoration of sanity and unconditional release as described in subdivision (h). The court shall notify the persons required to be notified in subdivision (a) of the hearing date.

(f) If the applicant is on parole or outpatient status and has been on it for one year or longer, then it is deemed that the applicant has completed the required one year in an appropriate forensic conditional release program and the court shall, if all other applicable provisions of law have been met, hold the trial on restoration of sanity as provided for in this section.

(g) Before placing an applicant in an appropriate forensic conditional release program, the community program director shall submit to the court a written recommendation as to what forensic conditional release program is the most appropriate for supervising and treating the applicant. If the court does not accept the community program director's recommendation, the court shall specify the reason or reasons for its order on the court record. Sections 1605 to 1610, inclusive, shall be applicable to the person placed in the forensic conditional release program unless otherwise ordered by the court.

(h) If the court determines that the person should be transferred to an appropriate forensic conditional release program, the community program director or a designee shall make the necessary placement arrangements, and, within 21 days after receiving notice of the court finding, the person shall be placed in the community in accordance with the treatment and supervision plan, unless good

cause for not doing so is made known to the court.

During the one year of supervision and treatment, if the community program director is of the opinion that the person is no longer a danger to the health and safety of others due to a mental defect, disease, or disorder, the community program director shall submit a report of his or her opinion and recommendations to the committing court, the prosecuting attorney, and the attorney for the person. The court shall then set and hold a trial to determine whether restoration of sanity and unconditional release should be granted. The trial shall be conducted in the same manner as is required at the end of one full year of supervision and treatment.

(i) If at the trial for restoration of sanity the court rules adversely to the applicant, the court may place the applicant on outpatient status, pursuant to Title 15 (commencing with Section 1600) of Part 2, unless the applicant does not meet all of the requirements of Section 1603.

(j) If the court denies the application to place the person in an appropriate forensic conditional release program or if restoration of sanity is denied, no new application may be filed by the person until one year has elapsed from the date of the denial.

(k) In any hearing authorized by this section, the applicant shall have the burden of proof by a preponderance of the evidence.

(l) If the application for the release is not made by the medical director of the state hospital or other treatment facility to which the person is committed or by the community program director where the person is on outpatient status under Title 15 (commencing with Section 1600), no action on the application shall be taken by the court without first obtaining the written recommendation of the medical director of the state hospital or other treatment facility or of the community program director where the person is on outpatient status under Title 15 (commencing with Section 1600).

SEC. 3. Section 1603 of the Penal Code, as amended by Section 3 of Chapter 1141 of the Statutes of 1993, is repealed.

SEC. 4. Section 1603 of the Penal Code, as amended by Section 4 of Chapter 1141 of the Statutes of 1993, is amended to read:

1603. (a) Any person subject to subdivision (a) of Section 1601 may be placed on outpatient status if all of the following conditions are satisfied:

(1) The director of the state hospital or other treatment facility to which the person has been committed advises the committing court that the defendant would no longer be a danger to the health and safety of others, including himself or herself, while under supervision and treatment in the community, and will benefit from that status.

(2) The community program director advises the court that the defendant will benefit from that status, and identifies an appropriate program of supervision and treatment.

(3) After actual notice to the prosecutor and defense counsel, and to the victim or next of kin of the victim of the offense for which the person was committed where a request for the notice has been filed

with the court, and after a hearing in court, the court specifically approves the recommendation and plan for outpatient status pursuant to Section 1604. The burden shall be on the victim or next of kin to the victim to keep the court apprised of the party's current mailing address.

In any case in which the victim or next of kin to the victim has filed a request for notice with the director of the state hospital or other treatment facility, he or she shall be notified by the director at the inception of any program in which the committed person would be allowed any type of day release unattended by the staff of the facility.

(b) The community program director shall prepare and submit the evaluation and the treatment plan specified in paragraph (2) of subdivision (a) to the court within 30 calendar days after notification by the court to do so.

(c) Any evaluations and recommendations pursuant to paragraphs (1) and (2) of subdivision (a) shall include review and consideration of complete, available information regarding the circumstances of the criminal offense and the person's prior criminal history.

SEC. 5. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1087

An act to add Section 22825.4 to the Government Code, and to add Section 4142.1 to the Public Resources Code, relating to the Public Employees' Medical and Hospital Care Act.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 22825.4 is added to the Government Code, to read:

22825.4. (a) Notwithstanding subdivisions (f) and (g) of Section 22825.3, for the purposes of meeting the vesting requirements of Section 22825.2 or 22825.3, employees of the Cities of Rubidoux and

Coachella who become employees of the state as a result of the state's assuming, on or before December 31, 1990, firefighting functions for the city shall be credited with each complete year of service with the city, as if that service had been with the state. The department shall identify those employees and provide the corresponding service credit information to the Public Employees' Retirement System.

(b) No employee whose firefighting function was transferred to the state after December 31, 1990, shall receive credit toward postretirement health benefits vesting unless the former employer agrees to reimburse the state for the costs of that credit in accordance with subdivisions (f) and (g) of Section 22825.3.

SEC. 2. Section 4142.1 is added to the Public Resources Code, to read:

4142.1. Whenever a county, city, or district considers entering into a cooperative agreement pursuant to subdivision (a) of Section 4142 under which the state would assume personnel from the county, city, or district, the county, city or district shall, prior to the execution of the cooperative agreement, give written notice to each affected employee of how the transfer of functions would affect his or her health benefits upon his or her retirement.

CHAPTER 1088

An act to amend Section 1569.193 of the Health and Safety Code, relating to residential care facilities for the elderly.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 1569.193 of the Health and Safety Code is amended to read:

1569.193. (a) When a licensee dies, an adult relative, or other nonrelated adult, who has control of the property may be designated as the responsible party to continue operation of the facility if the following conditions are met:

(1) The licensee has filed a notarized written statement with the department designating the responsible party in the event of death, and the licensee has submitted the following information to the department:

(A) A notarized statement, signed by the designee acknowledging acceptance of designation as responsible party.

(B) A declaration signed by the designee under penalty of perjury regarding any prior criminal convictions.

(2) The department receives notification of the death during the next normal workday and is informed of the designee's intent to continue operating the facility as a residential care facility for the

elderly.

(3) The designee files an application for licensure pursuant to Section 1569.15 within 20 working days of the date of death, shows evidence satisfactory to the department that he or she has the ability to operate the facility, and provides evidence of the licensee's death.

(b) (1) If the designee decides not to apply for licensure, he or she shall notify the department of that decision within five working days of the licensee's death. If the designee decides not to apply, the department shall assist the designee in the development and implementation of a relocation plan.

(2) If the designee decides to apply for licensure, the department shall decide within 60 days after the application is submitted whether to issue a provisional license pursuant to Section 1569.21. A provisional license shall be granted only if the department is satisfied that the conditions specified in subdivision (a) have been met and that the health and safety of the residents of the facility will not be jeopardized.

(c) If the designee complies with this section, he or she shall not be considered to be operating an unlicensed facility while the department decides whether to grant the provisional license.

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

CHAPTER 1089

An act to amend Section 5782.27 of the Public Resources Code, and to amend Sections 3 and 8 of, and to add Sections 36 and 37 to, the Sonoma County Flood Control and Water Conservation District Act (Chapter 994 of the Statutes of 1949), relating to water.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 5782.27 of the Public Resources Code is amended to read:

5782.27. (a) In addition to the powers which may be exercised pursuant to this chapter, the Camp Meeker Recreation and Park District may exercise the powers of a county water district as set

forth in Article 1 (commencing with Section 31000) to Article 5 (commencing with Section 31080), inclusive, of Part 5 of Division 12 of the Water Code, Part 6 (commencing with Section 31300) of Division 12 of the Water Code, and Part 7 (commencing with Section 31650) of Division 12 of the Water Code.

(b) The powers granted to the Camp Meeker Recreation and Park District by this section may be exercised by the district only if the authority to exercise these powers is approved by the local agency formation commission.

SEC. 2. Section 3 of the Sonoma County Flood Control and Water Conservation District Act (Chapter 994 of the Statutes of 1949) is amended to read:

Sec. 3. The purposes of this act are to provide, to the extent that the board may deem expedient or economical for water conservation, the control, treatment, reuse, and disposition of floodwater, storm water, wastewater, and other waters of the district, and the generating of electric energy, and to that end the district is hereby created to be a body corporate and politic and as such shall have power:

(a) To have perpetual succession.

(b) To sue and be sued in the name of the district in all actions and proceedings in all courts and tribunals of competent jurisdiction.

(c) To adopt a seal and alter it at pleasure.

(d) To obtain by grant, purchase, gift, devise or lease; to hold, use, enjoy, sell, and contract to sell, lease, or dispose of real, personal and mixed property of every kind, within or outside the district, necessary, expedient, or advantageous to the full exercise and economic enjoyment of its purposes.

(e) To acquire and contract to acquire by purchase, dedication, donation, or other lawful means in the name of the district from private persons, public and private corporations, associations, agencies or districts, lands, rights-of-way, easements, privileges, material, and property of every kind within or outside the district, to do all work and to acquire, construct, maintain, and operate any and all works and improvements within or outside the district, and to make, execute, carry out, and enforce all contracts of every character, necessary, convenient, incidental, useful, or proper to carry out any of the purposes of this act, and to complete, extend, add to, repair, or otherwise improve any works or improvements acquired by it as herein authorized.

(f) To exercise the right of eminent domain, either within or outside the district, to take any property necessary to carry out any of the objects or purposes of this act.

(g) To compel by injunction or other lawful means the owner or owners of any bridge, trestle, wire line, viaduct, embankment, or other structure which shall be intersected, traversed, or crossed by any channel, ditch, bed of any stream, waterway, conduit, or canal so to construct or alter the same as to offer a minimum of obstruction to the free flow of water through or along any such channel, ditch,

bed of any stream, waterway, conduit, or canal, and whenever necessary in the case of existing works or structures, to compel the removal or alteration thereof for such purpose or purposes. All costs of relocating or otherwise changing any portion of a state highway shall be paid from funds available for rights-of-way for flood control purposes and not from funds appropriated for state highway purposes. All costs of relocating or otherwise changing any portion of a county highway shall be paid from funds available for rights-of-way for flood control purposes, unless the county road commissioner recommends to the board of supervisors that the cost of relocating a particular county highway should be paid from funds appropriated for county highway purposes, and the board of supervisors, upon that recommendation, finds that the relocating of the highway is of general benefit to the county.

(h) To construct, maintain, repair, and operate all levees, bulkheads, walls of rock or other material, pumps, dams, channels, conduits, pipes, ditches, canals, reservoirs, tunnels, drains, poles, posts, wires, lamps, powerplants, railroads, dredgers and all other auxiliary, incidental, necessary or convenient agencies, work or improvements that may be required to carry out, facilitate, repair, maintain, and complete the same.

(i) To incur indebtedness, and to issue bonds in the manner herein provided and to provide for the issuance of warrants of the district in payment of district obligations and the registration of any warrants not paid for want of funds and the rate of interest the warrants shall bear after registration and until payment.

(j) To cause assessments to be levied and collected for the purpose of paying any obligations of the district in the manner hereinafter provided.

(k) To appoint and employ engineers, attorneys, assistants, and other employees as may be necessary and fix their compensation, including, if it deem advisable, a clerk, superintendent of work, assessor, treasurer, and collector, define their powers and duties, and fix and determine the amount of bond required of each appointee and pay the premium on each bond; which officers and employees and each of them shall serve at the pleasure of the board.

The board shall have the power to combine any two or more offices in its discretion.

(l) To make transfers of money from the general fund of the district to any special fund and to create and administer special funds as may seem advisable, and to abolish same; to create and administer revolving funds to facilitate and assist in the carrying on and completing of acquisitions, works, and improvements provided for herein, and to abolish same; and to do any and all things necessary or incidental to the accomplishment of the things which are permitted to be done under this act.

(m) To make and enter into contracts with the United States, the State of California, any political subdivision, county, municipality, district, agency, or mandatory of the State of California or of the

United States and any department, board, bureau, or commission of the State of California or the United States, or any person, firm, association, or corporation, jointly or severally, for the acquisition of property or rights or the construction, maintenance, and operation in whole or in part of any or all works and improvements provided in this act.

(n) To lease or rent to or from any of the parties named in subdivision (m) any property or rights necessary, in the opinion of the board, to accomplish or carry out any of the work or improvement or the maintenance thereof herein provided and under terms and conditions agreed to by the parties.

(o) To receive and accept any and all contributions in labor, material, or money from any of the parties named in subdivision (m) of this section, to be applied to the work or improvement herein provided for.

(p) To construct, purchase, lease, or otherwise acquire works, and to purchase, lease, appropriate, or otherwise acquire surface waters and water rights, useful or necessary to make use of water for any purposes authorized by this act.

(q) To control flood and storm waters within the district and the flood and storm waters of streams outside the district, which flow into the district; to construct any and all necessary drains or any other works and do any and every lawful act necessary to be done that the lands and other property within the district may be drained and protected from the effects of water, to maintain, repair, improve, or protect any drains or other works which are deemed necessary, to do any and all works necessary for the drainage of the lands of the district, to locate and acquire land needed for rights-of-way, including drains, canals, sloughs, water gates, embankments and watercourses, and to construct works necessary to provide drains, canals, sloughs, water gates, embankments and watercourses, and to provide the materials for the construction; to conserve waters by storage in surface reservoirs, to divert and transport waters for beneficial uses within the district; to do any act necessary to furnish sufficient water in the district for any present or future beneficial use, to sell water for the benefit of the district, conserve water for future use, and appropriate, acquire, and conserve water and water rights for any useful purpose, to operate works and exercise water rights, property rights, and privileges useful or necessary to convey, supply, sell, or make use of water for any purpose authorized herein, to supply, provide, and transport water for recreational purposes within or outside the district; to release waters from surface reservoirs to replenish and augment the supply of waters in natural underground reservoirs and otherwise to reduce the waste of water and to protect life and property from floods within the district; to do any and every lawful act necessary to be done that sufficient water may be available for any present or future beneficial use or uses of the lands or inhabitants within the district, including, but not limited to, irrigation, domestic, fire protection, municipal, commercial,

industrial, and all other beneficial uses; and to fix rates and charges for such purposes, all revenues received from the collection of the rates and charges as fixed to be used as follows: (1) to pay interest on a bonded debt; (2) so far as possible, provide a fund for the payment of the principal of the bonded debt as it becomes due; (3) pay the operating expenses of the district; (4) pay repairs and depreciation of works owned or operated by the district.

(r) To cooperate and contract with the United States under the Federal Reclamation Act of 1902 and all acts amendatory thereof or supplementary thereto or any other act of Congress heretofore or hereafter enacted permitting cooperation or contract for the purposes of construction of works, whether for irrigation, drainage, or flood control, or for the acquisition, purchase, extension, operation, or maintenance of such works, or for a water supply for any purposes, or for the assumption as principal or guarantor of indebtedness to the United States, or for carrying out any of the purposes of the district, and to carry out and perform the terms of any contract made; and for these purposes the district shall have in addition to the powers specifically set forth in this act, all powers, rights, and privileges possessed by irrigation districts as set forth in Chapter 2 (commencing with Section 23175) of Part 6 of Division 11 of the Water Code, not inconsistent with this act.

(s) (1) To prescribe, revise, and collect rates or other charges for the services and facilities furnished by it, and may pledge, place a charge upon, contribute or otherwise make available, as security or additional security for the payment of any revenue bonds issued by the district, any and all revenues received or receivable from any services or facilities furnished by it.

(2) The district may provide that charges for any services or facilities shall be collected together with, and not separately from, the charges for other revenues or facilities rendered by it, and that all charges shall be billed upon the same bill and collected as one item. If all or part of a bill is not paid, the district may discontinue any or all services or facilities for which the bill is rendered.

(3) The district may provide for the collection of charges. Remedies for their collection and enforcement are cumulative and may be pursued alternatively or consecutively as the district determines.

(4) The district may provide for a basic penalty of not more than 10 percent for nonpayment of the charges within the time and in the manner prescribed by it, and in addition may provide for a penalty of not exceeding one-half of 1 percent per month for nonpayment of the charges and basic penalty. It may provide for collection of the penalties herein provided for.

(t) (1) To acquire, construct, own, operate, or maintain, a sanitation system, a sewer system, or both, or any other system or enterprise used or useful in the collection, treatment, disposal, or reuse of sewage, water, wastewater, or storm water, and to provide sanitation services and fix, levy, and collect charges and benefit

assessments in connection therewith in accordance with this act or with any other provision of law authorizing the imposition of these charges and assessments.

(2) "Sanitation services" include, but are not limited to, the administration, planning, design, engineering, acquisition, construction, improvement, maintenance, operation, replacement, and repair of facilities used or useful for the purposes set forth in paragraph (1) and any acquisition or lease of equipment, land, easements, and rights-of-way necessary to own and operate those facilities, and payment of salaries and benefits to personnel necessary to operate those facilities.

(u) To contract with any public or private entity to provide sanitation services, including, but not limited to, the authority to operate and maintain any facility owned or operated by that entity.

(v) To exercise, with regard to sewage, wastewater, or storm water, any authority that the district has with regard to other waters, subject to compliance with applicable laws regulating the use and discharge of such waters.

SEC. 3. Section 8 of the Sonoma County Flood Control and Water Conservation District Act (Chapter 994 of the Statutes of 1949) is amended to read:

Sec. 8. (a) Claims for money or damages against the district are governed by Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code, except as provided therein. Claims not governed thereby or by other statutes, or by ordinances or regulations authorized by law and expressly applicable to those claims, shall be prepared and presented to the governing body, and all claims shall be audited and paid, in the same manner and with the same effect as are similar claims against the county.

(b) (1) Notwithstanding any other provision of law, to the extent that any judgment or claim against the district is based upon a cause of action arising from the performance or nonperformance of the responsibilities or activities of a zone, any payment upon the claim or judgment shall be made exclusively from the funds of the zone and shall not be made from the general funds of the district or from the funds of any other zone.

(2) This subdivision does not apply to any cause of action arising prior to January 1, 1995.

(3) This subdivision applies only to causes of action governed by Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code.

SEC. 4. Section 36 is added to the Sonoma County Flood Control and Water Conservation District Act (Chapter 994 of the Statutes of 1949), to read:

Sec. 36. (a) Whenever the board determines that it is in the public interest to provide sanitation services within a specified area, the board may form a sanitation zone within that area in the same manner as a county board of supervisors forms a county service area

pursuant to Chapter 2.2 (commencing with Section 25210.1) of Part 2 of Division 2 of Title 3 of the Government Code. No proceedings for formation of a zone may be instituted until the approval of the Sonoma County Local Agency Formation Commission is obtained pursuant to the Cortese-Knox Local Government Reorganization Act of 1985 (Division 1 (commencing with Section 56000) of Title 6 of the Government Code). The board may thereafter dissolve or modify the boundaries of any such zone in accordance with that act.

(b) In addition to any other authority granted to the board by this act, the board has the same authority with regard to the governance, administration, and operation of sanitation zones formed pursuant to this act as may be exercised by both of the following:

(1) A county board of supervisors acting as the governing body of a county service area pursuant to Chapter 2.2 (commencing with Section 25210.1) of Part 2 of Division 2 of Title 3 of the Government Code.

(2) The board of directors of a county sanitation district pursuant to Chapter 3 (commencing with Section 4700) of Part 3 of Division 5 of the Health and Safety Code.

SEC. 5. Section 37 is added to the Sonoma County Flood Control and Water Conservation District Act (Chapter 994 of the Statutes of 1949), to read:

Sec. 37. (a) Notwithstanding Section 36, the Sonoma County Local Agency Formation Commission shall, within 60 days from the date of the receipt of a resolution of application from the Sonoma County Board of Supervisors, determine whether the dissolution of zones and the creation of successor zones described in subdivision (c) are subject to approval by that commission pursuant to the Cortese-Knox Local Government Reorganization Act of 1985 (Division 1 (commencing with Section 56000) of Title 6 of the Government Code).

(b) If the commission determines that the dissolution and creation of zones described in subdivision (c) are subject to its approval, the reorganization shall be subject to the Cortese-Knox Local Government Reorganization Act of 1985.

(c) If the commission determines that the dissolution and creation of zones described in this subdivision are not subject to commission approval, both of the following paragraphs shall apply:

(1) All of the following zones of Sonoma County Service Area No. 41 are dissolved:

- (A) County Sanitation Zone Sears Point.
- (B) County Sanitation Zone Graton.
- (C) County Sanitation Zone One Sea Ranch.
- (D) County Sanitation Zone Airport-Larkfield-Wikiup.
- (E) County Sanitation Zone Penngrove.
- (F) County Sanitation Zone Geyserville.

(2) All of the following sanitation zones are created within the district:

- (A) District Sanitation Zone Sears Point. The boundaries of this

sanitation zone shall be those of its predecessor zone, County Sanitation Zone Sears Point.

(B) District Sanitation Zone Graton. The boundaries of this sanitation zone shall be those of its predecessor zone, County Sanitation Zone Graton.

(C) District Sanitation Zone One Sea Ranch. The boundaries of this sanitation zone shall be those of its predecessor zone, County Sanitation Zone One Sea Ranch.

(D) District Sanitation Zone Airport-Larkfield-Wikiup. The boundaries of this sanitation zone shall be those of its predecessor zone, County Sanitation Zone Airport-Larkfield-Wikiup.

(E) District Sanitation Zone Penngrove. The boundaries of this sanitation zone shall be those of its predecessor zone, County Sanitation Zone Penngrove.

(F) District Sanitation Zone Geyserville. The boundaries of this sanitation zone shall be those of its predecessor zone, County Sanitation Zone Geyserville.

(d) All of the following requirements shall apply if paragraphs (1) and (2) of subdivision (c) apply:

(1) The district, on behalf of the sanitation zones created pursuant to paragraph (2) of subdivision (c), is the successor in interest to all rights, duties, and obligations of the County of Sonoma, acting on behalf of the predecessor zones of Sonoma County Service Area No. 41, including, but not limited to, all rights, duties, and obligations relating to the enforcement, performance, or payment of outstanding bonds or other contracts and obligations of the predecessor zones.

(2) Any and all moneys or funds, including moneys due but uncollected, and any other obligations of the County of Sonoma held for or on behalf of the predecessor zones, shall be transferred to the district to be held for or on behalf of the successor sanitation zones.

(3) Any and all property, real or personal, held by the County of Sonoma for or on behalf of the predecessor zones shall be transferred to the district to be held by the district for or on behalf of the successor sanitation zones.

(4) Any and all resources and assets of the County of Sonoma held for or on behalf of the predecessor zones shall be transferred to the district to be held for or on behalf of the successor sanitation zones.

(5) Any property tax revenue received by the County of Sonoma for or on behalf of the predecessor zones shall be transferred to the district and allocated to the successor sanitation zones.

(6) The ordinances of the County of Sonoma adopted for the purpose of providing sanitation services within the sanitation zones created pursuant to paragraph (2) of subdivision (c) shall apply within the service areas of the district sanitation zones, as applicable, and shall remain in effect as district ordinances until the district amends or repeals those ordinances.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this

act is in accordance with the request of a local agency or school district which desired legislative authority to carry out the program specified in this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1090

An act to amend Section 5001.6 of the Public Resources Code, relating to the state park system.

[Approved by Governor September 28, 1994. Filed with Secretary of State September 29, 1994.]

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

SECTION 1. Section 5001.6 of the Public Resources Code is amended to read:

5001.6. (a) Notwithstanding Section 5001.95, units of the state park system may be located within, and be a part of, a state seashore. However, any such unit shall be managed in accordance with its classification as provided in Section 5019.62.

(b) The following state seashores are hereby established consisting of appropriate coastal lands described in this subdivision together with those other lands that may, from time to time, be acquired by the state as an addition to these state seashores:

(1) Del Norte State Seashore, consisting of lands lying between Pyramid Point and Point Saint George, particularly lands to assure public access to, and scenic protection of, Pyramid Point; beach and dune lands, water-bottom and shoreline lands at Lake Earl, including Lake Talawa, all within Del Norte County.

(2) Clem Miller State Seashore, consisting of lands extending from the mouth of the Eel River to Pudding Creek at Fort Bragg, and including lands at Bear Harbor, Usal Creek, Cottoneva Creek, shore and upland additions to Westport-Union Landing State Beach, DeHaven Creek uplands, Ten Mile River estuary, and MacKerricher State Park, all within Humboldt and Mendocino Counties.

(3) Mendocino Coast State Seashore, consisting of lands extending from Jughandle Creek to the Gualala River, and including the Pygmy Forest Ecological Staircase, Russian Gulch State Park, Mendocino Headlands State Park, Van Damme State Park, Greenwood Creek Beach, Bowling Ball Beach and the Gualala River shoreline and estuary, all within Mendocino County.

(4) Sonoma Coast State Seashore, consisting of lands extending from the Gualala River to Bodega Head, and including the Kruse Rhododendron State Reserve, Salt Point State Park, Fort Ross State Historic Park, and Sonoma Coast State Beach, all within Sonoma

County.

(5) Año Nuevo State Seashore, consisting of lands extending from Pillar Point to the City of Santa Cruz, and including the San Mateo Coast State Beaches, Año Nuevo State Reserve, Big Basin Redwoods State Park, and Natural Bridges State Beach, all within San Mateo and Santa Cruz Counties.

(6) San Luis Obispo State Seashore, consisting of lands extending from Cayucos to Lion's Head and including Cayucos State Beach, Morro Strand State Beach, Atascadero State Beach, Morro Bay State Park, Montana de Oro State Park, Avila State Beach, Pismo State Beach, Pismo Dunes State Vehicular Recreation Area and Point Sal State Beach, all within San Luis Obispo and Santa Barbara Counties.

(7) Santa Barbara Coast State Seashore, consisting of lands extending from Gaviota to Las Llagas Canyon, and including Gaviota State Park, Refugio State Beach, and El Capitan State Beach, all within Santa Barbara County.

(8) Point Mugu State Seashore, consisting of lands extending from Ormond Beach to San Nicholas Canyon, and including Mugu Lagoon, Point Mugu State Park, and Leo Carrillo State Beach, all within Ventura and Los Angeles Counties.

(9) Capistrano Coast State Seashore, consisting of lands extending from Newport Beach to San Mateo Point, and including Corona Del Mar State Beach, Irvine Coast, Doheny State Beach, and San Clemente State Beach, all within Orange County.

(10) (A) San Diego Coast State Seashore, consisting of lands extending from San Onofre State Beach to La Jolla, and including San Onofre State Beach, Carlsbad State Beach, Robert C. Frazee State Beach, South Carlsbad State Beach, Leucadia State Beach, Moonlight State Beach, San Elijo State Beach, Cardiff State Beach, Torrey Pines State Beach, and Torrey Pines State Reserve, all within San Diego County.

(B) That section of Carlsbad State Beach within the San Diego Coast State Seashore which is located north of Agua-Hedionda Lagoon is hereby renamed Robert C. Frazee State Beach.

(c) The department shall determine the precise boundaries of each state seashore, may revise those boundaries from time to time, shall identify additional lands appropriate for inclusion in state seashores, and shall recommend land acquisitions for the establishment of additional state seashores or as additions to existing state seashores to the Governor and to the Legislature for inclusion in the annual Budget Bill.

(d) Section 5019.62 shall not apply to lands lying within the boundaries of state seashores established pursuant to this section until those lands have been acquired by the state and designated as state park system lands that are a part of a state seashore.

SEC. 2. Section 5001.6 of the Public Resources Code is amended to read:

5001.6. (a) Notwithstanding Section 5001.95, units of the state park system may be located within, and be a part of, a state seashore.

However, any such unit shall be managed in accordance with its classification as provided in Section 5019.62.

(b) The following state seashores are hereby established consisting of appropriate coastal lands described in this subdivision together with any other lands that may, from time to time, be acquired by the state as an addition to these state seashores:

(1) Del Norte State Seashore, consisting of lands lying between Pyramid Point and Point Saint George, particularly lands to assure public access to, and scenic protection of, Pyramid Point; beach and dune lands, water-bottom and shoreline lands at Lake Earl, including Lake Talawa, all within Del Norte County.

(2) Clem Miller State Seashore, consisting of lands extending from the mouth of the Eel River to Pudding Creek at Fort Bragg, and including lands at Bear Harbor, Usal Creek, Cottoneva Creek, shore and upland additions to Westport-Union Landing State Beach, DeHaven Creek uplands, Ten Mile River estuary, and MacKerricher State Park, all within Humboldt and Mendocino Counties.

(3) Mendocino Coast State Seashore, consisting of lands extending from Jughandle Creek to the Gualala River, and including the Pygmy Forest Ecological Staircase, Russian Gulch State Park, Mendocino Headlands State Park, Van Damme State Park, Greenwood Creek Beach, Bowling Ball Beach and the Gualala River shoreline and estuary, all within Mendocino County.

(4) Sonoma Coast State Seashore, consisting of lands extending from the Gualala River to Bodega Head, and including the Kruse Rhododendron State Reserve, Salt Point State Park, Fort Ross State Historic Park, and Sonoma Coast State Beach, all within Sonoma County.

(5) Año Nuevo State Seashore, consisting of lands extending from Pillar Point to the City of Santa Cruz, and including the San Mateo Coast State Beaches, Año Nuevo State Reserve, Big Basin Redwoods State Park, and Natural Bridges State Beach, all within San Mateo and Santa Cruz Counties.

(6) (A) Monterey Bay State Seashore, consisting of lands extending from Natural Bridges State Beach south to Point Joe, including Lighthouse Fields, Twin Lakes, New Brighton State Beach, Seacliff, Manresa, Sunset, Zmudowski, Moss Landing, Salinas River, Marina, Monterey, and Asilomar, all within Santa Cruz and Monterey Counties.

(B) The department may establish a recreational trail system within the boundaries of the Monterey Bay State Seashore which is to be dedicated as the Sam Farr Recreational Trail System.

(7) San Luis Obispo State Seashore, consisting of lands extending from Cayucos to Lion's Head and including Cayucos State Beach, Morro Strand State Beach, Atascadero State Beach, Morro Bay State Park, Montana de Oro State Park, Avila State Beach, Pismo State Beach, Pismo Dunes State Vehicular Recreation Area and Point Sal State Beach, all within San Luis Obispo and Santa Barbara Counties.

(8) Santa Barbara Coast State Seashore, consisting of lands

extending from Gaviota to Las Llagas Canyon, and including Gaviota State Park, Refugio State Beach, and El Capitan State Beach, all within Santa Barbara County.

(9) Point Mugu State Seashore, consisting of lands extending from Ormond Beach to San Nicholas Canyon, and including Mugu Lagoon, Point Mugu State Park, and Leo Carrillo State Beach, all within Ventura and Los Angeles Counties.

(10) Capistrano Coast State Seashore, consisting of lands extending from Newport Beach to San Mateo Point, and including Corona Del Mar State Beach, Irvine Coast, Doheny State Beach, and San Clemente State Beach, all within Orange County.

(11) (A) San Diego Coast State Seashore, consisting of lands extending from San Onofre State Beach to La Jolla, and including San Onofre State Beach, Carlsbad State Beach, Robert C. Frazee State Beach, South Carlsbad State Beach, Leucadia State Beach, Moonlight State Beach, San Elijo State Beach, Cardiff State Beach, Torrey Pines State Beach, and Torrey Pines State Reserve, all within San Diego County.

(B) That section of Carlsbad State Beach within the San Diego Coast State Seashore which is located north of Agua-Hedionda Lagoon is hereby renamed Robert C. Frazee State Beach.

(c) The department shall determine the precise boundaries of each state seashore, may revise those boundaries from time to time, shall identify additional lands appropriate for inclusion in state seashores, and shall recommend land acquisitions for the establishment of additional state seashores or as additions to existing state seashores to the Governor and to the Legislature for inclusion in the annual Budget Bill.

(d) Section 5019.62 shall not apply to lands lying within the boundaries of state seashores established pursuant to this section until such lands have been acquired by the state and designated as state park system lands which are a part of a state seashore.

SEC. 3. Section 2 of this bill incorporates amendments to Section 5001.6 of the Public Resources Code proposed by both this bill and SB 1668. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 5001.6 of the Public Resources Code, and (3) this bill is enacted after SB 1668, in which case Section 1 of this bill shall not become operative.

CHAPTER 1091

An act relating to security guards.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. The Legislature finds and declares that the primary purpose of regulating and licensing armed security guards in this state is to protect the public from the unnecessary and improper use of force. The Legislature further finds and declares all of the following:

(a) The increasing crime and violence confronting California's citizens, private businesses, and law enforcement officials have strained the ability of the security guard industry and the individual armed security guard to confront criminal activity while avoiding the need to use force.

(b) The Department of Consumer Affairs reports that, during fiscal years 1989 to 1994, inclusive, there have been over 400 shootings by licensed armed security guards in this state.

(c) Licensed armed security guards are using and will continue to use deadly force in the face of criminal situations.

(d) Existing laws and regulations relating to the licensing and regulation of armed security guards are inadequate and do not adequately protect the public health, safety, and welfare.

(e) It is the intent of the Legislature that armed security guards should not be required to meet the same rigor of standards required of peace officers.

SEC. 2. The Bureau of Security and Investigative Services, with the technical assistance of the Commission on Peace Officer Standards and Training, shall develop minimum selection, competence, and training standards for armed security guards and implement those standards through regulations no later than January 1, 1996. In developing these minimum standards, the bureau also shall seek the advice of the security guard industry and other interested and affected parties. The minimum standards shall be developed by the bureau no later than July 1, 1995. The minimum standards to be considered for adoption shall include, but not be limited to, all of the following:

(a) Training and statewide policy standards in the use of force and weaponry, with particular emphasis on methods for preventing the need to use force.

(b) Selection standards, including the use of appropriate psychological testing methods to screen out any applicants with psychological disorders.

(c) Minimum educational standards.

(d) Criminal, arrest, and previous employment history and

preemployment investigation standards.

(e) Recertification standards to ensure continued competency, including an appropriate phase-in period.

CHAPTER 1092

An act to add Section 11622.5 to the Insurance Code, relating to insurance.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 11622.5 is added to the Insurance Code, to read:

11622.5. The plan shall provide for effective dates for coverage consistent with all of the following:

(a) Except as provided in this section, in no event shall coverage be effective prior to the date and time of execution of the application forms. Except as specifically provided by this section, postage meter postmarks shall not be recognized by the plan as establishing effective dates.

(b) (1) Beginning July 1, 1995, when the applicant requires that coverage be effective at the date and time the application forms are completed and executed, the effective date and time shall be established using an electronic effective date procedure established by the plan provided that the plan allows for a grace period of one hour to allow the producer of record to transmit the completed application.

(2) The manager of the plan shall establish and maintain a toll-free telephone number as part of the electronic effective date procedure. The manager shall maintain sufficient capacity to service, in a timely manner, applications received by means of the electronic effective date procedure.

(3) The electronic effective date procedure shall be available only to producers of record who are certified by the plan.

(c) Coverage for vehicles shall become effective at the date and time the application forms are completed and executed if and only if all of the following requirements are met:

(1) The producer of record and the applicant certify under penalty of perjury on the application the date and time that the application forms were completed and executed.

(2) The producer of record uses the electronic effective date procedure adopted pursuant to subdivision (b) and inserts the reference number or other required verification code on the application.

(3) The application forms and required deposit are mailed to the

plan manager no later than two working days, as reflected by the United States Postal Service postmark on the envelope enclosing the application, following the date the application forms are completed and executed.

(4) The application is transmitted through the plan's electronic effective date procedure within one hour of the completion and execution of the application.

(d) If the application is made without using the electronic effective date procedure, coverage shall be effective as of 12:01 a.m. on the date following receipt of the application in the plan office unless a later date is requested.

(e) If the applicant desires coverage on a date later than that which would otherwise be fixed pursuant to this section, the applicant shall indicate that date and the plan manager shall fix the effective date of coverage as of 12:01 a.m. on the desired date of coverage. However, no date shall be later than 45 days after the date of application.

(f) The effective date for coverage for an additional vehicle to be added to an in-force policy or for other coverage to be added to an in-force policy shall not be subject to the requirements of this section, but shall be governed by the terms of the policy and other applicable laws and regulations.

(g) In order to provide evidence of a requested effective date, the producer of record shall maintain appropriate records of all risks for which he or she has designated the time and date of coverage. That evidence shall be in the form of completed applications, eligibility certification forms, a mail log, a check copy, a check register, a receipt, and other records created contemporaneously with the application, and shall permit inspection or photocopying of those records by the plan manager or the assigned insurer. The inspection or photocopying shall be limited to situations where the effective date is an issue.

(h) Where the plan's electronic effective date procedure is disrupted due to failure of transmission or receiving equipment due to fire, earthquake, explosion, civil unrest, or similar disaster or emergency, the producer of record may bind coverage up to one day prior to the time the application forms and required deposit are mailed to the plan manager, as established by the United States Postal Service postmark on the envelope in which the application was enclosed.

(i) Notwithstanding any other provision of this section, where the producer of record discovers a material error in an application, the producer of record shall be authorized to rescind coverage bound for a period up to 24 hours after the date and time established pursuant to the plan's electronic effective date procedure.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction,

changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1093

An act to amend Sections 69051, 75007, 75027.5, 75035, 75051, 75058, 75060, 75089, 75094, 75131.3, 75132, 75133, 75134, 75135, 75136, 75172, 75173, and 75176 of, to repeal Sections 75037 and 75058.5 of, and to repeal and add Section 75030 of, the Food and Agricultural Code, relating to agriculture.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 69051 of the Food and Agricultural Code is amended to read:

69051. The powers and duties of the commission, subject to Sections 69032 and 69033, shall include, but are not limited to, all of the following powers and duties:

(a) To adopt and, from time to time, alter, rescind, modify, and amend all proper and necessary bylaws, rules, regulations, and orders for carrying out this chapter, including rules for appeals from any bylaw, rule, regulation, or order of the commission. The adoption, alteration, rescission, modification, or amendment of any bylaw, rule, regulation, or order implementing the brand-credit advertising program authorized pursuant to subdivision (i) is subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) To administer and enforce this chapter, and to do and perform all acts and exercise all powers incidental to, or in connection with, or determined reasonably necessary for, the proper or advisable effectuation of the purposes of this chapter.

(c) To appoint its own officers, including a chairperson, one or more vice chairpersons, and any other officers as it determines necessary. The officers have the powers and duties delegated to them by the commission.

(d) To employ a manager to serve at the pleasure of the commission as president and chief executive officer of the commission, and other personnel, including legal counsel, that are necessary to carry out this chapter. The commission may retain a management firm or the staff from any board, commission, or committee of the state to perform the functions prescribed by this

subdivision under the control of the commission. If the manager engages in any conduct which the secretary determines is not in the public interest or which is in violation of this chapter, the secretary shall notify the commission of the conduct and request that corrective and, if appropriate, disciplinary action be taken by the commission. If the commission fails or refuses to correct the situation or to take disciplinary action satisfactory to the secretary, the secretary may suspend or discharge the manager.

(e) To fix the compensation for all employees of the commission.

(f) To appoint committees composed of both members and nonmembers of the commission, such as a processor advisory committee, to advise the commission in carrying out this chapter.

(g) To establish offices and incur expenses, invest funds in the permissible investments as specified in Section 58939, enter into any and all contracts and agreements, and create liabilities and borrow funds in advance of receipt of assessments as may be necessary, in the opinion of the commission, for the proper administration and enforcement of this chapter and the performance of its duties.

(h) To keep accurate books, records, and accounts of all of its dealings, which books, records, and accounts shall be subject to an annual audit by an auditing firm selected by the commission with the concurrence of the secretary. The audit shall be made a part of an annual report to all producers of pistachios, copies of which shall also be submitted to the Legislature and the department. In addition, the secretary may, as he or she determines necessary, conduct or cause to be conducted a fiscal and compliance audit of the commission. The Department of Finance may audit books, records, and accounts of the commission at any time.

(i) To promote the sale of pistachios by advertising and other promotional means, including cost-sharing advertising of pistachios or other complementary products and brand-credit advertising, for the purpose of maintaining and expanding present markets and creating new and larger intrastate, interstate, and foreign markets for pistachios, and to educate and instruct the public with respect to the uses, healthful properties, and nutritional value of pistachios. Any decision to implement a brand-credit advertising program shall be ratified by a vote of producers conducted pursuant to Section 69062.

(j) To educate and instruct the wholesale and retail trade with respect to proper methods of handling and selling pistachios, make market surveys and analyses, and present facts to, and negotiate with, state, federal, and foreign agencies on matters which affect the marketing of pistachios.

(k) To make, in the name of the commission, contracts to render service in formulating and conducting plans and programs, and any other contracts or agreements as the commission may determine necessary for the promotion of the sale of pistachios.

(l) To conduct and contract with others to conduct scientific research, including the study, analysis, dissemination, and accumulation of information obtained from the research or

elsewhere, respecting cultural and production practices, and marketing and distribution of pistachios. In connection with the research, the commission may accept contributions of, or match, private, state, or federal funds that may be available for these purposes, and employ or make contributions of funds to other persons or state or federal agencies conducting the research.

(m) To publish and distribute, without charge, a bulletin or other communication for dissemination of information relating to the pistachio industry to producers and processors.

(n) To establish an assessment rate to defray operating costs of the commission. Any assessment rate established pursuant to this chapter may be modified in accordance with Section 69081.

(o) To establish an annual budget according to accepted accounting practices. The budget shall be concurred in by the secretary prior to disbursement of funds, except for disbursements made pursuant to subdivision (e).

(p) To submit to the secretary, for his or her concurrence, an annual statement of contemplated activities authorized under this chapter, including advertising, promotion, marketing research, and production research.

(q) To administer any governmental program establishing quality standards for the pistachio industry upon request of an authorized agent of a governmental agency.

SEC. 1.5. Section 75007 of the Food and Agricultural Code is amended to read:

75007. The benefits conferred by the activities authorized pursuant to this chapter extend to those segments of the egg industry doing business within this state. Insofar as out-of-state handlers benefit from the programs and activities authorized in accordance with this chapter, they may be obligated to bear their fair share of the burden and shall comply with this chapter.

SEC. 2. Section 75027.5 of the Food and Agricultural Code is amended to read:

75027.5. (a) "Egg products" means eggs that are not sold or used for consumption in shell egg form and that have been processed into a nonshell form.

(b) For purposes of this section, "processed" means cut, diced, sliced, peeled, seasoned, salted, sugared, preserved, frozen, dried, liquified, strained, pasteurized, separated into yolks and whites (whether or not in natural proportions), or blended or mixed with not more than 25 percent nonegg substances or ingredients.

(c) Food products that contain less than 75 percent egg substances, or that historically have not been considered egg products, shall not be considered an "egg product" for purposes of this section.

SEC. 3. Section 75030 of the Food and Agricultural Code is repealed.

SEC. 4. Section 75030 is added to the Food and Agricultural Code, to read:

75030. (a) "Handler" means any person who engages in the operation of marketing eggs or egg products in California that he or she has produced, purchased, or acquired from another person, or that he or she is marketing on behalf of another person, whether as owner, agent, employee, broker, or otherwise. When the handler is a corporation, all of the directors and officers of the corporation in their capacity as individuals shall be included, and any liability for failure to collect or make payment of assessments for which a corporate handler may be subject pursuant to this chapter shall include identical liability upon each individual director or officer of the corporation. "Handler" does not include a retailer, except a retailer who purchases or acquires eggs or egg products from any producer, handler, or broker that were not previously subject to assessment by the commission.

(b) Reference to "handler" in this chapter, except for Article 3 (commencing with Section 75051), Article 5 (commencing with Section 75111), subdivision (a) of Section 75132, and Article 8 (commencing with Section 75171), but not including Sections 75175 and 75176, includes California handlers and out-of-state handlers, unless otherwise specified.

SEC. 5. Section 75035 of the Food and Agricultural Code is amended to read:

75035. "Producer" means any person who is engaged in the business of producing, or causing to be produced, eggs or egg products for market.

SEC. 6. Section 75037 of the Food and Agricultural Code is repealed.

SEC. 7. Section 75051 of the Food and Agricultural Code is amended to read:

75051. There is in the state government the California Egg Commission. The commission shall be composed of eight handler members, of which four shall be elected by and from handlers from District 1, three shall be elected by and from handlers from District 2, and one at-large handler shall be elected who exclusively handles eggs or egg products produced outside of California, and one public member.

SEC. 8. Section 75058 of the Food and Agricultural Code is amended to read:

75058. (a) Three alternate handler members, one from each district and one who exclusively handles eggs or egg products produced outside of California, shall be elected in the same manner as the handler members.

(b) Under procedures established by the commission, any alternate handler member may serve in place of any absent handler member on the commission regardless of whether the alternate handler was chosen from the district the absent handler member represents and shall have all the rights, privileges, and powers of the handler member when serving on the commission.

(c) In the event of death, removal, resignation, or disqualification

of a handler member, the alternate handler shall act as a handler member on the commission until a qualified successor is elected.

SEC. 9. Section 75058.5 of the Food and Agricultural Code is repealed.

SEC. 10. Section 75060 of the Food and Agricultural Code is amended to read:

75060. (a) Any handler member or his or her alternate shall be an individual, partner, or employee of a handler who has a financial interest in handling eggs or egg products for market. Not more than two handler members on the commission and not more than one handler member in any district shall be employed by or represent the same corporation, firm, partnership, association, or business organization.

(b) Handler members and alternates shall meet the requirements of this section during their entire term of office.

SEC. 11. Section 75089 of the Food and Agricultural Code is amended to read:

75089. (a) The commission shall keep accurate books, records, and accounts of all of its dealings, which books, records, and accounts are subject to an annual audit by an auditing firm selected by the commission with the concurrence of the secretary. The audit shall be made a part of an annual report to all handlers and producers, copies of which shall also be submitted to the Legislature and the department.

(b) In addition, the secretary may, as he or she determines it to be necessary, conduct or cause to be conducted a fiscal and compliance audit of the commission.

SEC. 12. Section 75094 of the Food and Agricultural Code is amended to read:

75094. The commission may publish and distribute, without charge, bulletins or other communications for dissemination of information relating to commission activities and other related matters to producers and handlers.

SEC. 13. Section 75131.3 of the Food and Agricultural Code is amended to read:

75131.3. The assessment established pursuant to Section 75131 may be collected from out-of-state handlers in accordance with procedures established by the commission on eggs or egg products marketed in this state.

SEC. 14. Section 75132 of the Food and Agricultural Code is amended to read:

75132. (a) This chapter does not apply to any person who handles not more than 26,000 cases of eggs per year, or the equivalent thereof, and to secondary handlers. Unless the commission determines otherwise, direct sales to customers on the premises of the handler in less than one case lots shall not be included in computing the number of cases handled per year and shall not be subject to assessment by the commission. However, the handler shall file an affidavit with the commission stating the basis for exemption

from this chapter. The commission shall then determine whether the exemption should be approved.

(b) This chapter does not apply to any out-of-state handler who handles not more than 26,000 cases of eggs per year, or the equivalent thereof. However, upon the implementation of Section 75131.3, the commission may require the out-of-state handlers to file an affidavit with the commission stating the basis for exemption from this chapter. The commission shall then determine whether the exemption should be approved.

SEC. 15. Section 75133 of the Food and Agricultural Code is amended to read:

75133. Every handler, and any person required to be registered pursuant to Section 75135.5, shall keep a complete and accurate record of all eggs and egg products handled or marketed by him or her. These records shall be in the form and contain the information prescribed by the commission. The records shall be retained for a period of five years and shall be submitted for inspection at any reasonable time upon written demand of the commission or its duly authorized agent.

SEC. 16. Section 75134 of the Food and Agricultural Code is amended to read:

75134. (a) All proprietary information obtained by the commission or the secretary from handlers is confidential and shall not be disclosed except when required by court order in a judicial proceeding involving this chapter.

(b) Information on volume shipments, product value, and any other related information that is required for reports to governmental agencies; financial reports to the commission or aggregate sales and inventory information; and any other information that the commission requires that gives only totals, but excludes individual handler information, may be disclosed by the commission.

SEC. 17. Section 75135 of the Food and Agricultural Code is amended to read:

75135. Assessments shall be levied upon the handler for all eggs and egg products handled by him or her that were not previously assessed by the commission. The handler of eggs and egg products being assessed shall be a trustee of the assessment funds until they are paid to the commission at the time and in the manner prescribed by the commission.

SEC. 18. Section 75136 of the Food and Agricultural Code is amended to read:

75136. Every handler is personally liable for the payment of the assessments. Any handler who fails to file records as prescribed by the commission or pay any assessment within the time required by the commission, shall pay to the commission a penalty of 10 percent of the amount of the assessment determined to be due and, in addition, 2 percent interest per month on the unpaid balance.

SEC. 19. Section 75172 of the Food and Agricultural Code is

amended to read:

75172. (a) Following a favorable referendum conducted prior to December 31, 1989, a referendum shall be conducted by the commission every fifth year thereafter between January 1st and December 31st, following procedures provided in this article, unless a referendum is conducted as the result of a petition filed pursuant to Section 75173. In that case, the referendum shall be every fifth year following the industry-petitioned referendum.

(b) A favorable vote under this section shall be found if the secretary determines from the referendum that a majority of the handlers eligible to vote in the referendum voted in favor of continuing the operations of this chapter, or that the handlers so voting marketed a majority or more of the volume of eggs or egg products marketed in the preceding season by all of the handlers who voted in the referendum.

(c) If the secretary finds that a favorable vote has been given, he or she shall so certify and this chapter shall remain operative. If the secretary finds that a favorable vote has not been given, he or she shall so certify and declare the operation of this chapter and the commission suspended upon the expiration of the then current marketing season. Thereupon, the operations of the commission shall be concluded and funds distributed in the manner provided in Section 75175.

(d) No bond or security is required for a referendum conducted pursuant to this section.

SEC. 20. Section 75173 of the Food and Agricultural Code is amended to read:

75173. (a) Upon a finding by a two-thirds vote of the commission that the operation of this chapter has not tended to effectuate its declared purposes, the commission may recommend to the secretary that the operation of this chapter be suspended. However, the suspension shall not become effective until the expiration of the current marketing season.

(b) The secretary shall, upon receipt of this recommendation, or may, after a public hearing to review a petition filed with him or her requesting the suspension, signed by 20 percent of the total number of handlers by number who marketed not less than 20 percent of the volume of eggs and egg products marketed in the immediately preceding marketing season, conduct a referendum among the handlers to determine if the operation of the commission shall be suspended. However, the secretary shall not hold a referendum as a result of the petition unless the petitioner shows by a preponderance of the evidence that the operation of this chapter has not tended to effectuate its declared purpose.

(c) The secretary shall establish a referendum period, which shall not be less than 10 or more than 60 days in duration. The secretary may prescribe additional procedures as may be necessary to conduct the referendum. At the close of the established referendum period, the secretary shall tabulate the ballots filed during the period.

(d) If at least 40 percent of the total number of handlers from the list established by the secretary participated in the referendum, the secretary shall suspend the operation of this chapter, if he or she finds either one of the following:

(1) Sixty-five percent or more of the total number of handlers who voted in the referendum voted in favor of suspension, and the handlers so voting marketed a majority or more of the volume of eggs and egg products marketed in the preceding marketing season by all of the handlers who voted in the referendum.

(2) A majority of the total number of handlers who voted in the referendum voted in favor of suspension, and the handlers so voting marketed 65 percent or more of the volume of eggs and egg products marketed in the preceding season by all of the handlers who voted in the referendum.

SEC. 21. Section 75176 of the Food and Agricultural Code is amended to read:

75176. Upon suspension of the operation of this chapter and of the commission, the commission shall mail a copy of the notice of suspension to all handlers affected by the suspension whose names and addresses are on file.

CHAPTER 1094

An act to amend Sections 12420.2 and 20215.5 of the Government Code, relating to public employees, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 12420.2 of the Government Code is amended to read:

12420.2. The Controller may purchase annuity contracts for permanent employees of the State Department of Education, Department of the Youth Authority, Board of Governors of the California Community Colleges, Department of Corrections, State Department of Mental Health, California Maritime Academy, Commission for Teacher Credentialing, State Department of Developmental Services, California State Library, California Postsecondary Education Commission, Private Postsecondary Vocational Education Council, Department of Consumer Affairs, Board of Vocational Nurse and Psychiatric Technician Examiners, and the Board of Registered Nursing, and shall reduce the salary of each employee for whom an annuity contract is purchased by the amount of the cost thereof provided that all of the following conditions are met:

(a) The annuity contract is under an annuity plan which meets the requirements of subdivision (b) of Section 403 of the Internal Revenue Code and Section 17512 of the Revenue and Taxation Code.

(b) The employee makes application to the Controller for the purchase and reduction of salary.

(c) All provisions of the Insurance Code applicable to the purchase of those annuities are satisfied.

SEC. 2. Section 20215.5 of the Government Code is amended to read:

20215.5. (a) It is the intent of the Legislature that the provisions of this section be available to assist members in obtaining homes in this state. The Legislature intends that home loans made pursuant to Section 20215 and this section shall be secured primarily by the property acquired except as authorized pursuant to paragraph (1) of subdivision (b) and shall not exceed the fair market value of the property acquired.

(b) The board shall include in any program established pursuant to Section 20215 a procedure whereby a member may obtain 100 percent financing for the purchase of a single-family dwelling unit in accordance with the following criteria:

(1) The member shall obtain one loan with a loan-to-value ratio not to exceed 95 percent secured by the purchased home and a second personal loan with a loan-to-value ratio not to exceed 5 percent secured by a portion of the accumulated contributions and vested accrued benefits in the member's individual account.

(2) The loan secured by the purchased home shall be consistent with the loan-to-value ratios specified in the schedules established pursuant to Section 20215.

(3) The amount of any loan on a single family dwelling unit shall not exceed 95 percent of the median value of those dwellings in the county in which the dwelling is located or two hundred thousand dollars (\$200,000), whichever is the greater amount. The amount shall be increased annually by the increase in the consumer price index, as defined in Section 21221. In no event, shall the loan amount exceed three hundred fifty thousand dollars (\$350,000).

(4) In no event may the personal loan secured by the accumulated contributions and vested accrued benefits in the member's individual account exceed 50 percent of the current value amount of the accumulated contributions.

(5) The pledge of security under this section shall remain in effect until the loan is paid in full.

(c) In the event of a default on the personal loan secured by the member's contributions as authorized by this section, the board may deduct an amount from the member's contributions on deposit and adjust the member's accrued benefit, up to the amount pledged as security, prior to making any disbursement of retirement benefits.

(d) The secured personal loan permitted under this section shall be made available only to currently employed members who meet such eligibility criteria as the board deems advisable.

(e) If the member is married at the time the home is purchased with a personal loan secured by the member's contributions as authorized by this section, then the member's spouse shall agree in writing to the pledge of security, as to his or her community interest in the amount pledged regardless of whether title to the home is in joint tenancy.

(f) The pledge of security under this section shall take binding effect, notwithstanding Section 21201. In the event of default, the accumulated contributions in the member's account shall be reduced as necessary to recover any outstanding loan balance, not to exceed the pledged amount.

(g) Appropriate administrative costs of implementing this section shall be paid by the members utilizing this section. Those costs may be included in the loan amount.

(h) Appropriate interest rates shall be periodically reviewed and adjusted to provide loans to members consistent with the financial integrity of the member home loan program and the sound and prudent investment of the retirement fund.

(i) The amendments to this section during the 1993-94 Regular Session of the Legislature shall be deemed to have become operative on November 1, 1993.

(j) The board shall administer this section under such other terms and conditions as it deems appropriate and in keeping with the investment standard set forth in Section 20205.8. The board may adopt procedural guidelines as necessary for its administration of this section and to assure compliance with applicable state and federal laws.

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

In order to make the annuity and housing programs available to public employees in time for them to benefit from the current housing market conditions and in order to increase home sales to stimulate the California economy, it is necessary that this act take effect immediately.

CHAPTER 1095

An act to amend Section 1505 of the Health and Safety Code, and to amend Sections 4475, 4476, 4477, 4478, and 4535 of, and to add Sections 4689.1, 4689.2, 4689.3, 4689.4, 4689.5, and 4689.6 to, the Welfare and Institutions Code, relating to developmental services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1994. Filed with Secretary of State September 29, 1994.]

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

SECTION 1. Section 1505 of the Health and Safety Code is amended to read:

1505. This chapter does not apply to any of the following:

- (a) Any health facility, as defined by Section 1250.
- (b) Any clinic, as defined by Section 1202.
- (c) Any juvenile placement facility approved by the California Youth Authority or any juvenile hall operated by a county.
- (d) Any place in which a juvenile is judicially placed pursuant to subdivision (a) of Section 727 of the Welfare and Institutions Code.
- (e) Any child day care facility, as defined in Section 1596.750.
- (f) Any facility conducted by and for the adherents of any well-recognized church or religious denomination for the purpose of providing facilities for the care or treatment of the sick who depend upon prayer or spiritual means for healing in the practice of the religion of the church or denomination.
- (g) Any school dormitory or similar facility determined by the department.
- (h) Any house, institution, hotel, homeless shelter, or other similar place that supplies board and room only, or room only, or board only, provided that no resident thereof requires any element of care as determined by the director.
- (i) Recovery houses or other similar facilities providing group living arrangements for persons recovering from alcoholism or drug addiction where the facility provides no care or supervision.
- (j) Any alcoholism or drug abuse recovery or treatment facility as defined by Section 11834.11.
- (k) Any arrangement for the receiving and care of persons by a relative or any arrangement for the receiving and care of persons from only one family by a close friend of the parent, guardian, or conservator, if the arrangement is not for financial profit and occurs only occasionally and irregularly, as defined by regulations of the state department.
- (l) Any supported living arrangement for individuals with developmental disabilities as defined in Section 4689 of the Welfare and Institutions Code.
- (m) (1) Any family home agency or family home, as defined in

Section 4689.1 of the Welfare and Institutions Code, that is vendored by the State Department of Developmental Services and that does either of the following:

(A) As a family home approved by a family home agency, provides 24-hour care for one or two adults with developmental disabilities in the residence of the family home provider or providers and the family home provider or providers' family, and the provider is not licensed by the State Department of Social Services or the State Department of Health Services or certified by a licensee of the State Department of Social Services or the State Department of Health Services.

(B) As a family home agency, engages in recruiting, approving, and providing support to family homes.

(2) No part of this subdivision shall be construed as establishing by implication either a family home agency or family home licensing category.

(n) Any similar facility determined by the director.

SEC. 2. Section 4475 of the Welfare and Institutions Code is amended to read:

4475. (a) Each developmental center under the jurisdiction of the State Department of Developmental Services shall have a developmental center advisory board of eight members appointed by the Governor from a list of nominations submitted to him or her by the boards of supervisors of counties within each developmental center's designated service area. If a state hospital and developmental center provides services for both persons with mental disorders and persons with developmental disabilities, there shall be a separate advisory board for the program provided the persons with mental disorders and a separate board for the program provided the persons with developmental disabilities. To the extent feasible, an advisory board serving a developmental center for persons with developmental disabilities shall consist of two relatives of persons with developmental disabilities who are residents in that developmental center, three representatives of professional disciplines who are not employees of the state developmental center system, but who are serving persons with developmental disabilities, two representatives of the general public who have demonstrated an interest in services to persons with developmental disabilities, and one current or former resident of a state developmental center.

(b) Each appointment to the advisory board shall be for the term of three years, except that an appointment to fill a vacancy shall be for the unexpired term only. No person shall be appointed to serve more than a maximum of two terms as a member of the board.

SEC. 3. Section 4476 of the Welfare and Institutions Code is amended to read:

4476. No person shall be eligible for appointment to a developmental center advisory board if he or she is a Member of the Legislature or an elective state officer, and if that person becomes a Member of the Legislature or an elective state officer after his or her

appointment his or her office shall be vacated and a new appointment made. If any appointee fails to attend three consecutive regular meetings of the board, unless he or she is ill or absent from the state, his or her office becomes vacant, and the board, by resolution, shall so declare, and shall transmit a certified copy of that resolution to the Governor immediately.

SEC. 4. Section 4477 of the Welfare and Institutions Code is amended to read:

4477. The advisory boards of the several state developmental centers are advisory to the State Department of Developmental Services and the Legislature with power of visitation and advice with respect to the conduct of the developmental centers and coordination with community mental health programs or regional programs for persons with developmental disabilities. The members of the boards shall serve without compensation other than necessary expenses incurred in the performance of duty. They shall organize and elect a chairperson. They shall meet at least once every three months and at any other times they are called by the chairperson, by the medical director, by the head of the department, or by a majority of the board. No expenses shall be allowed except in connection with meetings so held. The advisory board or boards of each developmental center or state hospital and developmental center may make a written report on its activities.

SEC. 5. Section 4478 of the Welfare and Institutions Code is amended to read:

4478. (a) The chairperson of an advisory board advising a developmental center shall meet annually with the developmental center director, the regional center directors, and the area board chairpersons representing areas within the developmental center's service area, as defined in Division 4.5 (commencing with Section 4500).

(b) The chairpersons shall be allowed necessary expenses incurred in attending these meetings.

(c) It is the intent of the Legislature that the department assist the development of annual regional meetings required by this section.

SEC. 6. Section 4535 of the Welfare and Institutions Code is amended to read:

4535. (a) The state council shall meet at least six times each year, and, on call of its chairperson, as often as necessary to fulfill its duties. All meetings and records of the state council shall be open to the public.

(b) The state council shall, by majority vote of the voting members, elect its own chairperson and vice chairperson who shall have full voting rights on all state council actions, from among the 10 appointed members, described in subdivision (a) of Section 4521, and shall establish any committees it deems necessary or desirable. The chairperson shall appoint all members of committees of the state council.

(c) The state council may appoint technical advisory consultants

and may establish committees composed of professional persons serving persons with developmental disabilities as necessary for technical assistance. The state council may call upon representatives of all agencies receiving state funds for assistance and information, and may invite persons with developmental disabilities, their parents or guardians or conservators, professionals, or members of the general public to participate on state council committees.

SEC. 7. Section 4689.1 is added to the Welfare and Institutions Code, to read:

4689.1. (a) The Legislature declares that it places a high priority on providing opportunities for adults with developmental disabilities to live with families approved by family home agencies and to receive services and supports in those settings as determined by the individual program plan.

(b) For purposes of this section, "family home" means a home that is owned, leased, or rented by, and is the family residence of, the family home provider or providers, and in which services and supports are provided to a maximum of two adults with developmental disabilities regardless of their degree of disability, and who do not require continuous skilled nursing care.

(c) For purposes of this section, "family home agency" means a private not-for-profit agency that is vended to do all of the following:

- (1) Recruit, approve, train, and monitor family home providers.
- (2) Provide social services and in-home support to family home providers.
- (3) Assist adults with developmental disabilities in moving into approved family homes.

(d) For purposes of ensuring that regional centers may secure high quality services that provide supports in natural settings and promote inclusion and meaningful participation in community life for adults with developmental disabilities, the department shall promulgate regulations for family home agencies and family homes that shall include, but not be limited to, standards and requirements related to all of the following:

(1) Selection criteria for regional centers to apply in vending family home agencies, including, but not limited to, all of the following:

- (A) The need for service.
- (B) The experience of the agency or key personnel in providing the same or comparable services.
- (C) The reasonableness of the agency's overhead.
- (D) The capability of the regional center to monitor and evaluate the vendor.

(2) Vendorization.

(3) Operation of family home agencies, including, but not limited to, all of the following:

- (A) Recruitment.
- (B) Approval of family homes.

(C) Qualifications, training, and monitoring of family home providers.

(D) Assistance to consumers in moving into approved family homes.

(E) The range of services and supports to be provided.

(F) Family home agency staffing levels, qualifications, and training.

(4) Program design.

(5) Program and consumer records.

(6) Family homes.

(7) (A) Rates of payment for family home agencies and approved family home providers. In developing the rates pursuant to regulation, the department may require family home agencies and family homes to submit program cost or other information, as determined by the department.

(B) Regional center reimbursement to family home agencies shall not exceed rates for similar individuals when residing in other types of out-of-home care established pursuant to Section 4681.1.

(C) The department shall review the appropriateness of the rates paid to family home agencies and report its findings to the Legislature no later than December 31, 1996.

(8) The department and regional center's monitoring and evaluation of the family home agency and approved homes, which shall be designed to ensure that services do all of the following:

(A) Conform to applicable laws and regulations and provide for the consumer's health and well-being.

(B) Assist the consumer in understanding and exercising his or her individual rights.

(C) Are consistent with the family home agency's program design and the consumer's individual program plan.

(D) Maximize the consumer's opportunities to have choices in where he or she lives, works, and socializes.

(E) Provide a supportive family home environment, available to the consumer 24 hours a day, that is clean, comfortable, and accommodating to the consumer's cultural preferences, values, and lifestyle.

(F) Are satisfactory to the consumer, as indicated by the consumer's quality of life as assessed by the consumer, his or her family, and if appointed, conservator, or significant others, or all of these, as well as by evaluation of outcomes relative to individual program plan objectives.

(9) Monthly monitoring visits by family home agency social service staff to approved family homes.

(10) Procedures whereby the regional center and the department may enforce applicable provisions of law and regulation, investigate allegations of abuse or neglect, and impose sanctions on family home agencies and approved family homes, including, but not limited to, all of the following:

(A) Requiring movement of a consumer from a family home

under specified circumstances.

(B) Termination of approval of a family home.

(C) Termination of the family home agency's vendorization.

(11) Appeal procedures.

(f) Each adult with developmental disabilities placed in a family home shall have the rights specified in this division, including, but not limited to, the rights specified in Section 4503.

(g) Prior to placement in a family home of an adult with developmental disabilities who has a conservator, consent of the conservator shall be obtained.

(h) The adoption of any emergency regulations to implement this section that are filed with the Office of Administrative Law within one year of the date on which the act that added this section took effect shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.

SEC. 8. Section 4689.2 is added to the Welfare and Institutions Code, to read:

4689.2. (a) It is the intent of the Legislature in enacting this section to require the filing of fingerprints of those individuals whose contact with consumers receiving services and supports from family home agencies, as defined in subdivision (c) of Section 4689.1, and family homes, as defined in subdivision (b) of Section 4689.1, may pose a risk to the consumers' health and safety.

(b) As part of the vendor approval process for family home agencies and family homes, the State Department of Developmental Services shall secure from the Department of Justice a full criminal history to determine whether the applicant or any other person specified in subdivision (c) has ever been convicted of, or arrested for, a crime other than a minor traffic violation. If it is found that the applicant, or any other person specified in subdivision (c), has been convicted of, or is awaiting trial for, a crime other than a minor traffic violation, the vendor application shall be denied, unless the director grants an exemption pursuant to subdivision (f). If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Developmental Services with a statement of that fact.

(c) In addition to the applicant, this section shall be applicable to criminal convictions of the following persons:

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

(2) Any adult other than a consumer residing in the family home.

(3) Any adult who provides assistance to the consumer in dressing, grooming, bathing, or personal hygiene.

(4) Any staff person, employee, consultant, or volunteer who has frequent and routine contact with the consumer. In determining who has frequent contact, any consultant or volunteer shall be exempt unless the volunteer is used to replace or supplement staff or family home personnel in providing services or supports, or both,

to consumers. In determining who has routine contact, staff and employees under direct onsite supervision of the family home agency and who are not providing direct services and supports or who have only occasional or intermittent contact with consumers shall be exempt.

(5) The executive director of the entity applying for vendorization or other person serving in like capacity.

(6) Officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the family home agency or family home.

(d) (1) Subsequent to vendorization, any person specified in subdivision (c) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a family home agency or a family home, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The vendor shall submit these fingerprints to the Department of Justice not later than four calendar days following employment, residence, or initial presence in the family home agency or family home. These fingerprints shall be on a card provided by the State Department of Developmental Services for the purpose of obtaining a permanent set of fingerprints. If fingerprints are not submitted to the Department of Justice, as required in this section, that failure shall result in a sanction and the fingerprints shall then be submitted to the State Department of Developmental Services for processing. Upon request of the vendor, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprints.

(2) Within 30 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Developmental Services of the criminal record information, as provided in subdivision (b). If no criminal record information has been recorded, the Department of Justice shall provide the vendor and the State Department of Developmental Services with a statement of that fact within 15 calendar days of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice shall, within 15 calendar days from the date of receipt of the fingerprints, notify the vendor that the fingerprints were illegible.

(3) (A) Except for persons specified in paragraph (2) of subdivision (c), the vendor shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Developmental Services, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of, or is awaiting trial for, a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, 273d, or

subdivision (a) or (b) of Section 368 of the Penal Code, or has been convicted of a felony, the State Department of Developmental Services shall notify the vendor to act immediately to terminate the person's employment, remove the person from the family home, or bar the person from entering the family home. The State Department of Developmental Services may subsequently grant an exemption pursuant to subdivision (f).

(B) If the conviction or arrest was for another crime, except a minor traffic violation, the vendor shall, upon notification by the State Department of Developmental Services, act immediately to do either of the following:

(i) Terminate the person's employment, remove the person from the family home, or bar the person from entering the family home.

(ii) Seek an exemption pursuant to subdivision (f). The State Department of Developmental Services shall determine if the person shall be permitted to remain in the family home until a decision on the exemption is rendered.

(e) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the State Department of Developmental Services is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(f) After review of the record, the Director of Developmental Services may grant an exemption from denial of vendor approval pursuant to subdivision (b), or for employment in a family home agency or family home of residence or presence in a family home as specified in subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify vendor approval or granting an exemption for purposes of subdivision (c). Except as otherwise provided in this subdivision, no exemption shall be granted if the conviction was for an offense specified in Section 220, 243.4, 264.1,

paragraph (1) of subdivision (a) of Section 273a, Section 273d, 288, 289, or subdivision (a) or (b) of Section 368 of the Penal Code, or for another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code. The director may grant an exemption if the employee, prospective employee, or other person identified in subdivision (c) who was convicted of a crime against an individual in paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5 of the Penal Code, has been rehabilitated as provided in Section 4852.03 of the Penal Code and has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years and has the recommendation of the district attorney representing the employee's county of residence, or if the employee, prospective employee, or other persons identified in subdivision (c) has received a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(g) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal record clearance, as described in subdivision (b), from one family home agency or family home to another, as long as the criminal record clearance has been processed through the State Department of Developmental Services.

(h) If a family home agency or a family home is required by law to deny employment or to terminate employment of any employee based on written notification from the state department pursuant to subdivision (c) the family home agency or the family home shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

SEC. 9. Section 4689.3 is added to the Welfare and Institutions Code, to read:

4689.3. (a) A family home agency shall not place an adult with developmental disabilities in a family home until the family home agency has received a criminal record clearance from the State Department of Developmental Services pursuant to Section 4689.2, except as provided in subdivisions (b) and (c).

(b) Any peace officer, or other category of person approved by the department subject to criminal record clearance as a condition of employment, and who has submitted fingerprints and executed a declaration regarding criminal convictions, may receive an adult with developmental disabilities in placement pending the receipt of a criminal record clearance when the family home has met all other requirements for vendor approval.

(c) Any person currently approved as a vendor pursuant to this chapter by the department when the family home has met all other requirements, and who has submitted fingerprints and executed a declaration regarding criminal convictions, may receive, or continue, an adult with developmental disabilities in placement pending the receipt of a criminal record clearance.

SEC. 10. Section 4689.4 is added to the Welfare and Institutions Code, to read:

4689.4. The State Department of Developmental Services may deny an application for vendorization or terminate vendorization as a family home agency or family home upon the grounds that the applicant for vendorization, the vendor, or any other person mentioned in Section 4689.2 has been convicted at any time of a crime, except a minor traffic violation.

SEC. 11. Section 4689.5 is added to the Welfare and Institutions Code, to read:

4689.5. (a) Proceeding for the termination, or denial of vendorization as a family home agency or family home pursuant to Section 4689.4 shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the State Department of Developmental Services shall have all the powers granted by Chapter 5. In the event of conflict between this section and Chapter 5, Chapter 5 shall prevail.

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

(c) The hearing shall be held within 90 calendar days after receipt of the notice of defense, unless a continuance of the hearing is granted by the department or the administrative law judge. When the matter has been set for hearing, only the administrative law judge may grant a continuance of the hearing. The administrative law judge may grant a continuance of the hearing, but only upon finding the existence of one or more of the following:

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

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

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

(4) A stipulation for continuance signed by all parties or their authorized representatives that is communicated with the request for continuance to the administrative law judge no later than 25 business days before the hearing.

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

(6) The unavailability of a party, representative, or attorney of a party, or witness to an essential fact due to a conflicting and required appearance in a judicial matter if when the hearing date was set, the person did not know and could neither anticipate nor at any time

avoid the conflict, and the conflict with request for continuance is immediately communicated to the administrative law judge.

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

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

(d) Notwithstanding Section 11510 of the Government Code, witnesses subpoenaed at the request of the department for a hearing conducted pursuant to this section who attend a hearing may be paid by the department witness fees and mileage as provided by Section 68093 of the Government Code. In addition, the department may pay actual, necessary, and reasonable expenses in an amount not to exceed the per diem allowance payable to a nonrepresented state employee on travel status. The department may pay witness expenses pursuant to this section in advance of the hearing.

SEC. 12. Section 4689.6 is added to the Welfare and Institutions Code, to read:

4689.6. (a) The State Department of Developmental Services may prohibit a vendor from employing, or continuing the employment of, or allowing in a family home, or allowing contact with any adult with a developmental disability placed in a family home by, any employee or prospective employee, who has been denied an exemption to work or to be present in a facility, when that person has been convicted of a crime, except a minor traffic violation.

(b) The employee or prospective employee, and the vendor shall be given written notice of the basis of the department's action and of the employee's or prospective employee's right to a hearing. The notice shall be served either by personal service or by registered mail. Within 15 days after the department serves the notice, the employee or prospective employee may file with the department a written request for a hearing. If the employee or prospective employee fails to file a written request for a hearing within the prescribed time, the department's action shall be final.

(c) (1) The department may require the immediate exclusion of an employee or prospective employee from a family home agency or family home pending a final decision of the matter, when, in the opinion of the director, the action is necessary to protect any adult with a developmental disability placed in the family home from physical or mental abuse, abandonment, or any other substantial threat to his or her health and safety.

(2) If the department requires the immediate exclusion of an employee or prospective employee from a family home agency or family home, the department shall serve an order of immediate exclusion upon the employee or prospective employee that shall notify the employee or prospective employee of the basis of the department's action and of the employee's or prospective employee's right to a hearing.

(3) Within 15 days after the department serves an order of immediate exclusion, the employee or prospective employee may file a written request for a hearing with the department. The department's action shall be final if the employee or prospective employee does not file a request for a hearing within the prescribed time. The department shall do the following upon receipt of a written request for a hearing:

(A) Within 80 days of receipt of the request for a hearing, serve an accusation upon the employee or prospective employee.

(B) Within 60 days of receipt of a notice of defense by the employee or prospective employee pursuant to Section 11506 of the Government Code, conduct a hearing on the statement of issues.

(4) An order of immediate exclusion of the employee or prospective employee from the family home agency or family home shall remain in effect until the hearing is completed and the director has made a final determination on the merits. However, the order of immediate exclusion shall be deemed vacated if the director fails to make a final determination on the merits within 60 days after the original hearing has been completed.

(d) An employee or prospective employee who files a written request for a hearing with the department pursuant to this section shall, as part of the written request, provide his or her current mailing address. The employee or prospective employee shall subsequently notify the department in writing of any change in mailing address, until the hearing process has been completed or terminated.

(e) Hearings held pursuant to this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The standard of proof shall be the preponderance of the evidence and the burden of proof shall be on the department.

(f) The department may institute or continue a disciplinary proceeding against an employee or prospective employee upon any ground provided by this section, or enter an order prohibiting the employee's or prospective employee's employment or presence in the family home agency or family home or otherwise take disciplinary action against the employee or prospective employee, notwithstanding any resignation, withdrawal of employment application, or change of duties by the employee or prospective employee, or any discharge, failure to hire, or reassignment of the employee or prospective employee by the vendor.

(g) A vendor's failure to comply with the department's prohibition of employment or presence in the family home agency or family home shall be grounds for disciplining the vendor pursuant to Section 4689.4.

SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction,

changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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

The adult family home agency is a necessary community placement option. In order to serve adults with developmental disabilities in small family homes at the earliest possible time, and thus provide sufficient access to care for persons with developmental disabilities, it is necessary that this act take effect immediately.

CHAPTER 1096

An act to amend Sections 5701, 5801, 5810, 5812, and 17605.05 of, and to repeal Section 14115.8 of, the Welfare and Institutions Code, relating to mental health, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 5701 of the Welfare and Institutions Code is amended to read:

5701. (a) To achieve equity of funding, available funding for local mental health programs beyond the funding provided pursuant to Section 17601 shall be distributed to cities, counties, and cities and counties pursuant to the procedures described in subdivision (c) of Section 17606.05.

(b) Funding provided pursuant to Section 6 of Article XIII B of the California Constitution, funding provided pursuant to subdivision (c), and funding provided for future pilot projects shall be exempt from the requirements of subdivision (a).

(c) Effective in the 1994-95 fiscal year and each year thereafter:

(1) The State Department of Mental Health shall annually identify from mental health block grant funds provided by the federal government, the maximum amount that federal law and regulation permit to be allocated to counties and cities and counties pursuant to this subdivision. This section shall apply to any federal mental health block grant funds in excess of the following:

(A) The amount allocated to counties and cities and counties from the alcohol, drug abuse, and mental health block grant in the 1991-92

fiscal year.

(B) Funds for departmental support.

(C) Amounts awarded to counties and cities and counties for children's systems of care programs pursuant to Part 4 (commencing with Section 5850).

(D) Amounts allocated to small counties for the development of alternatives to state hospitalization in the 1993-94 fiscal year.

(E) Amounts appropriated by the Legislature for the purposes of this part.

(2) Notwithstanding subdivision (a), annually the State Department of Mental Health shall allocate to counties and cities and counties the funds identified in paragraph (1), not to exceed forty million dollars (\$40,000,000) in any year. The allocations shall be proportional to each county's and each city and county's percentage of the forty million dollars (\$40,000,000) in Cigarette and Tobacco Products Surtax funds that were allocated to local mental health programs in the 1991-92 fiscal year.

(3) Monthly, the Controller shall allocate funds from the Vehicle License Collection Account of the Local Revenue Fund to counties and cities and counties for mental health services. Allocations shall be made to each county or city and county in the same percentages as described in paragraph (2), until the total of the funds allocated to all counties in each year pursuant to paragraph (2) and this paragraph reaches forty million dollars (\$40,000,000).

(4) Funds allocated to counties and cities and counties pursuant to paragraphs (2) and (3) shall not be subject to Section 17606.05.

(5) Funds that are available for allocation in any year in excess of the forty million dollar (\$40,000,000) limits described in paragraph (2) or (3) shall be deposited into the Mental Health Subaccount of the Local Revenue Fund.

(6) Nothing in this section is intended to, nor shall it, change the base allocation of any city, county, or city and county as provided in Section 17601.

SEC. 2. Section 5801 of the Welfare and Institutions Code is amended to read:

5801. (a) The State Department of Mental Health shall contract with one or more counties for at least one, but not more than three, county demonstration projects to develop and implement the model adult and senior county interagency mental health service system beginning July 1, 1989, and ending December 31, 1996.

(b) The State Department of Mental Health shall adopt as part of its overall mission for the proposed demonstration projects the development of community-based, county interagency systems of mental health care for seriously mentally disordered adults and seniors that result in the highest benefit to the client, family, and community while ensuring that the public sector meets its legal responsibility and fiscal liability at the lowest possible cost. The underlying philosophy for these systems of care includes the following:

(1) Mental health care is a basic human service, no less so than food and shelter programs, adult protective services, medical care, education, or vocational training.

(2) Seriously mentally disordered adults and seniors are citizens of a community with all the rights, privileges, opportunities, and responsibilities accorded other citizens.

(3) Seriously mentally disordered adults and seniors usually have multiple disorders and disabling conditions and should have the highest priority for mental health services.

(4) Seriously mentally disordered adults and seniors should have an interagency network of services with multiple points of access and be assigned a single person or team to be responsible for all treatment, case management, and community support services.

(5) The client should be fully informed and volunteer for all treatment provided, unless danger to self or others or grave disability requires temporary involuntary treatment.

(6) Clients and families should directly participate in making decisions about services and resource allocations that affect their lives.

(7) People in local communities are the most knowledgeable regarding their particular environments, issues, service gaps and strengths, and opportunities.

(8) State and county government agencies each have responsibilities and fiscal liabilities for seriously mentally disordered adults and seniors.

(9) Mental health services should be responsive to the unique needs, among the seriously mentally disordered, of minority and ethnic groups, elderly persons, and people with multiple disorders.

(10) For the majority of seriously mentally disordered adults and seniors, treatment is best provided in the client's natural setting in the community. Treatment, case management, and community support services should be designed to prevent inappropriate removal from the natural environment to more restrictive and costly placements.

(11) Mental health systems of care shall have measurable goals and be fully accountable by providing measures of client outcomes and cost of services.

(c) Notwithstanding subdivision (a), if the Director of Mental Health determines prior to June 30, 1993, that a project is unsuccessful pursuant to the client and cost outcomes specified in Section 5834, the department may terminate the contract as of that date.

SEC. 3. Section 5810 of the Welfare and Institutions Code is amended to read:

5810. (a) The State Department of Mental Health shall establish at least two, but not more than six, pilot integrated service agencies for the seriously mentally disordered beginning July 1, 1989, and ending December 31, 1996, hereafter referred to in this part as pilot agencies.

(b) Notwithstanding subdivision (a), if the Director of Mental Health determines prior to June 30, 1993, that a project is unsuccessful pursuant to the client and cost outcomes specified in Section 5834, the department may terminate the agency as of that date. If one or more of the projects continues beyond June 30, 1993, the director may continue the independent evaluation of client and cost outcomes of these projects.

SEC. 4. Section 5812 of the Welfare and Institutions Code is amended to read:

5812. (a) Any public or private agency, organization, or corporation, including a county, may respond to the request for proposals and be considered as a contractor to operate a pilot agency. Two or more counties, agencies, organizations, or corporations may respond jointly. A pilot agency or its satellite shall be located within a reasonable distance to its members.

(b) The director shall award contracts effective July 1, 1989, to implement the pilot agencies. Each contract shall ensure that the number of persons in the pilot agencies remain constant and that the population served meets the criteria established in this part. No pilot agency shall serve more than 200 clients or fewer than 100 clients.

(c) (1) Contracts entered into pursuant to this part shall start July 1, 1989, and end December 31, 1996.

(2) Notwithstanding paragraph (1), if the Director of Mental Health determines prior to June 30, 1993, that a project is unsuccessful, the department may terminate the contract as of that date.

SEC. 5. Section 14115.8 of the Welfare and Institutions Code is repealed.

SEC. 6. Section 17605.05 of the Welfare and Institutions Code is amended to read:

17605.05. (a) For the 1992-93 fiscal year and fiscal years thereafter, after satisfying the obligations set forth in Section 17605, the Controller shall deposit into the Base Restoration Subaccount of the Sales Tax Growth Account of the Local Revenue Fund, the remainder of those revenues deposited in the Sales Tax Growth Account of the Local Revenue Fund, up to a cumulative amount, that, in conjunction with local matching funds pursuant to Section 17608.15, is sufficient to fund the difference between two billion two hundred fourteen million four hundred ten thousand two hundred sixty dollars (\$2,214,410,260), less the amount allocated pursuant to subdivision (a) of Section 17605, and actual amounts distributed for the 1991-92 fiscal year pursuant to this chapter.

(b) On or before the 27th day of each month, the Controller shall allocate to the appropriate accounts in the local health and welfare trust fund the amounts deposited and remaining unexpended and unreserved on the 15th day of the month in the Base Restoration Subaccount of the Sales Tax Growth Account pursuant to a schedule developed by the Department of Finance, in consultation with the appropriate state departments and the California State Association of

Counties, based on each county's, city's, and city and county's share of the funds determined pursuant to subdivision (a), including the adjustment made for individual counties and cities and counties that received funds allocated pursuant to subdivision (a) of Section 17605.

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

In order that federal mental health block grant funds may be distributed in the most efficient and timely manner possible for the 1994-95 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 1097

An act to amend Sections 11735 and 11737 of the Insurance Code, and to amend Sections 53, 54.5, 55, 56, 119, 133, 138.2, 138.5, 3205, 3205.5, 3206, 4409, 4638, 4643, 4645, 4647, 4702, 5450, 5451, 5453, and 5454 of, and to repeal Section 5452 of, the Labor Code, relating to workers' compensation.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 11735 of the Insurance Code, as added by Chapter 228 of the Statutes of 1993, is amended to read:

11735. (a) Every insurer shall file with the commissioner all rates, rating plans, and supplementary rate information which are to be used in this state. The rates and supplementary information shall be filed not later than 30 days prior to the effective date. If the commissioner finds, after a hearing, that an insurer's rates require closer supervision because of the insurer's financial condition, as determined pursuant to Section 11733, the insurer shall file with the commissioner at least 30 days before the effective date, all of those rates and the supplementary rate information and supporting information as prescribed by the commissioner. Upon application by the filer, the commissioner may authorize an earlier effective date.

(b) Rates filed pursuant to this section shall be filed in the form and manner prescribed by the commissioner. All rates, supplementary information and any supporting information for rates filed under this article shall, as soon as filed, be open to public inspection at any reasonable time. Copies may be obtained by any person on request and upon payment of a reasonable charge.

(c) Upon the written application of the insurer and insured, stating its reasons therefor, filed with the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used

on any specific risk.

(d) Notwithstanding Section 679.70, no rating organization may issue nor may any insurer use any classification system or rate, as applied or used, that violates Section 679.71 or 679.72 or that violates the Unruh Civil Rights Act which shall also include any arbitrary economic discrimination by an insurer as a prohibited basis of discrimination.

SEC. 1.5. Section 11737 of the Insurance Code, as amended by Section 7 of Chapter 1242 of the Statutes of 1993, is amended to read:

11737. (a) The commissioner may disapprove a rate if the insurer fails to comply with the filing requirements under Section 11735.

(b) If the commissioner believes that rates may violate any of the requirements of this article, he or she shall call a hearing prior to any disapproval. The commissioner shall disapprove a rate if he or she finds that the rate would, if continued in use, tend to impair or threaten the solvency of an insurer or tend to create a monopoly in the market pursuant to Section 11732.

(c) Every insurer or rating organization shall provide within this state reasonable means whereby any person aggrieved by the application of its filings may be heard on written request to review the manner in which the rating system has been applied in connection with the insurance afforded or offered. If the insurer or rating organization fails to grant or reject the request within 30 days, the applicant may proceed in the same manner as if the application had been rejected. Any party affected by the action of the insurer or rating organization on the request may, within 30 days after written notice of the action, appeal to the commissioner who, after a hearing held upon not less than 10 days' written notice to the appellant and to the insurer or rating organization, may affirm, modify, or reverse such action.

(d) If the commissioner disapproves a rate, the commissioner shall issue an order specifying in what respects it fails to meet the requirements of this article and stating when within a reasonable period thereafter such rate shall be discontinued for any policy issued or renewed after a date specified in the order. The order shall be issued within 30 days after the close of the hearing or within such reasonable time extension as the commissioner may fix. The order may include a provision for premium adjustment for the period after the effective date of the order for policies in effect on that date.

(e) Whenever an insurer has no legally effective rates as a result of the commissioner's disapproval of rates or other act, the commissioner shall on request of the insurer specify interim rates for the insurer that are adequate to protect the interests of all parties and may order that a specified portion of the premiums be placed in an escrow account approved by him or her. When new rates become legally effective, the commissioner shall order the escrowed funds or any overcharge in the interim rates to be distributed appropriately, except that refunds of less than ten dollars (\$10) per

policyholder shall not be required.

SEC. 2. Section 53 of the Labor Code is amended to read:

53. Whenever in Section 1001 or in Part 1 (commencing with Section 11000) of Division 3 of Title 2 of the Government Code "head of the department" or similar designation occurs, the same shall, for the purposes of this code, mean the director, except that in respect to matters which by the express provisions of this code are committed to or retained under the jurisdiction of the Division of Workers' Compensation, the State Compensation Insurance Fund, the Occupational Safety and Health Standards Board, the Occupational Safety and Health Appeals Board, or the Industrial Welfare Commission the designation shall mean the Division of Workers' Compensation, the Administrative Director of the Division of Workers' Compensation, the Workers' Compensation Appeals Board, the State Compensation Insurance Fund, the Occupational Safety and Health Standards Board, the Occupational Safety and Health Appeals Board, or the Industrial Welfare Commission, as the case may be.

SEC. 3. Section 54.5 of the Labor Code is amended to read:

54.5. The director may appoint an attorney and assistants licensed to practice law in this state. In the absence of an appointment, the attorney for the Division of Workers' Compensation shall also perform legal services for the department as the Director of Industrial Relations may direct.

SEC. 4. Section 55 of the Labor Code is amended to read:

55. For the purpose of administration the director shall organize the department subject to the approval of the Governor, in the manner he deems necessary properly to segregate and conduct the work of the department. Notwithstanding any provision in this code to the contrary, the director may require any division in the department to assist in the enforcement of any or all laws within the jurisdiction of the department. Except as provided in Section 18930 of the Health and Safety Code, the director may, in accordance with the provisions of Chapter 4.5 (commencing with Section 11371), Part 1, Division 3, Title 2 of the Government Code, make rules and regulations that are reasonably necessary to carry out the provisions of this chapter and to effectuate its purposes. The provisions of this section, however, shall not apply to the Division of Workers' Compensation or the State Compensation Insurance Fund, except as to any power or jurisdiction within those divisions as may have been specifically conferred upon the director by law.

SEC. 5. Section 56 of the Labor Code is amended to read:

56. The work of the department shall be divided into at least six divisions known as the Division of Workers' Compensation, the Division of Occupational Safety and Health, the Division of Labor Standards Enforcement, the Division of Labor Statistics and Research, the Division of Apprenticeship Standards, and the State Compensation Insurance Fund.

SEC. 6. Section 119 of the Labor Code is amended to read:

119. The attorney shall:

(a) Represent and appear for the state and the Division of Workers' Compensation and the appeals board in all actions and proceedings arising under any provision of this code administered by the division or under any order or act of the division or the appeals board and, if directed so to do, intervene, if possible, in any action or proceeding in which any such question is involved.

(b) Commence, prosecute, and expedite the final determination of all actions or proceedings, directed or authorized by the administrative director or the appeals board.

(c) Advise the administrative director and the appeals board and each member thereof, upon request, in regard to the jurisdiction, powers or duties of the administrative director, the appeals board and each member thereof.

(d) Generally perform the duties and services as attorney to the Division of Workers' Compensation and the appeals board which are required of him or her.

SEC. 7. Section 133 of the Labor Code is amended to read:

133. The Division of Workers' Compensation, including the administrative director and the appeals board, shall have power and jurisdiction to do all things necessary or convenient in the exercise of any power or jurisdiction conferred upon it under this code.

SEC. 8. Section 138.2 of the Labor Code is amended to read:

138.2. The headquarters of the Division of Workers' Compensation shall be based at and operated from a centrally located city.

The administrative director shall have an office in that city with suitable rooms, necessary office furniture, stationery and supplies, and may rent quarters in other places for the purpose of establishing branch or service offices, and for that purpose may provide those offices with necessary furniture, stationery and supplies.

The administrative director shall provide suitable rooms, with necessary office furniture, stationery and supplies for the appeals board at the centrally located city where said board shall be based at and operate from, and may rent quarters in other places for the purpose of establishing branch or service offices for said appeals board, and for that purpose may provide those offices with necessary furniture, stationery and supplies.

All meetings held by the administrative director shall be open and public. Notice thereof shall be published in papers of general circulation not more than 30 days and not less than 10 days prior to each meeting in Sacramento, San Francisco, Fresno, Los Angeles and San Diego. Written notice of all meetings shall be given to all persons who request in writing directed to the administrative director that they be given notice.

SEC. 9. Section 138.5 of the Labor Code is amended to read:

138.5. The Division of Workers' Compensation shall cooperate in the enforcement of child support obligations. At the request of the Director of Social Services, the administrative director shall assist in

providing to the State Department of Social Services information concerning persons who are receiving permanent disability benefits or who have filed an application for adjudication of a claim which the Director of Social Services determines is necessary to carry out its responsibilities pursuant to Section 11478.6 of the Welfare and Institutions Code.

The process of sharing information with regard to applicants for and recipients of permanent disability benefits required by this section shall be known as the Workers' Compensation Notification Project.

SEC. 10. Section 3205 of the Labor Code is amended to read:

3205. "Division" means the Division of Workers' Compensation.

SEC. 11. Section 3205.5 of the Labor Code is amended to read:

3205.5. "Appeals board" means the Workers' Compensation Appeals Board of the Division of Workers' Compensation.

SEC. 12. Section 3206 of the Labor Code is amended to read:

3206. "Administrative director" means the Director of the Division of Workers' Compensation.

SEC. 13. Section 4409 of the Labor Code is amended to read:

4409. The Director of Industrial Relations, or his or her representative, shall assign investigative and claims adjustment services respecting matters concerning Asbestos Workers' Account cases. Those assignments may be made within the department, including the Division of Workers' Compensation, and excluding the State Compensation Insurance Fund.

SEC. 14. Section 4638 of the Labor Code is amended to read:

4638. (a) If the employee is determined to be a qualified injured worker, and the employer notifies the injured worker, pursuant to paragraph (1) of subdivision (d) of Section 4636 that the employer will be unable to provide modified or alternative work to that injured worker, the qualified rehabilitation representative and the employee, jointly, shall develop an agreed-upon vocational rehabilitation plan pursuant to subdivision (e) of Section 4635.

Vocational rehabilitation plans which utilize an employee's transferable skills and experience shall be preferable to plans that propose training for an occupation in which the employee has no skills or experience.

An insured employer in whose employment the injury occurred shall receive a refund, payable in the same manner as a return of a standard insurance premium, from the insurer that provided the security for the payment of compensation on the date of injury when the employer, pursuant to Section 4644, returns the qualified injured worker to modified or alternative work at the employer's place of employment for 12 consecutive months. The refund shall be equal to the standard premium computed on the wages paid by the employer to the qualified injured worker during the 12-month period and shall be calculated as follows: multiply the workers' compensation insurance premium rate times the wages reported for workers' compensation insurance for the qualified injured worker during that

12-month period. For this calculation, the workers' compensation insurance rate shall be the insurance premium rate or rates per one hundred dollars (\$100) of payroll which were applicable to the payroll reported for the qualified injured worker during that 12-month period, modified by the experience modification factor or factors, if any, which were applicable to the employer during that 12-month period. During and after the 12-month period, the qualified injured worker shall be protected against discrimination pursuant to Section 132a.

(b) Within 90 days after determination of the employee's vocational feasibility, the employer shall do either of the following:

(1) Submit a vocational rehabilitation plan agreed to by the employee to the administrative director's vocational rehabilitation unit for review and approval when required pursuant to Section 139.5.

(2) Request the administrative director's vocational rehabilitation unit to resolve any dispute concerning the provision of vocational rehabilitation services.

SEC. 15. Section 4643 of the Labor Code is amended to read:

4643. If the employee unreasonably fails to cooperate in the provision of vocational rehabilitation services, unreasonably fails to cooperate in the development or implementation of a vocational rehabilitation plan, or unreasonably fails to cooperate in completing an approved vocational rehabilitation plan, the employee shall not be entitled to receive that portion of the maintenance allowance payable under paragraph (1) of subdivision (d) of Section 139.5 for the period of unreasonable failure. The employer shall provide the employee with written notice of the employer's intention to withhold payment, the reasons therefor, and the employee's right to object thereto within 10 days of the date the notice was received or served.

If the employee objects to the employer's stated intention to withhold payment, the administrative director's vocational rehabilitation unit shall conduct an expedited conference to determine if the employee is entitled to receive the payments. A copy of the determination shall be served by certified mail on the employee and employer within 10 days of the employee's objection. The employer shall continue payment of that portion of the maintenance allowance due under paragraph (1) of subdivision (d) of Section 139.5 until receipt of the determination.

SEC. 16. Section 4645 of the Labor Code is amended to read:

4645. (a) (1) For unrepresented employees, all disputed matters regarding the provision of vocational rehabilitation services shall be submitted initially to the administrative director's vocational rehabilitation unit for its recommendation except as otherwise provided in this section.

(2) For represented employees, all disputed matters shall be submitted to arbitration pursuant to Part 3.5 (commencing with Section 5270), except as otherwise provided in this section and

Section 4643.

(b) Where the question of entitlement to vocational rehabilitation services is first raised before a workers' compensation judge and there are good faith issues which, if resolved against the employee, would defeat his or her right to all compensation, the judge shall determine the issues and, if appropriate, refer the question of entitlement to vocational rehabilitation services to the administrative director's vocational rehabilitation unit or arbitration for recommendation.

(c) Where the question of entitlement to vocational rehabilitation services is first raised before a workers' compensation judge and there are no issues which would bar the employee's right to compensation, the judge shall refer the question of entitlement to the vocational rehabilitation services to the administrative director's vocational rehabilitation unit or arbitration for recommendations before entering a finding, decision, or award on the issue of vocational rehabilitation.

(d) Any determination or recommendation of the administrative director's vocational rehabilitation unit or by the arbitrator shall be binding unless a petition is filed with the appeals board within 20 days after service of the determination or recommendation. Nothing in this section shall affect an employee's rights pursuant to Sections 5405.5, 5410, and 5803.

SEC. 17. Section 4647 of the Labor Code is amended to read:

4647. The administrative director shall appoint an advisory committee to assist the administrative director's vocational rehabilitation unit in recommending forms, procedures, and rules and regulations consistent with the effective administration of this article. Members of the advisory committee shall include two representatives each of employees, employers, insurers, and providers of vocational rehabilitation services.

SEC. 18. Section 4702 of the Labor Code is amended to read:

4702. (a) Except as otherwise provided in this section and Sections 4553, 4554, 4557, and 4558, the death benefit in cases of total dependency shall be as follows:

(1) In the case of two total dependents and regardless of the number of partial dependents, ninety-five thousand dollars (\$95,000), for injuries occurring on and after January 1, 1991, one hundred fifteen thousand dollars (\$115,000), for injuries occurring on or after July 1, 1994, one hundred thirty-five thousand dollars (\$135,000), and for injuries occurring on or after July 1, 1996, one hundred forty-five thousand dollars (\$145,000).

(2) In the case of one total dependent and one or more partial dependents, seventy thousand dollars (\$70,000), or for injuries occurring on and after January 1, 1991, ninety-five thousand dollars (\$95,000), for injuries occurring on or after July 1, 1994, one hundred fifteen thousand dollars (\$115,000), and for injuries occurring on or after July 1, 1996, one hundred twenty-five thousand dollars (\$125,000), plus four times the amount annually devoted to the

support of the partial dependents, but not more than a total of ninety-five thousand dollars (\$95,000), for injuries occurring on and after January 1, 1991, one hundred fifteen thousand dollars (\$115,000), for injuries occurring on or after July 1, 1994, one hundred twenty-five thousand dollars (\$125,000), and for injuries occurring on or after July 1, 1996, one hundred forty-five thousand dollars (\$145,000).

(3) In the case of one total dependent and no partial dependents, seventy thousand dollars (\$70,000), for injuries occurring on and after January 1, 1991, ninety-five thousand dollars (\$95,000), for injuries occurring on or after July 1, 1994, one hundred fifteen thousand dollars (\$115,000), and for injuries occurring on or after July 1, 1996, one hundred twenty-five thousand dollars (\$125,000).

(4) In the case of no total dependents and one or more partial dependents, four times the amount annually devoted to the support of the partial dependents, but not more than seventy thousand dollars (\$70,000), for injuries occurring on and after January 1, 1991, a total of ninety-five thousand dollars (\$95,000), for injuries occurring on or after July 1, 1994, one hundred fifteen thousand dollars (\$115,000), and for injuries occurring on or after July 1, 1996, one hundred twenty-five thousand dollars (\$125,000).

(5) In the case of three or more total dependents and regardless of the number of partial dependents, one hundred fifty thousand dollars (\$150,000) for injuries occurring on and after July 1, 1994, and one hundred sixty thousand dollars (\$160,000) on or after July 1, 1996.

(b) The death benefit in all cases shall be paid in installments in the same manner and amounts as temporary total disability indemnity would have to be made to the employee, unless the appeals board otherwise orders. However, no payment shall be made at a weekly rate of less than two hundred twenty-four dollars (\$224).

(c) Disability indemnity shall not be deducted from the death benefit and shall be paid in addition to the death benefit when the injury resulting in death occurs after September 30, 1949.

(d) All rights under this section existing prior to January 1, 1990, shall be continued in force.

SEC. 19. Section 5450 of the Labor Code is amended to read:

5450. The Division of Workers' Compensation shall make available to employees, employers and other interested parties information, assistance, and advice to assure the proper and timely furnishing of benefits and to assist in the resolution of disputes on an informal basis.

SEC. 20. Section 5451 of the Labor Code is amended to read:

5451. Any party may consult with, or seek the advice of, an information and assistance officer within the Division of Workers' Compensation as designated by the administrative director. If no application is filed, if the employee is not represented, or upon agreement of the parties, the information and assistance officer shall consider the contentions of the parties and may refer the matter to the appropriate bureau or unit within the Division of Workers'

Compensation for review and recommendations. The information and assistance officer shall advise the employer and the employee of their rights, benefits, and obligations under this division. Upon making a referral, the information and assistance officer shall arrange for a copy of any pertinent material submitted to be served upon the parties or their representatives, if any. The procedures to be followed by the information and assistance officer shall be governed by the rules and regulations of the administrative director adopted after public hearings.

SEC. 21. Section 5452 of the Labor Code is repealed.

SEC. 22. Section 5453 of the Labor Code is amended to read:

5453. After consideration of the information submitted, including the reports of any bureau or unit within the Division of Workers' Compensation which have been received, the information and assistance officer shall make a recommendation which shall be served on the parties or their representatives, if any.

SEC. 23. Section 5454 of the Labor Code is amended to read:

5454. Submission of any matter to an information and assistance officer of the Division of Workers' Compensation shall toll any applicable statute of limitations for the period that the matter is under consideration by the information and assistance officer, and for 60 days following the issuance of his or her recommendation.

CHAPTER 1098

An act to amend Sections 2317 and 2356 of the Business and Professions Code, relating to medicine.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 2317 of the Business and Professions Code is amended to read:

2317. If a person, not a regular employee of the board, is hired, under contract, or retained under any other arrangement, paid or unpaid, to provide expertise to the Division of Medical Quality or to the California Board of Podiatric Medicine in the evaluation of the conduct of a licensee, and that person is named as a defendant in an action for defamation, malicious prosecution, or any other civil cause of action directly resulting from opinions rendered, statements made, or testimony given to, or on behalf of, the division or committee or its representatives, the board shall provide for representation required to defend the defendant in that civil action. The board shall be liable for any judgment rendered against that person, except that the board shall not be liable for any punitive damages award. If the plaintiff prevails in a claim for punitive

damages, the defendant shall be liable to the board for the full costs incurred in providing representation to the defendant. The Attorney General shall be utilized in those actions as provided in Section 2020.

SEC. 2. Section 2356 of the Business and Professions Code is amended to read:

2356. The board shall provide for the representation and indemnification of any persons making reports to a committee or the board under this article in any action in accordance with Section 2317.

CHAPTER 1099

An act to amend Section 1170.1 of, and to add and repeal Section 667.83 of, the Penal Code, relating to sentencing.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 667.83 is added to the Penal Code, to read:
667.83. (a) When a person is convicted of a felony violation of Section 207, 261, 264.1, 273a, 273d, 286, 288a, or 289 committed against a child under the age of 18 years or a violation of Section 288 committed against a child of the age designated in that statute, where the offense was committed as part of a ceremony, rite, or any similar observance, the person shall be punished by an additional term of three years in addition and consecutive to that violation.

(b) For purposes of this section, a "ceremony, rite, or any similar observance" shall mean any of the following:

(1) Actual or simulated torture, mutilation, or sacrifice of any mammal.

(2) Forced ingestion, or external application of human or animal urine, feces, flesh, blood, or bones.

(3) Placement of a living child into a coffin, open grave, or other confined area containing animal remains or a human corpse or remains.

(c) This section shall not apply to:

(1) Lawful agricultural, animal husbandry, food preparation, or wild game hunting and fishing practices and specifically the branding or identification of livestock.

(2) The lawful medical practice of circumcision or any ceremony related thereto.

(3) Any state or federally approved, licensed, or funded research project.

(d) The enhancement charged in violation of subdivision (a) shall be proven by the testimony of two witnesses, or of one witness and corroborating circumstances.

(e) The following provisions govern the imposition of this enhancement:

(1) Only one enhancement shall be imposed per victim per incident.

(2) If there are two or more victims, one enhancement may be imposed per victim per incident.

(f) The Department of Justice shall submit to the Legislature on or before January 1, 1998, a report compiling data from the Department of Justice form 8715 containing information relating to this section that has been reported into the Department of Justice automated criminal history system and is available on the longitudinal file.

(g) Persons responsible for the completion of the Department of Justice form 8715 shall submit the form to the Attorney General in a timely manner. In addition, those persons shall record all cases in which enhancements are charged under this section and the disposition of those cases.

(h) This section shall not be construed to infringe in any way upon the rights and practices of legitimate religions.

(i) This section shall remain in effect only until January 1, 1999, and as of that date is repealed unless a later enacted statute, that is enacted before January 1, 1999, deletes or extends that date.

SEC. 2. Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as provided in subdivision (c) and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1, and pursuant to Section 11370.2 of the Health and Safety Code. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any enhancements imposed pursuant to Section 667.15, 667.8, 667.83, 667.85, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, or 12022.9 and an enhancement imposed pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code. The subordinate term for each consecutive offense which is not a "violent felony" as defined in subdivision (c) of Section 667.5 shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is not a violent felony for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for these consecutive offenses which are not "violent felonies" as defined in subdivision (c) of Section 667.5 exceed five years. The subordinate term for each consecutive offense which is a "violent felony" as defined in subdivision (c) of Section 667.5, including those offenses described in

paragraph (8), (9), or (17) of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is a violent felony for which a consecutive term of imprisonment is imposed, and shall include one-third of any enhancements imposed pursuant to Section 667.15, 667.8, 667.83, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9.

(b) (1) When a consecutive term of imprisonment is imposed under Sections 669 and 1170 for two or more convictions for kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions, the aggregate term shall be calculated as provided in subdivision (a), except that the subordinate term for each subsequent kidnapping conviction shall consist of the middle term for each kidnapping conviction for which a consecutive term of imprisonment is imposed and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.83, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9. The five-year limitation on the total of subordinate terms provided in subdivision (a) shall not apply to subordinate terms for second and subsequent convictions of kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions.

(2) As used in this subdivision, "separate occasion" means the defendant committed a second violation of Section 207 involving the same victim after at least 24 hours elapsed following his or her release of the victim.

(c) In the case of any person convicted of one or more felonies committed while the person is confined in a state prison, or is subject to reimprisonment for escape from custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the convictions which the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a), except that the total of subordinate terms may exceed five years. This subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.

(d) When the court imposes a prison sentence for a felony pursuant to Section 1170 the court shall also impose the additional terms provided in Sections 667, 667.15, 667.5, 667.8, 667.83, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, and 12022.9, and the additional terms provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, unless the additional punishment therefor is stricken pursuant to subdivision (h). The court shall also impose any other additional term which the court determines in its discretion or as required by law shall run consecutive to the term imposed under Section 1170. In considering

the imposition of the additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) When two or more enhancements under Sections 12022, 12022.4, 12022.5, 12022.55, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply. However, in cases of lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, as described in Section 288, kidnapping, as defined in Section 207, sexual battery, as defined in Section 243.4, penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, carjacking, rape or burglary, or attempted lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, kidnapping, sexual battery, penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, carjacking, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or subdivision (a) of, or paragraph (2) of subdivision (b) of, Section 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in Sections 667, 667.15, 667.5, 667.6, 667.8, 667.83, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, and 12022.9, and in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, shall be pleaded and proven as provided by law.

(g) (1) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170, unless the defendant stands convicted of a "violent felony" as defined in subdivision (c) of Section 667.5, or a consecutive sentence is being imposed pursuant to subdivision (b) or (c) of this section, or an enhancement is imposed pursuant to Section 667, 667.15, 667.5, 667.8, 667.83, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, or 12022.9, or an enhancement is being imposed pursuant to Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, or the defendant stands convicted of felony escape from an institution in which he or she is lawfully confined.

(2) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170 unless an enhancement is imposed pursuant to Section 12022.1 and both the primary and secondary offenses specified in Section 12022.1 are serious felonies as specified in subdivision (c) of Section 1192.7.

(h) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in Sections 667.15, 667.5, 667.8, 667.83, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.6, 12022.7, 12022.75, and 12022.9, or the enhancements provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, if it determines that there are circumstances in mitigation of the

additional punishment and states on the record its reasons for striking the additional punishment.

(i) For any violation of paragraph (2) or (3) of subdivision (a) of Section 261, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person as provided in Section 286 or 288a, the number of enhancements which may be imposed shall not be limited, regardless of whether the enhancements are pursuant to this or some other section of law. Each of the enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

CHAPTER 1100

An act to amend Section 31461.1 of the Government Code, relating to public retirement systems.

[Approved by Governor September 28, 1994. Filed with Secretary of State September 29, 1994.]

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

SECTION 1. Section 31461.1 of the Government Code is amended to read:

31461.1. (a) This section applies only to a county of the first class, as defined by Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961.

(b) Notwithstanding Sections 31460 and Section 31461, neither "compensation" nor "compensation earnable" shall include any of the following: cafeteria or flexible benefit plan contributions, transportation allowances, car allowances, or security allowances, as enumerated in a resolution adopted pursuant to subdivision (c).

(c) Except as provided in subdivision (d), this section shall not be operative until the board of supervisors, by resolution adopted by a majority vote, makes this section operative with respect to any employee who becomes a member after the effective date of the resolution .

(d) Regardless of whether it has acted pursuant to subdivision (c), at any time the board of supervisors, by separate resolution adopted by a majority vote, may make this section operative with respect to any member not represented by a certified employee organization who makes an irrevocable election to become subject to this section.

(e) Nothing in this section shall be construed to affect any determination made by the board of retirement, pursuant to Section 31461, prior to the effective date of this section.

(f) Nothing in this section shall be construed to affect the validity

of any memorandum of understanding or similar agreement that has been executed prior to the effective date of this section.

CHAPTER 1101

An act to amend Sections 27315 and 27360 of, to amend the heading of Article 3.3 (commencing with Section 27360) of Chapter 5 of Division 12 of, and to add Section 27360.5 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 27315 of the Vehicle Code, as amended by Section 1 of Chapter 122 of the Statutes of 1992, is amended to read:

27315. (a) The Legislature finds that a mandatory seatbelt law will contribute to reducing highway deaths and injuries by encouraging greater usage of existing manual seatbelts, that automatic crash protection systems which require no action by vehicle occupants offer the best hope of reducing deaths and injuries, and that encouraging the use of manual safety belts is only a partial remedy for addressing this major cause of death and injury. The Legislature declares that the enactment of this section is intended to be compatible with support for federal safety standards requiring automatic crash protection systems and should not be used in any manner to rescind federal requirements for installation of automatic restraints in new cars.

(b) This section shall be known and may be cited as the Private Passenger Motor Vehicle Safety Act.

(c) As used in this section, "private passenger motor vehicle" means any passenger vehicle and any motortruck of less than 6,001 pounds unladen weight, but "private passenger motor vehicle" does not include a motorcycle.

(d) (1) No person shall operate a private passenger motor vehicle on a highway unless that person and all passengers 16 years of age or over are properly restrained by a safety belt. This paragraph shall not apply to the operator of a taxicab, as defined in Section 27908, when the taxicab is driven on a city street. The safety belt requirement established by this paragraph is the minimum safety standard applicable to employees being transported in a private passenger motor vehicle. This paragraph does not preempt any more stringent or restrictive standards imposed by the Labor Code or any other state or federal regulation regarding the transportation of employees in a private passenger motor vehicle.

(2) The operator of a limousine for hire or the operator of an authorized emergency vehicle, as defined in subdivision (a) of

Section 165, shall not operate the limousine for hire or authorized emergency vehicle unless the operator and any passengers, four years of age or over and weighing 40 pounds or more, in the front seat are properly restrained by a safety belt.

(3) The operator of a taxicab shall not operate the taxicab unless any passengers, four years of age and over and weighing 40 pounds or more, in the front seat are properly restrained by a safety belt.

(e) No person 16 years of age or over shall be a passenger in a private passenger motor vehicle on a highway unless that person is properly restrained by a safety belt.

(f) Every owner of a private passenger motor vehicle, including every owner or operator of a taxicab, as defined in Section 27908, or a limousine for hire, operated on a highway shall maintain safety belts in good working order for the use of occupants of the vehicle. The safety belts shall conform to motor vehicle safety standards established by the United States Department of Transportation. This subdivision does not, however, require installation or maintenance of safety belts where not required by the laws of the United States applicable to the vehicle at the time of its initial sale.

(g) This section does not apply to a passenger or operator with a physically disabling condition or medical condition which would prevent appropriate restraint in a safety belt, if the condition is duly certified by a licensed physician and surgeon or by a licensed chiropractor who shall state the nature of the condition, as well as the reason the restraint is inappropriate. This section also does not apply to a peace officer, as defined in Section 830 of the Penal Code, when in an authorized emergency vehicle as defined in paragraph (1) of subdivision (b) of Section 165, or to any passenger in any seat behind the front seat of an authorized emergency vehicle as defined in paragraph (1) of subdivision (b) of Section 165 operated by the peace officer, unless required by the agency employing the peace officer.

(h) Notwithstanding subdivision (a) of Section 42001, any violation of subdivision (d), (e), or (f) is an infraction punishable by a fine, including all penalty assessments and court costs imposed on the convicted person, of not more than twenty dollars (\$20) for a first offense, and a fine, including all penalty assessments and court costs imposed on the convicted person, of not more than fifty dollars (\$50) for each subsequent offense. In lieu of the fine and any penalty assessment or court costs, the court, pursuant to Section 42005, may order that a person convicted of a first offense attend a school for traffic violators or a driving school in which the proper use of safety belts is demonstrated.

(i) For any violation of subdivision (d), (e), or (f), in addition to the fines provided for pursuant to subdivision (h) and the penalty assessments provided for pursuant to Section 1464 of the Penal Code, an additional penalty assessment of two dollars (\$2) shall be levied for any first offense, and an additional penalty assessment of five dollars (\$5) shall be levied for any subsequent offense.

All moneys collected pursuant to this subdivision shall be utilized in accordance with Section 1464 of the Penal Code.

(j) In any civil action, a violation of subdivision (d), (e), or (f) or information of a violation of subdivision (h) shall not establish negligence as a matter of law or negligence per se for comparative fault purposes, but negligence may be proven as a fact without regard to the violation.

(k) If the United States Secretary of Transportation fails to adopt safety standards for manual safety belt systems by September 1, 1989, no private passenger motor vehicle manufactured after that date for sale or sold in this state shall be registered unless it contains a manual safety belt system which meets the performance standards applicable to automatic crash protection devices adopted by the Secretary of Transportation pursuant to Federal Motor Vehicle Safety Standard No. 208 (49 C.F.R. 571.208) as in effect on January 1, 1985.

(l) Each private passenger motor vehicle offered for original sale in this state which has been manufactured on or after September 1, 1989, shall comply with the automatic restraint requirements of Section S4.1.2.1 of Federal Motor Vehicle Safety Standard No. 208 (49 C.F.R. 571.208), as published in Volume 49 of the Federal Register, No. 138, page 29009. Any automobile manufacturer who sells or delivers a private passenger motor vehicle subject to the requirements of this subdivision, and fails to comply with this subdivision, shall be punished by a fine of not more than five hundred dollars (\$500) for each sale or delivery of a noncomplying private passenger motor vehicle.

(m) Compliance with subdivision (k) or (l) by a manufacturer shall be made by self-certification in the same manner as self-certification is accomplished under federal law.

(n) This section does not apply to a person actually engaged in delivery of newspapers to customers along the person's route if the person is properly restrained by a safety belt prior to commencing and subsequent to completing delivery on the route.

(o) This section does not apply to a person actually engaged in collection and delivery activities as a rural delivery carrier for the United States Postal Service if the person is properly restrained by a safety belt prior to stopping at the first box and subsequent to stopping at the last box on the route.

(p) Subdivisions (d), (e), (f), (g), and (h) shall become inoperative immediately upon the date that the United States Secretary of Transportation, or his or her delegate, determines to rescind the portion of the Federal Motor Vehicle Safety Standard No. 208 (49 C.F.R. 571.208) which requires the installation of automatic restraints in new private passenger motor vehicles, except that those subdivisions shall not become inoperative if the secretary's decision to rescind that Standard No. 208 is not based, in any respect, on the enactment or continued operation of those subdivisions.

(q) This section shall remain in effect only until January 1, 1996,

and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date.

SEC. 2. Section 27315 of the Vehicle Code, as added by Section 2 of Chapter 122 of the Statutes of 1992, is amended to read:

27315. (a) The Legislature finds that a mandatory seatbelt law will contribute to reducing highway deaths and injuries by encouraging greater usage of existing manual seatbelts, that automatic crash protection systems which require no action by vehicle occupants offer the best hope of reducing deaths and injuries, and that encouraging the use of manual safety belts is only a partial remedy for addressing this major cause of death and injury. The Legislature declares that the enactment of this section is intended to be compatible with support for federal safety standards requiring automatic crash protection systems and should not be used in any manner to rescind federal requirements for installation of automatic restraints in new cars.

(b) This section shall be known and may be cited as the Private Passenger Motor Vehicle Safety Act.

(c) As used in this section, "private passenger motor vehicle" means any passenger vehicle and any motortruck of less than 6,001 pounds unladen weight, but "private passenger motor vehicle" does not include a motorcycle.

(d) (1) No person shall operate a private passenger motor vehicle on a highway unless that person and all passengers 16 years of age or over are properly restrained by a safety belt. This paragraph does not apply to the operator of a taxicab, as defined in Section 27908, when the taxicab is driven on a city street. The safety belt requirement established by this paragraph is the minimum safety standard applicable to employees being transported in a private passenger motor vehicle. This paragraph does not preempt any more stringent or restrictive standards imposed by the Labor Code or any other state or federal regulation regarding the transportation of employees in a private passenger motor vehicle.

(2) The operator of a limousine for hire or the operator of an authorized emergency vehicle, as defined in subdivision (a) of Section 165, shall not operate the limousine for hire or authorized emergency vehicle unless the operator and any passengers four years of age or over and weighing 40 pounds or more, in the front seat are properly restrained by a safety belt.

(3) The operator of a taxicab shall not operate the taxicab unless any passengers four years of age or over and weighing 40 pounds or more, in the front seat are properly restrained by a safety belt.

(e) No person 16 years of age or over shall be a passenger in a private passenger motor vehicle on a highway unless that person is properly restrained by a safety belt.

(f) Every owner of a private passenger motor vehicle, including every owner or operator of a taxicab, as defined in Section 27908, or a limousine for hire, operated on a highway shall maintain safety belts in good working order for the use of occupants of the vehicle.

The safety belts shall conform to motor vehicle safety standards established by the United States Department of Transportation. This subdivision does not, however, require installation or maintenance of safety belts where not required by the laws of the United States applicable to the vehicle at the time of its initial sale.

(g) This section does not apply to a passenger or operator with a physically disabling condition or medical condition which would prevent appropriate restraint in a safety belt, if the condition is duly certified by a licensed physician and surgeon or by a licensed chiropractor who shall state the nature of the condition, as well as the reason the restraint is inappropriate. This section also does not apply to a peace officer, as defined in Section 830 of the Penal Code, when in an authorized emergency vehicle as defined in paragraph (1) of subdivision (b) of Section 165, or to any passenger in any seat behind the front seat of an authorized emergency vehicle as defined in paragraph (1) of subdivision (b) of Section 165 operated by the peace officer, unless required by the agency employing the peace officer.

(h) Notwithstanding subdivision (a) of Section 42001, any violation of subdivision (d), (e), or (f) is an infraction punishable by a fine, including all penalty assessments and court costs imposed on the convicted person, of not more than twenty dollars (\$20) for a first offense, and a fine, including all penalty assessments and court costs imposed on the convicted person, of not more than fifty dollars (\$50) for each subsequent offense. In lieu of the fine and any penalty assessment or court costs, the court, pursuant to Section 42005, may order that a person convicted of a first offense attend a school for traffic violators or a driving school in which the proper use of safety belts is demonstrated.

(i) For any violation of subdivision (d), (e), or (f), in addition to the fines provided for pursuant to subdivision (h) and the penalty assessments provided for pursuant to Section 1464 of the Penal Code, an additional penalty assessment of two dollars (\$2) shall be levied for any first offense, and an additional penalty assessment of five dollars (\$5) shall be levied for any subsequent offense.

All moneys collected pursuant to this subdivision shall be utilized in accordance with Section 1464 of the Penal Code.

(j) In any civil action, a violation of subdivision (d), (e), or (f) or information of a violation of subdivision (h) shall not establish negligence as a matter of law or negligence per se for comparative fault purposes, but negligence may be proven as a fact without regard to the violation.

(k) Notwithstanding Section 40300 or any other provision of law, a peace officer shall not stop or seize a person for a violation of subdivision (d), (e), or (f), nor arrest or issue a notice to appear or notice to correct for a violation of those subdivisions if the officer has no other cause to stop or seize the person other than a violation of subdivision (d), (e), or (f).

(l) If the United States Secretary of Transportation fails to adopt

safety standards for manual safety belt systems by September 1, 1989, no private passenger motor vehicle manufactured after that date for sale or sold in this state shall be registered unless it contains a manual safety belt system which meets the performance standards applicable to automatic crash protection devices adopted by the Secretary of Transportation pursuant to Federal Motor Vehicle Safety Standard No. 208 (49 C.F.R. 571.208) as in effect on January 1, 1985.

(m) Each private passenger motor vehicle offered for original sale in this state which has been manufactured on or after September 1, 1989, shall comply with the automatic restraint requirements of Section S4.1.2.1 of Federal Motor Vehicle Safety Standard No. 208 (49 C.F.R. 571.208), as published in Volume 49 of the Federal Register, No. 138, page 29009. Any automobile manufacturer who sells or delivers a private passenger motor vehicle subject to the requirements of this subdivision, and fails to comply with this subdivision, shall be punished by a fine of not more than five hundred dollars (\$500) for each sale or delivery of a noncomplying private passenger motor vehicle.

(n) Compliance with subdivision (l) or (m) by a manufacturer shall be made by self-certification in the same manner as self-certification is accomplished under federal law.

(o) This section does not apply to a person actually engaged in delivery of newspapers to customers along the person's route if the person is properly restrained by a safety belt prior to commencing and subsequent to completing delivery on the route.

(p) This section does not apply to a person actually engaged in collection and delivery activities as a rural delivery carrier for the United States Postal Service if the person is properly restrained by a safety belt prior to stopping at the first box and subsequent to stopping at the last box on the route.

(q) Subdivisions (d), (e), (f), (g), and (h) shall become inoperative immediately upon the date that the United States Secretary of Transportation, or his or her delegate, determines to rescind the portion of the Federal Motor Vehicle Safety Standard No. 208 (49 C.F.R. 571.208) which requires the installation of automatic restraints in new private passenger motor vehicles, except that those subdivisions shall not become inoperative if the secretary's decision to rescind that Standard No. 208 is not based, in any respect, on the enactment or continued operation of those subdivisions.

(r) This section shall become operative on January 1, 1996.

SEC. 3. Article 3.3 (commencing with Section 27360) of Chapter 5 of Division 12 of the Vehicle Code is amended to read:

Article 3.3. Child Safety Belt and Passenger Restraint
Requirements

SEC. 4. Section 27360 of the Vehicle Code is amended to read:
27360. (a) No parent or legal guardian, when present in a

passenger vehicle or motortruck of less than 6,001 pounds unladen weight, shall permit his or her child or ward under the age of four years, regardless of weight, or weighing less than 40 pounds, regardless of age, to be transported upon a highway in the motor vehicle without providing and properly using, for each such child or ward, a child passenger restraint system meeting applicable federal motor vehicle safety standards.

(b) No driver shall transport on a highway any child under four years of age, regardless of weight, or weighing less than 40 pounds, regardless of age, in a passenger vehicle or motortruck of less than 6,001 pounds unladen weight without providing and properly securing the child in a child passenger restraint system meeting applicable federal motor vehicle safety standards. This subdivision does not apply to a driver if the parent or legal guardian of the child is also present in the vehicle and is not the driver.

(c) (1) A first offense under this section is punishable by a fine of one hundred dollars (\$100), except that the court may waive the fine if the defendant establishes to the satisfaction of the court that he or she is economically disadvantaged and the court, instead, refers the defendant to a child passenger restraint low-cost purchase or loaner program. If the fine is waived, the court shall nevertheless report the conviction to the department pursuant to Section 1803.

(2) A second or subsequent offense under this section is punishable by a fine of one hundred dollars (\$100), no part of which may be waived by the court.

(d) Notwithstanding any other provision of law, the fines collected for a violation of this section shall be allocated as follows:

(1) Sixty percent to local health departments in the county where the violation occurred, to be used for a child passenger restraint low-cost purchase or loaner program which shall include, but not be limited to, education on the proper installation and use of a child passenger restraint system. The county may contract for the implementation of the program.

Local health departments shall report on an ongoing basis to the Office of Traffic Safety in the Business, Transportation and Housing Agency whenever a child passenger restraint low-cost purchase or loaner program is developed or funded pursuant to subdivision (d). The Office of Traffic Safety shall prepare and distribute to the counties a listing of all child passenger restraint low-cost purchase or loaner programs in the state. Each county shall forward the listing to the courts and county hospitals in that county.

(2) Fifteen percent to the county for the administration of the program.

(3) Twenty-five percent to the city, to be deposited in its general fund except that, if the violation occurred in an unincorporated area, this amount shall be allocated to the county for purposes of paragraph (1).

SEC. 5. Section 27360.5 is added to the Vehicle Code, to read:

27360.5. (a) No parent or legal guardian, when present in a

private passenger motor vehicle as defined in Section 27315, shall permit his or her child or ward who is four years of age or older but less than 16 years of age and weighs more than 40 pounds to be transported upon a highway in the motor vehicle without providing and properly using, for each child or ward, a safety belt meeting applicable federal motor vehicle safety standards.

(b) No driver shall transport on a highway any child who is four years of age or older but less than 16 years of age and weighs more than 40 pounds in a private passenger motor vehicle, as defined in Section 27315, without providing and properly using a safety belt meeting applicable federal motor vehicle safety standards. This subdivision does not apply to a driver if the parent or legal guardian of the child is also present in the vehicle and is not the driver.

(c) (1) A first offense under this section is punishable by a fine of fifty dollars (\$50).

(2) A second or subsequent offense under this section is punishable by a fine of one hundred dollars (\$100).

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

CHAPTER 1102

An act to add Section 647a to the Penal Code, relating to peace officers.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 647a is added to the Penal Code, to read:
647a. (a) Any peace officer, as defined in subdivision (a) of Section 830.1 or Section 830.31, 830.32, or 830.33, may transport any person, as quickly as is feasible, to the nearest homeless shelter, if the officer inquires whether the person desires the transportation, and the person does not object to the transportation. Any officer exercising due care and precaution shall not be liable for any damages or injury incurred during transportation.

(b) Notwithstanding any other provision of law, this section shall become operative in a county only if the board of supervisors adopts

the provisions of this section by ordinance. The ordinance shall include a provision requiring peace officers to determine the availability of space at the nearest homeless shelter prior to transporting any person.

CHAPTER 1103

An act to add Section 29532.1 to, to add Title 7.91 (commencing with Section 67910), Title 7.92 (commencing with Section 67920), and Title 7.93 (commencing with Section 67930), to, and to repeal Sections 29535.1, 29535.2, and 29535.3 of, the Government Code, relating to transportation.

[Approved by Governor September 28, 1994. Filed with Secretary of State September 29, 1994.]

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

SECTION 1. Section 29532.1 is added to the Government Code, to read:

29532.1. Pursuant to subdivision (a) of Section 29532, each of the following entities is designated the transportation planning agency for its respective area:

(a) The Metropolitan Transportation Commission created by Title 7.1 (commencing with Section 66500).

(b) The Tahoe Regional Planning Agency created by interstate compact and ratified by Title 7.4 (commencing with Section 66800).

(c) The Placer County Transportation Planning Agency created by Title 7.91 (commencing with Section 67910).

(d) The Nevada County Transportation Planning Agency created by Title 7.92 (commencing with Section 67920).

(e) The Transportation Agency of Monterey County created pursuant to Title 7.93 (commencing with Section 67930).

SEC. 2. Section 29535.1 of the Government Code is repealed.

SEC. 3. Section 29535.2 of the Government Code is repealed.

SEC. 4. Section 29535.3 of the Government Code is repealed.

SEC. 5. Title 7.91 (commencing with Section 67910) is added to the Government Code, to read:

TITLE 7.91. PLACER COUNTY TRANSPORTATION PLANNING AGENCY

67910. The Placer County Transportation Planning Agency is hereby created, as a local area planning agency, and not as a part of the executive branch of the state government, to provide regional transportation planning for the area of Placer County, exclusive of the Tahoe Basin, as that term is defined in Section 66800. The agency may be known by any other name it chooses.

67911. The agency shall be composed of three members appointed by the county board of supervisors and one member appointed by the city council of each incorporated city in the county. The appointing authority, for each regular member it appoints, may appoint an alternate member to serve in place of the regular member when the regular member is absent or disqualified from participating in a meeting of the agency.

SEC. 6. Title 7.92 (commencing with Section 67920) is added to the Government Code, to read:

**TITLE 7.92. NEVADA COUNTY TRANSPORTATION
PLANNING AGENCY**

67920. (a) The Nevada County Transportation Planning Agency is hereby created, as a local area planning agency, and not as a part of the executive branch of the state government, to provide regional transportation planning for the area of Nevada County. The agency may be known by any other name it chooses and is the legal successor to the Nevada County Transportation Commission for all purposes.

(b) The governing body shall be composed of four members appointed by the county board of supervisors, and one member appointed by the city council of each incorporated city in the county.

(c) The appointing authority, for each regular member it appoints, may appoint an alternate member to serve in place of the regular member when the regular member is absent or disqualified from participating in a meeting of the agency.

SEC. 7. Title 7.93 (commencing with Section 67930) is added to the Government Code, to read:

**TITLE 7.93. TRANSPORTATION AGENCY OF MONTEREY
COUNTY**

67930. (a) The Transportation Agency of Monterey County is hereby created, as a local area agency and not as a part of the executive branch of the state government, to provide regional transportation planning and development for the area of Monterey County. The agency may be known by any other name it chooses.

(b) The governing body shall be composed of the members of the county board of supervisors and one member appointed by the city council of each incorporated city in the county. A member of the board of supervisors and a city council appointing a member may each designate up to two alternate members to act in the place of the regular member.

67931. (a) The agency is the legal successor to the Monterey County Transportation Commission for all purposes, including those set forth in Part 11.5 (commencing with Section 99600) of Division 10 of the Public Utilities Code, and particularly Section 99638.

(b) The agency has all of the powers expressed or implied, necessary to carry out the intent of that Part 1.5, including the power

of eminent domain and the power to preserve, acquire, construct, or improve any to the following:

- (1) Rights-of-way for rail purposes.
 - (2) Rail terminals and stations.
 - (3) Rolling stock, including locomotives, passenger cars, and related rail equipment and facilities.
 - (4) Grade separation and other improvements along rail rights-of-way for rail purposes.
 - (5) Rail maintenance facilities.
 - (6) Other capital facilities deemed necessary for a rail service, including soundwalls.
- (c) The agency may contract for the operation of rail service in Monterey County and for connections with rail service in adjacent and neighboring counties and cities.

CHAPTER 1104

An act to amend Sections 25200.10 and 25200.11 of the Health and Safety Code, and to amend Section 21151.1 of the Public Resources Code, relating to hazardous waste.

[Approved by Governor September 28, 1994. Filed with Secretary of State September 29, 1994.]

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

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

(1) The grant of interim status to a hazardous waste treatment, storage, or disposal facility is intended to represent a temporary authorization to allow existing facilities to continue operation until the time when a final hazardous waste facilities permit granted pursuant to federal and state law can be issued.

(2) California has several commercial multiuser facilities which have been allowed to operate under a grant of interim status for many years, and that have made little apparent progress towards fulfillment of the requirements necessary to achieve a final hazardous waste facilities permit. That situation represents a potential abuse of the interim status authority, potentially weakens the protection of public health, safety, and the environment, and fosters inequities in the environmental services marketplace in California.

(3) A uniform approach to the enforcement of state and federal laws regarding facility permitting is essential to ensure adequate protection of public health, safety, and the environment, and to create a regulatory environment in which all companies operating hazardous waste management facilities compete on an equal basis.

(4) It is appropriate and necessary to require the Department of

Toxic Substances Control to address the permitting of interim status facilities as a top priority.

SEC. 2. Section 25200.10 of the Health and Safety Code is amended to read:

25200.10. (a) Except as provided in subdivisions (d) and (e), the department shall require, and any permit issued by the department shall require, corrective action for all releases of hazardous waste or constituents from a solid waste management unit or a hazardous waste management unit at a facility engaged in hazardous waste management, regardless of the time at which waste was released at the facility. Any corrective action required pursuant to this section shall require that corrective action be taken beyond the facility boundary where necessary to protect human health or the environment, unless the owner or operator demonstrates to the satisfaction of the department that despite the owner's or operator's best efforts, the owner or operator is unable to obtain the necessary permission to undertake this action. When corrective action cannot be completed prior to issuance of the permit, the permit shall contain schedules of compliance for corrective action and assurances of financial responsibility for completing the corrective action.

(b) This section does not limit the department's authority to require corrective action pursuant to Section 25187.

(c) For purposes of this section, "facility" means the entire site that is under the control of the owner or operator seeking a hazardous waste facilities permit.

(d) This section does not apply to a permit issued to a public agency or person for the operation of a temporary household hazardous waste collection facility pursuant to Article 10.8 (commencing with Section 25218).

(e) The corrective action required by subdivision (a) does not apply to a generator who treats hazardous waste pursuant to subdivision (a) or (c) of Section 25201.5. This subdivision does not limit the department's authority or the authority of a local health officer authorized pursuant to Section 25187.7 to order corrective action pursuant to Section 25187.

(f) Pursuant to Article 8 (commencing with Section 25180), the department shall require any offsite facility which was granted interim status pursuant to Section 25200.5 prior to January 1, 1992, and which is not subject to Section 25201.6 to perform a Phase I environment pursuant to Section 25200.14.

SEC. 3. Section 25200.11 of the Health and Safety Code is amended to read:

25200.11. (a) On or before July 1, 1993, the department shall take final action on each application for a hazardous waste facilities permit to be issued pursuant to Section 25200 for an offsite hazardous waste facility which is not subject to the time limits specified in Section 25200.7 and which has been operating under a grant of interim status pursuant to Section 25200.5 prior to January 1, 1992, if the permit application was submitted to the department before

January 1, 1992. In taking final action pursuant to this section, the department shall either issue the hazardous waste facilities permit or make a final denial of the application. The department may extend final action for one year upon its determination that the permit application is complete and that more time is needed for review and evaluation of the application.

(b) On July 1, 1992, interim status granted for any existing offsite hazardous waste facility which is not subject to the time limits specified in Section 25200.7 shall be terminated, unless the department received an application for a final hazardous waste facilities permit pursuant to Section 25200 on or before June 30, 1992.

(c) Except for facilities subject to Section 25201.6, for any offsite facility, which facility or portion of facility was first granted interim status pursuant to Section 25200.5 on or after January 1, 1992, the department shall provide public notice for a permit determination to issue or deny a hazardous waste facilities permit for the facility, including a permit modification to incorporate a portion of a facility operating under a grant of interim status, not later than the following dates:

(1) For interim status which was first granted on or after January 1, 1992, but prior to January 1, 1994, not more than four years from the date that interim status was first granted.

(2) For interim status which was first granted on or after January 1, 1994, but prior to January 1, 1996, not more than three years from the date that interim status was first granted.

(3) For interim status which was granted on or after January 1, 1996, not more than two years from the date that interim status was first granted.

(d) For purposes of complying with this section, any change in the owner or operator of the hazardous waste facility shall not affect the applicability of this section with respect to permit determinations required for the facility, including a permit modification to incorporate a portion of the facility operating under a grant of interim status.

(e) Not later than March 1, 1995, the department shall prepare a status report and workplan describing its efforts in permitting and regulating offsite facilities operating under a grant of interim status pursuant to Section 25200.5, including permit modifications to incorporate a portion of a facility operating under a grant of interim status, except those facilities subject to Section 25201.6. The status report and workplan shall be made available to the public and updated semiannually by March 1 and September 1 of each year, and shall include the following elements:

(1) A listing of all offsite facilities, or portions of facilities, operating under a grant of interim status, the date upon which the grant of interim status was first made, the schedule for making a permit determination, and a description of the department's resources that are committed to permitting, regulating, and overseeing interim status activities at these facilities.

(2) A status report on enforcement and other regulatory activities that have been taken by the department to ensure that these facilities are operating in compliance with the interim status authority granted by the department pursuant to this chapter.

SEC. 4. Section 21151.1 of the Public Resources Code is amended to read:

21151.1. (a) Notwithstanding paragraph (6) of subdivision (b) of Section 21080, or Section 21080.5 or 21084, or any other provision of law, except as provided in this section, a lead agency shall prepare or cause to be prepared by contract, and certify the completion of, an environmental impact report or, if appropriate, a modification, addendum, or supplement to an existing environmental impact report, for any project involving any of the following:

(1) (A) The burning of municipal wastes, hazardous waste, or refuse-derived fuel, including, but not limited to, tires, if the project is either of the following:

(i) The construction of a new facility.

(ii) The expansion of an existing facility which burns hazardous waste which would increase its permitted capacity by more than 10 percent.

(B) This paragraph does not apply to any project exclusively burning hazardous waste, for which a final determination under Section 21080.1 has been made prior to July 14, 1989.

(2) The initial issuance of a hazardous waste facilities permit to a land disposal facility, as defined in subdivision (d) of Section 25199.1 of the Health and Safety Code.

(3) The initial issuance of a hazardous waste facilities permit pursuant to Section 25200 of the Health and Safety Code to an offsite large treatment facility, as defined pursuant to subdivision (d) of Section 25205.1 of the Health and Safety Code.

(b) For purposes of clause (ii) of subparagraph (A) of subparagraph (B) of paragraph (1) of subdivision (a), the amount of expansion of an existing facility shall be calculated by comparing the proposed facility capacity with whichever of the following is applicable:

(1) The facility capacity authorized in the facility's hazardous waste facilities permit pursuant to Section 25200 of the Health and Safety Code or its grant of interim status pursuant to Section 25200.5 of the Health and Safety Code, or the facility capacity authorized in any state or local agency permit allowing the construction or operation of a facility for the burning of hazardous waste, granted before January 1, 1990.

(2) The facility capacity authorized in the facility's original hazardous waste facilities permit, grant of interim status, or any state or local agency permit allowing the construction or operation of a facility for the burning of hazardous waste, granted on or after January 1, 1990.

(c) For purposes of paragraphs (2) and (3) of subdivision (a), the initial issuance of a hazardous waste facilities permit does not include

the issuance of a closure or postclosure permit pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

(d) Paragraph (1) of subdivision (a) does not apply to any project which does any of the following:

(1) Exclusively burns digester gas produced from manure or any other solid or semisolid animal waste.

(2) Exclusively burns methane gas produced from a disposal site, as defined in Section 40122, which is used only for the disposal of solid waste, as defined in Section 40191.

(3) Exclusively burns forest, agricultural, wood, or other biomass wastes.

(4) Exclusively burns hazardous waste in an incineration unit which is transportable and which is either at a site for not longer than three years or is part of a remedial or removal action. For purposes of this paragraph, "transportable" means any equipment which performs a "treatment" as defined in Section 66216 of Title 22 of the California Code of Regulations, and which is transported on a vehicle as defined in Section 66230 of Title 22 of the California Code of Regulations.

(5) Exclusively burns refinery waste in a flare on the site of generation.

(6) Exclusively burns in a flare methane gas produced at a municipal sewage treatment plant.

(7) Exclusively burns hazardous waste, or exclusively burns hazardous waste as a supplemental fuel, as part of a research, development, or demonstration project which, consistent with federal regulations implementing the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.), has been determined to be innovative and experimental by the Department of Toxic Substances Control and which is limited in type and quantity of waste to that necessary to determine the efficacy and performance capabilities of the technology or process; provided, however, that any facility which operated as a research, development, or demonstration project and for which an application is thereafter submitted for a hazardous waste facility permit for operation other than as a research, development, or demonstration project shall be considered a new facility for the burning of hazardous waste and shall be subject to subdivision (a) of Section 21151.1.

(8) Exclusively burns soils contaminated only with petroleum fuels or the vapors from these soils.

(9) Exclusively treats less than 3,000 pounds of hazardous waste per day in a thermal processing unit operated in the absence of open flame, and submits a worst-case health risk assessment of the technology to the Department of Toxic Substances Control for review and distribution to the interested public. This assessment shall be prepared in accordance with guidelines set forth in the Air Toxics Assessment Manual of the California Air Pollution Control

Officers Association.

(10) Exclusively burns less than 1,200 pounds per day of medical waste, as defined in Section 25023.2 of the Health and Safety Code, on hospital sites.

(11) Exclusively burns chemicals and fuels as part of firefighter training.

(12) Exclusively conducts open burns of explosives subject to the requirements of the air pollution control district or air quality management district and in compliance with OSHA and Cal-OSHA regulations.

(13) Exclusively conducts onsite burning of less than 3,000 pounds per day of fumes directly from a manufacturing or commercial process.

(14) Exclusively conducts onsite burning of hazardous waste in an industrial furnace that recovers hydrogen chloride from the flue gas if the hydrogen chloride is subsequently sold, distributed in commerce, or used in a manufacturing process at the site where the hydrogen chloride is recovered, and the burning is in compliance with the requirements of the air pollution control district or air quality management district and the Department of Toxic Substances Control.

(e) Paragraph (1) of subdivision (a) does not apply to any project for which the State Energy Resources Conservation and Development Commission has assumed jurisdiction under Chapter 6 (commencing with Section 25500) of Division 15.

(f) Paragraphs (2) and (3) of subdivision (a) shall not apply if the facility only manages hazardous waste which is identified or listed pursuant to Section 25140 or 25141 on or after January 1, 1992, but not before that date, or only conducts activities which are regulated pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code on or after January 1, 1992, but not before that date.

(g) This section does not exempt any project from any other requirement of this division.

(h) For purposes of this section, offsite facility means a facility that serves more than one generator of hazardous waste.

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

CHAPTER 1105

An act to amend Sections 89501, 89504, and 89506 of the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor September 28, 1994. Filed with Secretary of State September 29, 1994.]

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

SECTION 1. Section 89501 of the Government Code, as amended by Chapter 36 of the Statutes of 1994, is amended to read:

89501. (a) No local elected officeholder, candidate for local elected office, elected, appointed, or candidate for, member of the governing board of a special district, or designated employee of a local government agency shall accept any honorarium, as defined in subdivisions (b), (c), and (e) of Section 89502.

(b) No local elected officeholder, candidate for local elected office, elected, appointed, or candidate for, member of the governing board of a special district, or designated employee of a local government agency shall accept any gifts, from any single source, which is in excess of two hundred fifty dollars (\$250), in any calendar year, except reimbursement for actual travel expenses and reasonable subsistence in connection therewith. The commission shall adjust this gift limitation to make it equal to the prevailing gift limitation amount applicable to elected state officers in effect on January 1, 1995, and thereafter shall adjust this gift limit at the same time and in the same amount as the gift limit applicable to elected state officers is adjusted pursuant to subdivision (d) of Section 89504.

(c) This section shall not limit or prohibit payments, advances, or reimbursements for travel and related lodging and subsistence authorized by Section 89506.

(d) A person shall be deemed a candidate for purposes of this section when a statement of organization is filed by the committee controlled by the person, when a declaration of intent is filed by the person, or when a declaration of candidacy is filed by the person, whichever event occurs first. A person shall not be deemed a candidate for purposes of this section after he or she is sworn into the elective office, after the person has terminated his or her campaign statement filing obligation pursuant to Section 84214, or after certification of the election results if the person lost and did not establish a committee.

SEC. 2. Section 89504 of the Government Code is amended to read:

89504. (a) No elected state officer or candidate for elected state office shall accept gifts from any single source in any calendar year with a total value of more than two hundred fifty dollars (\$250).

(b) This section shall not prohibit or limit the following:

(1) Payments, advances, or reimbursements for travel and related

lodging and subsistence permitted by Section 89506.

(2) Wedding gifts and gifts exchanged between individuals on birthdays, holidays, and other similar occasions, provided that the gifts exchanged are not substantially disproportionate in value.

(c) For purposes of this section, "elected state officer" includes the Insurance Commissioner.

(d) The gift limitation amounts in this section shall be adjusted biennially by the commission to reflect changes in the Consumer Price Index, rounded to the nearest ten dollars (\$10).

(e) The limitations in this section are in addition to the limitations on gifts in Section 86203.

(f) A person shall be deemed a candidate for purposes of this section when a statement of organization is filed by the committee controlled by the person, when a declaration of intent is filed by the person, or when a declaration of candidacy is filed by the person, whichever event occurs first. A person shall not be deemed a candidate for purposes of this section after he or she is sworn into the elective office, after the person has terminated his or her campaign statement filing obligation pursuant to Section 84214, or after certification of the election results if the person lost and did not establish a committee.

SEC. 3. Section 89506 of the Government Code is amended to read:

89506. (a) Payments, advances, or reimbursements, for travel, including actual transportation and related lodging and subsistence which is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, are not prohibited or limited by this chapter if either of the following apply:

(1) The travel is in connection with a speech given by the elected state officer, local elected officeholder, candidate for elected state office or local elected office, member of a state board or commission, or designated employee of a state agency, the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech, and the travel is within the United States.

(2) The travel is provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institution, as defined in Section 203 of the Revenue and Taxation Code, a nonprofit charitable or religious organization which is exempt from taxation under Section 501 (c) (3) of the Internal Revenue Code, or by a person domiciled outside the United States which substantially satisfies the requirements for tax-exempt status under Section 501 (c) (3) of the Internal Revenue Code.

(b) Gifts of travel not described in subdivision (a) are subject to the limits in Sections 89504 and 89505.

(c) Subdivision (a) applies only to travel which is reported on the recipient's statement of economic interests.

(d) For purposes of this section, a gift of travel does not include

any of the following:

(1) Travel which is paid for from campaign funds, as permitted by Article 4 (commencing with Section 89510), or which is a contribution.

(2) Travel which is provided by the agency of a local elected officeholder, an elected state officer, member of a state board or commission, or a designated employee.

(3) Travel which is reasonably necessary in connection with a bona fide business, trade, or profession and which satisfies the criteria for federal income tax deduction for business expenses in Sections 162 and 274 of the Internal Revenue Code, unless the sole or predominant activity of the business, trade, or profession is making speeches.

(4) Travel which is excluded from the definition of a gift by any other provision of this title.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 5. The Legislature finds and declares that the provisions of this act further the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

CHAPTER 1106

An act to amend Section 13967 of the Government Code, to amend Sections 1202.4 and 1203.04 of the Penal Code, and to amend Sections 729.6 and 731.1 of, and to repeal and add Section 730.6 of, the Welfare and Institutions Code, relating to crime, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. The Legislature finds and declares as follows:

(a) Section 28(b) of Article I of the California Constitution secures the right to restitution for "all persons who suffer losses as a result of criminal activity."

(b) Restitution is recognized to have a rehabilitative effect on criminals.

(c) Restitution is recognized as a deterrent to future criminality.

(d) The right of persons to receive restitution for losses suffered as a result of criminal activity shall be secured as provided in this act.

SEC. 2. Section 13967 of the Government Code is amended to read:

13967. Notwithstanding Section 13340, the proceeds in the Restitution Fund are hereby continuously appropriated to the board for the purpose of indemnifying persons filing claims pursuant to this article. However, the funds appropriated pursuant to this section for administrative costs of the State Board of Control shall be subject to annual review through the state budget process.

SEC. 3. Section 1202.4 of the Penal Code is amended to read:

1202.4. (a) (1) It is the intent of the Legislature that a victim of crime who incurs any economic loss as a result of the commission of a crime shall receive restitution directly from any defendant convicted of that crime.

(2) Upon a person being convicted of any crime in the State of California, the court shall order the defendant to pay a fine in the form of a penalty assessment in accordance with Section 1464.

(3) The court, in addition to any other penalty provided or imposed under the law, shall order the defendant to pay both of the following:

(A) A restitution fine in accordance with subdivision (b).

(B) Restitution to the victim or victims, if any, in accordance with subdivision (f).

(b) In every case where a person is convicted of a crime, the court shall impose a separate and additional restitution fine. The restitution fine shall be set at the discretion of the court and commensurate with the seriousness of the offense, but shall not be less than two hundred dollars (\$200), and not more than ten thousand dollars (\$10,000) if the person is convicted of a felony, and shall not be less than one hundred dollars (\$100), and not more than one thousand dollars (\$1,000) if the person is convicted of a misdemeanor.

(c) The restitution fine shall be in addition to any other penalty or fine imposed and shall be ordered regardless of the defendant's present ability to pay. However, if the court finds that there are compelling and extraordinary reasons, the court may waive imposition of the fine. When the waiver is granted, the court shall state on the record all reasons supporting the waiver. Except as provided in this subdivision and subdivision (f), under no circumstances shall the court fail to impose the separate and additional restitution fine required by this section. This fine shall not be subject to penalty assessments as provided in Section 1464.

(d) In setting the amount of the fine pursuant to subdivision (b) in excess of the two hundred dollar (\$200) or one hundred dollar (\$100) minimum, the court shall consider any relevant factors

including, but not limited to, the defendant's ability to pay, the seriousness and gravity of the offense and the circumstances of its commission, any economic gain derived by the defendant as a result of the crime, and the extent to which any other person suffered any losses as a result of the crime. Those losses may include pecuniary losses to the victim or his or her dependents as well as intangible losses, such as psychological harm caused by the crime. Consideration of a defendant's ability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating lack of his or her ability to pay. Express findings by the court as to the factors bearing on the amount of the fine shall not be required.

(e) Except as provided in subdivision (f), the fine imposed pursuant to this section shall be deposited in the Restitution Fund in the State Treasury.

(f) In every case in which a victim has suffered economic loss as a result of the defendant's conduct, and the defendant is denied probation, in lieu of imposing all or a portion of the restitution fine pursuant to subdivision (b), the court shall require that the defendant make restitution to the victim or victims. Payments made pursuant to this subdivision shall be made to the Restitution Fund to the extent that the person has received assistance pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code.

(g) Restitution ordered pursuant to subdivision (f) shall be imposed in the amount of the losses, as determined. The court shall order full restitution unless it finds clear and compelling reasons for not doing so, and states them on the record. Restitution shall, to the extent possible, be of a dollar amount that is sufficient to fully reimburse the victim or victims, for every determined economic loss incurred as the result of the defendant's criminal conduct, including all of the following:

(1) Full or partial payment for the value of stolen or damaged property. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible.

(2) Medical expenses.

(3) Wages or profits lost due to injury incurred by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, while caring for the injured minor.

(4) Wages or profits lost by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, due to time spent as a witness or in assisting the police or prosecution.

(h) A restitution order imposed pursuant to subdivision (f) shall identify the losses to which it pertains, and shall be enforceable as a civil judgment. The making of a restitution order pursuant to subdivision (f) shall not affect the right of a victim to recovery from the Restitution Fund in the manner provided elsewhere, except to

the extent that restitution is actually collected pursuant to the order. Restitution collected pursuant to this subdivision shall be credited to any other judgments for the same losses obtained against the defendant arising out of the crime for which the defendant was convicted.

(i) If the conviction is for felony violation of Section 288, restitution may be ordered pursuant to subdivision (f) regardless of whether or not the defendant is denied probation and the court may order that the restitution be paid to the victim to cover noneconomic losses, including, but not limited to, psychological harm.

(j) For any order of restitution made pursuant to subdivision (f), the defendant shall have the right to a hearing before the judge to dispute the determination made regarding the amount of restitution.

(k) For purposes of this section, "victim" shall include the immediate surviving family of the actual victim.

(l) At its discretion, the board of supervisors of any county may impose a fee to cover the actual administrative cost of collecting the restitution fine, not to exceed 10 percent of the amount ordered to be paid, to be added to the restitution fine and included in the order of the court, the proceeds of which shall be deposited in the general fund of the county.

(m) In any case in which the defendant is ordered to pay restitution as a condition of probation, the order to pay the restitution fine, or portion thereof, may be stayed pending the successful completion of probation, and thereafter the stay shall become permanent.

(n) If the restitution fine has been stayed pending successful completion of probation, upon revocation of probation and imposition of sentence the stay shall be lifted. The amount of restitution fine shall be offset by any restitution payments actually made as a condition of probation. Nothing in this section authorizes the stay of an order of restitution to the victim.

(o) The provisions of Section 13966.01 of the Government Code shall apply to restitution imposed pursuant to this section.

(p) Nothing in this section shall prevent a court from ordering restitution to any corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity when that entity is a direct victim of a crime.

SEC. 4. Section 1203.04 of the Penal Code is amended to read:

1203.04. (a) (1) It is the intent of the Legislature that a victim of crime who incurs any economic loss as a result of the commission of a crime shall receive restitution directly from any defendant convicted of that crime.

(2) In every case where a person is convicted of a crime and is granted probation, the court shall require, as a condition of probation, that the person make restitution as follows:

(A) To the victim, if the crime involved a victim. Payments shall be made to the Restitution Fund to the extent the victim has

received assistance pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code.

(B) To the Restitution Fund, if the crime did not involve a victim.

(b) If the court finds, and states its reasons for the finding on the record, that there are compelling and extraordinary reasons why restitution should not be required as provided in paragraph (2) of subdivision (a), the court shall require, as a condition of probation, that the person perform specified community service.

(c) The court may avoid imposing the requirement of community service as a condition of probation only if it finds, and states its reasons for the finding on the record, that there are compelling and extraordinary reasons not to require community service in addition to its finding as to why restitution pursuant to subdivision (a) should not be required.

(d) Restitution ordered pursuant to subparagraph (A) of paragraph (2) of subdivision (a) shall be imposed in the amount of the losses, as determined. The court shall order full restitution unless it finds clear and compelling reasons for not doing so, and states them on the record. Restitution shall, to the extent possible, be of a dollar amount that is sufficient to fully reimburse all persons, for all determined economic losses incurred as the result of the defendant's criminal conduct, including all of the following:

(1) Full or partial payment for the value of stolen or damaged property. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible.

(2) Medical expenses.

(3) Wages or profits lost due to injury incurred by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, while caring for the injured minor.

(4) Wages or profits lost by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, due to time spent as a witness or in assisting the police or prosecution.

(e) A restitution order imposed pursuant to subparagraph (A) of paragraph (2) of subdivision (a) shall identify the losses to which it pertains, and shall be enforceable as a civil judgment. The making of a restitution order pursuant to this subdivision shall not affect the right of a victim to recovery from the Restitution Fund in the manner provided elsewhere, except to the extent that restitution is actually collected pursuant to the order. Restitution collected pursuant to this subdivision shall be credited to any other judgments for the same losses obtained against the defendant arising out of the crime for which the defendant was convicted.

(f) For purposes of subparagraph (B) of paragraph (2) of subdivision (a), the amount of restitution to be paid to the Restitution Fund shall be set at the discretion of the court and commensurate with the seriousness of the offense; but shall not be

less than two hundred dollars (\$200), and shall not exceed ten thousand dollars (\$10,000) if the person is convicted of a felony; and shall not be less than one hundred dollars (\$100), and not more than one thousand dollars (\$1,000) if the person is convicted of a misdemeanor. The defendant's ability to pay shall be a factor in determining the amount of the fine. Except as provided in subdivision (b), the amount of the fine shall in no case be less than two hundred dollars (\$200) if the person is convicted of a felony, or less than one hundred dollars (\$100) if the person is convicted of a misdemeanor.

(g) Nothing in this section shall be construed to limit the authority of the court to grant or deny probation or provide conditions of probation.

(h) For the purposes of this section, the following shall apply:

(1) "Probation" includes a "conditional sentence" as that term is defined in subdivision (a) of Section 1203.

(2) "Victim" shall include the immediate surviving family of the actual victim.

(i) When the court orders the defendant to pay restitution pursuant to this section, the court shall, if applicable, also order an income deduction pursuant to Section 13967.2 of the Government Code.

(j) Nothing in this section shall prevent a court from ordering restitution to any corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity when that entity is a direct victim of a crime.

SEC. 5. Section 729.6 of the Welfare and Institutions Code is amended to read:

729.6. (a) (1) It is the intent of the Legislature that a victim of conduct for which a minor is found to be a person described in Section 602 who incurs any economic loss as a result of the minor's conduct shall receive restitution directly from that minor.

(2) If a minor is found to be a person described in Section 602, the court shall require as a condition of probation, that the minor make restitution as follows:

(A) To the victim, if the offense involved a victim. Payments shall be made to the Restitution Fund to the extent that the victim has received assistance pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code.

(B) To the Restitution Fund, if the offense did not involve a victim.

(b) If the court finds, and states its reasons for the finding on the record, that there are compelling and extraordinary reasons why restitution should not be required as provided in paragraph (2) of subdivision (a), the court shall require, as a condition of probation, that the minor perform specified community services.

(c) The court may avoid imposing the requirement of community

service as a condition of probation only if it finds, and states its reasons for the finding on the record, that there are compelling and extraordinary reasons not to require community service in addition to its finding as to why restitution pursuant to paragraph (2) of subdivision (a) should not be required.

(d) Restitution ordered pursuant to subparagraph (A) of paragraph (2) of subdivision (a) shall be imposed in the amount of the losses, as determined. The court shall order full restitution unless it finds clear and compelling reasons for not doing so, and states them on the record. A restitution order pursuant to this subdivision shall, to the extent possible, be of a dollar amount that is sufficient to fully reimburse all persons, for all determined economic losses incurred as the result of the minor's conduct for which the minor was found to be a person described in Section 602, including all of the following:

(1) Full or partial payment for the value of stolen or damaged property. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible.

(2) Medical expenses.

(3) Wages or profits lost due to injury incurred by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, while caring for the injured minor.

(4) Wages or profits lost by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, due to time spent as a witness or in assisting the police or prosecution.

(e) A restitution order imposed pursuant to subparagraph (A) of paragraph (2) of subdivision (a) shall identify the losses to which it pertains, and shall be enforceable as a civil judgment. The making of a restitution order pursuant to this subdivision shall not affect the right of a victim to recovery from the Restitution Fund in the manner provided elsewhere, except to the extent that restitution is actually collected pursuant to the order. Restitution collected pursuant to this subdivision shall be credited to any other judgments for the same losses obtained against the minor arising out of the offense for which the minor was found to be a person described in Section 602.

(f) For purposes of subparagraph (B) of paragraph (2) of subdivision (a), the amount of restitution to be paid to the Restitution Fund shall be set at the discretion of the court and commensurate with the seriousness of the offense; but shall not be less than one hundred dollars (\$100), and shall not exceed one thousand dollars (\$1,000) if the person is found to have committed a felony; and shall not exceed one hundred dollars (\$100) if the person is found to have committed a misdemeanor.

(g) (1) In determining the amount of the fine pursuant to subparagraph (B) of paragraph (2) of subdivision (a), the court shall consider any relevant factors including, but not limited to, the minor's ability to pay, the seriousness and gravity of the offense and

the circumstances of its commission, any economic gain derived by the minor as a result of the offense, and the extent to which others suffered losses as a result of the offense. The losses may include pecuniary losses to the victim or his or her dependents as well as intangible losses such as psychological harm caused by the offense.

(2) The consideration of a minor's ability to pay may include his or her future earning capacity. A minor shall bear the burden of demonstrating a lack of his or her ability to pay.

(h) Express findings by the court as to the factors bearing on the amount of the fine shall not be required.

(i) Nothing in this section shall be construed to limit the authority of the court to grant or deny probation or provide conditions of probation.

(j) For the purposes of this section, "victim" shall include the immediate surviving family of the actual victim.

(k) Nothing in this section shall prevent a court from ordering restitution to any corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity when that entity is a direct victim of an offense.

SEC. 6. Section 730.6 of the Welfare and Institutions Code is repealed.

SEC. 7. Section 730.6 is added to the Welfare and Institutions Code, to read:

730.6. (a) (1) It is the intent of the Legislature that a victim of conduct for which a minor is found to be a person described in Section 602 who incurs any economic loss as a result of the minor's conduct shall receive restitution directly from that minor.

(2) Upon a minor being found to be a person described in Section 602, the court shall consider levying a fine in accordance with Section 730.5. In addition, the court shall order the minor to pay, in addition to any other penalty provided or imposed under the law, both of the following:

(A) A restitution fine in accordance with subdivision (b).

(B) Restitution to the victim or victims, if any, in accordance with subdivision (h) or Section 729.6 or 731.1.

(b) In every case where a minor is found to be a person described in Section 602, the court shall impose a separate and additional restitution fine. The restitution fine shall be set at the discretion of the court and commensurate with the seriousness of the offense as follows:

(1) If the minor is found to be a person described in Section 602 by reason of the commission of one or more felony offenses, the restitution fine shall not be less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000).

(2) If the minor is found to be a person described in Section 602 by reason of the commission of one or more misdemeanor offenses, the restitution fine shall not exceed one hundred dollars (\$100).

(c) The restitution fine shall be in addition to any other

disposition or fine imposed and shall be imposed regardless of the minor's present ability to pay. This fine shall be deposited in the Restitution Fund, the proceeds of which shall be distributed pursuant to Section 13967 of the Government Code.

(d) (1) In setting the amount of the fine pursuant to subparagraph (A) of paragraph (2) of subdivision (a), the court shall consider any relevant factors including, but not limited to, the minor's ability to pay, the seriousness and gravity of the offense and the circumstances of its commission, any economic gain derived by the minor as a result of the offense, and the extent to which others suffered losses as a result of the offense. The losses may include pecuniary losses to the victim or his or her dependents as well as intangible losses such as psychological harm caused by the offense.

(2) The consideration of a minor's ability to pay may include his or her future earning capacity. A minor shall bear the burden of demonstrating a lack of his or her ability to pay.

(e) Express findings of the court as to the factors bearing on the amount of the fine shall not be required.

(f) Except as provided in subdivision (g), under no circumstances shall the court fail to impose the separate and additional restitution fine required by subparagraph (A) of paragraph (2) of subdivision (a). This fine shall not be subject to penalty assessments pursuant to Section 1464 of the Penal Code.

(g) In a case in which the minor is a person described in Section 602 by reason of having committed a felony offense, if the court finds that there are compelling and extraordinary reasons, the court may waive imposition of the restitution fine required by subparagraph (A) of paragraph (2) of subdivision (a). When a waiver is granted, the court shall state on the record all reasons supporting the waiver.

(h) Restitution ordered pursuant to subparagraph (B) of paragraph (2) of subdivision (a) shall be imposed in the amount of the losses, as determined. The court shall order full restitution unless it finds clear and compelling reasons for not doing so, and states them on the record. A restitution order pursuant to subparagraph (B) of paragraph (2) of subdivision (a), to the extent possible, shall be of a dollar amount sufficient to fully reimburse the victim or victims for all determined economic losses incurred as the result of the minor's conduct for which the minor was found to be a person described in Section 602, including all of the following:

(1) Full or partial payment for the value of stolen or damaged property. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible.

(2) Medical expenses.

(3) Wages or profits lost due to injury incurred by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, while caring for the injured minor.

(4) Wages or profits lost by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or

guardians, due to time spent as a witness or in assisting the police or prosecution.

(i) A restitution order imposed pursuant to subparagraph (B) of paragraph (2) of subdivision (a) shall identify the losses to which it pertains, and shall be enforceable as a civil judgment. The making of a restitution order pursuant to this subdivision shall not affect the right of a victim to recovery from the Restitution Fund in the manner provided elsewhere, except to the extent that restitution is actually collected pursuant to the order. Restitution collected pursuant to this subdivision shall be credited to any other judgments for the same losses obtained against the minor arising out of the offense for which the minor was found to be a person described in Section 602.

(j) For purposes of this section, "victim" shall include the immediate surviving family of the actual victim.

(k) Nothing in this section shall prevent a court from ordering restitution to any corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity when that entity is a direct victim of an offense.

(l) In any case in which the minor is ordered to pay restitution as a condition of probation, the order to pay the restitution fine required by subparagraph (A) of paragraph (2) of subdivision (a) may be stayed pending the successful completion of probation, and thereafter the stay shall become permanent.

(m) If the restitution fine required by subparagraph (A) of paragraph (2) of subdivision (a) has been stayed pending successful completion of probation, upon revocation of probation and imposition of sentence, the stay shall be lifted. The amount of the restitution fine shall be offset by any restitution payments actually made as a condition of probation. However, probation shall not be revoked for failure of a person to make restitution pursuant to Section 729.6 as a condition of probation unless the court determines that the person has willfully failed to pay or failed to make sufficient bona fide efforts to legally acquire the resources to pay.

(n) At its discretion, the board of supervisors of any county may impose a fee to cover the actual administrative cost of collecting the restitution fine, not to exceed 10 percent of the amount ordered to be paid, to be added to the restitution fine and included in the order of the court, the proceeds of which shall be deposited in the general fund of the county.

SEC. 8. Section 731.1 of the Welfare and Institutions Code is amended to read:

731.1. (a) (1) It is the intent of the Legislature that a victim of conduct for which a minor is found to be a person described in Section 602 who incurs any economic loss as a result of the minor's conduct shall receive restitution directly from that minor.

(2) When a minor is committed to the Department of the Youth Authority, in lieu of imposing all or a portion of the restitution fine

required by Section 730.6, the court shall order restitution to be paid to the victim or victims, if any.

(b) Restitution ordered pursuant to subdivision (a) shall be imposed in the amount of the losses, as determined. The court shall order full restitution unless it finds clear and compelling reasons for not doing so, and states them on the record. A restitution order pursuant to subdivision (a) shall, to the extent possible, be of a dollar amount that is sufficient to fully reimburse all persons, for all determined economic losses incurred as the result of the minor's conduct for which the minor was found to be a person described in Section 602, including all of the following:

(1) Full or partial payment for the value of stolen or damaged property. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible.

(2) Medical expenses.

(3) Wages or profits lost due to injury incurred by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, while caring for the injured minor.

(4) Wages or profits lost by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, due to time spent as a witness or in assisting the police or prosecution.

(c) A restitution order imposed pursuant to subdivision (a) shall identify the losses to which it pertains and shall be enforceable as a civil judgment. The making of a restitution order pursuant to this subdivision shall not affect the right of a victim to recovery from the Restitution Fund in the manner provided elsewhere, except to the extent that restitution is actually collected pursuant to the order. Restitution collected pursuant to this subdivision shall be credited to any other judgments for the same losses obtained against the minor arising out of the offense for which the minor was found to be a person described in Section 602.

(d) For the purposes of this section, "victim" shall include the immediate surviving family of the actual victim.

(e) Nothing in this section shall prevent a court from ordering restitution to any corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity when that entity is a direct victim of an offense.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to create financial stability for, and to establish procedures to derive a greater level of savings in connection with, the Restitution Fund as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 1107

An act to amend Section 25364.1 of the Health and Safety Code, relating to hazardous substances.

[Approved by Governor September 28, 1994. Filed with Secretary of State September 29, 1994.]

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

SECTION 1. Section 25364.1 of the Health and Safety Code is amended to read:

25364.1. (a) For purposes of this section, the following definitions shall apply:

(1) "Affiliate" means any entity which directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the responsible party owner. For purposes of this paragraph, "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, or ownership of shares or interests in the entity possessing more than 50 percent of the voting power.

(2) "Qualified independent consultant" means either a geologist who is registered pursuant to Section 7850 of the Business and Professions Code or a professional engineer who is registered pursuant to Section 6762 of the Business and Professions Code.

(3) "Responsible party owner" means the owner of all or part of the site on January 1, 1993, or if all or a part of the site is transferred to a joint venture formed for purposes of development of the site, the owner of the site immediately prior to that transfer.

(4) "Site" means the site of the former Kaiser Steel Corporation steel mill located near the City of Fontana.

(b) Notwithstanding any other provision of law, except as provided in subdivisions (c) and (e), the director may release from liability under this chapter or Chapter 6.5 (commencing with Section 25100), and from liability for any claims of the state for recovery of response costs under the federal act, any of the following persons, with regard to a removal or remedial action at the site:

(1) Any person who provides financing for all, or a substantial part of, the costs of performing a removal or remedial action at the site pursuant to a remedial action plan prepared by a qualified independent consultant and issued by the department pursuant to subdivision (e) of Section 25356.1, except that the release from liability shall not release the person providing this financing from liability for any hazardous substance release or threatened release resulting from that person's exercise of decisionmaking control over the performance of the removal or remedial action while the responsible party owner remains in possession of the site.

(2) Any person who enters into an agreement with the

responsible party owner to provide development services for the development of all, or a part of, the site, including a developer, who becomes a partner in a joint venture partnership with the responsible party owner, if the joint venture is formed for purposes of the development of the site and legal title to the site is transferred by the responsible party owner to the joint venture. If a release from liability is granted to a developer pursuant to this paragraph and the legal title to the site is transferred by the responsible party owner to a joint venture between the developer and the responsible party owner of the site, the responsible party owner shall not be relieved of liability under this chapter.

(3) Any person who acquires an ownership or leasehold interest in all or a part of the site after performance of the removal or remedial action specified in the remedial action plan for the site, or part of the site, has been completed to the satisfaction of the department.

(c) A release from liability shall not be granted pursuant to subdivision (b) unless all of the following conditions are met:

(1) A responsible party owner has entered into a stipulated settlement of an order issued by the department pursuant to Section 25187, 25355.5, or 25358.3 to perform the removal or remedial action at the site in accordance with the remedial action plan and has arranged financing, contingent only upon obtaining releases from potential liability pursuant to subdivision (b), for the costs of performing the removal or remedial action.

(2) A responsible party owner agrees to pay all applicable oversight fees required by Section 25343 and to pay any additional costs that are recoverable pursuant to Section 25360.

(3) No person to be released from liability pursuant to subdivision (b) is a responsible party or an affiliate of a responsible party, with respect to any hazardous substance release existing at the site at the time the release from liability is granted.

(4) The stipulated settlement requires the responsible party owner to provide irrevocable financial assurances for full performance of the remedial action plan. The financial assurances may consist of one or more of the financial assurance instruments described in Section 66264.143 of Title 22 of the California Code of Regulations. Upon the approval of the department, the forms of these instruments may be revised as appropriate to apply to the costs of performing the removal or remedial action specified in the remedial action plan.

(5) The director finds that the release from liability to be granted will promote the purposes and goals of this chapter and encourage private investment in property that is in need of remediation.

(d) The site may be subdivided to create subdivided parcels of land, pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code), in order to facilitate removal or remedial action at the site, secure financing for removal or remedial action, or secure financing for development

which would generate funds for removal or remedial action at the site.

(e) Notwithstanding any other provision of this section, a release from liability granted pursuant to subdivision (b) shall not extend to any of the following:

(1) Any person who was a responsible party for a hazardous substance release existing at the site before the release from liability was granted, and any entity which is an affiliate of such a responsible party.

(2) Any contractor who prepares the remedial action plan or performs the removal or remedial action provided for in the remedial action plan.

(3) Any person who obtains a release pursuant to subdivision (b) by fraud or negligent or intentional nondisclosure or misrepresentation.

(4) Any liability for a release or threatened release of a hazardous substance first deposited at the site by a person released from liability pursuant to subdivision (b) after the release from liability is granted.

(f) Any release from liability granted by the director pursuant to this section shall contain the following provision: "If, for any reason, the responsible party does not complete the removal or remedial action, this release does not extend to any subsequent actions or activities performed by the released party that exacerbate the conditions at the site."

CHAPTER 1108

An act to amend Sections 10232, 10232.1, 10249.11, 10249.2, 10249.3, 10249.6, 11018.12, and 11022 of, to add Sections 10249.91 and 10249.92 to, and to repeal Sections 10249.5 and 11029 of, the Business and Professions Code, relating to real estate brokers, and making an appropriation therefor.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 10232 of the Business and Professions Code is amended to read:

10232. (a) Except as otherwise expressly provided, the provisions of Sections 10232.2 and 10232.25 are applicable to every real estate broker who intends or reasonably expects in any successive 12 months to do any of the following:

(1) Negotiate any combination of 20 or more of the following transactions pursuant to subdivision (d) or (e) of Section 10131 or Section 10131.1 in an aggregate amount of more than two million dollars (\$2,000,000):

(A) Loans secured directly or collaterally by liens on real property or on business opportunities as agent for another or others.

(B) Sales or exchanges of real property sales contracts or promissory notes secured directly or collaterally by liens on real property or on business opportunities as agent for another or others.

(C) Sales or exchanges of real property sales contracts or promissory notes secured directly or collaterally by liens on real property as the owner of those notes or contracts.

(2) Make collections of payments in an aggregate amount of five hundred thousand dollars (\$500,000) or more on behalf of owners of promissory notes secured directly or collaterally by liens on real property, owners of real property sales contracts, or both.

(3) Make collections of payments in an aggregate amount of five hundred thousand dollars (\$500,000) or more on behalf of obligors of promissory notes secured directly or collaterally by liens on real property, lenders of real property sales contracts, or both.

Persons under common management, direction or control in conducting the activities enumerated above shall be considered as one person for the purpose of applying the above criteria.

(b) The negotiation of any combination of five or more new loans and sales or exchanges of existing promissory notes and real property sales contracts of an aggregate amount of more than five hundred thousand dollars (\$500,000) in any three successive months or any combination of 10 or more new loans and sales or exchanges of existing promissory notes and real property sales contracts of an aggregate amount of more than one million dollars (\$1,000,000) in any successive six months shall create a rebuttable presumption that the broker intends to negotiate new loans and sales and exchanges of an aggregate amount that will meet the criteria of subdivision (a).

(c) In determining the applicability of Sections 10232.2 and 10232.25, loans or sales negotiated by a broker, or for which a broker collects payments or provides other servicing for the owner of the note or contract, shall not be counted in determining whether the broker meets the criteria of subdivisions (a) and (b) if any of the following apply:

(1) The lender or purchaser is any of the following:

(A) The Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, and the Veteran's Administration.

(B) Any bank or subsidiary thereof, bank holding company or subsidiary thereof, trust company, savings bank or savings and loan association or subsidiary thereof, savings bank or savings association holding company or subsidiary thereof, credit union, industrial bank or industrial loan company, commercial finance lender, personal property broker, consumer finance lender, or insurance company doing business under the authority of, and in accordance with, the laws of this state, any other state, or of the United States relating to banks, trust companies, savings banks or savings associations, credit

unions, industrial banks or industrial loan companies, commercial finance lenders, or insurance companies, as evidenced by a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States.

(C) Trustees of a pension, profit sharing, or welfare fund, if the pension, profit sharing, or welfare fund has a net worth of not less than fifteen million dollars (\$15,000,000).

(D) Any corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or any wholly owned subsidiary of that corporation.

(E) Any syndication or other combination of any of the entities specified in subparagraph (A), (B), (C), or (D) which is organized to purchase the promissory note.

(F) The California Housing Finance Agency or any local housing finance agency organized under the Health and Safety Code.

(G) A licensed real estate broker selling all or part of the loan, the note, or the contract to a lender or purchaser specified in subparagraphs (A) through (F) of this subdivision.

(2) The loan or sale is negotiated, or the loan or contract is being serviced for the owner, under authority of a permit issued pursuant to the provisions of Article 6 (commencing with Section 10237) or applicable provisions of the Corporate Securities Law of 1968 (Section 25000 and following of the Corporations Code).

(d) If two or more real estate brokers who are not under common management, direction, or control, cooperate in the negotiation of a loan or the sale or exchange of a promissory note or real property sales contract and share in the compensation for their services, the dollar amount of the transaction shall be allocated according to the ratio that the compensation received by each broker bears to the total compensation received by all brokers for their services in negotiating the loan or sale or exchange.

(e) A real estate broker who on the effective date of this section satisfies the criteria of subdivision (a) or (b) shall, within 30 days thereafter, notify the Department of Real Estate in writing of that fact. A broker who first meets any of the criteria of subdivision (a) or (b) after January 1, 1982, shall notify the department in writing within 30 days after that determination is made.

SEC. 2. Section 10232.1 of the Business and Professions Code is amended to read:

10232.1. (a) A real estate broker, prior to the use of any proposed advertisement in connection with the conduct of activities described in subdivisions (d) and (e) of Section 10131 and Section 10131.1, may submit a true copy thereof to the Department of Real Estate for approval. The submission shall be accompanied by a fee of not more than forty dollars (\$40). The commissioner shall by regulation prescribe the amount of the fee. If disapproval of the proposed advertisement is not communicated by the department to the broker within 15 calendar days after receipt of the copy of the proposed advertisement by the department, the proposed advertisement shall

be deemed approved, but the department shall not be estopped from disapproving a later publication or other use of the same, or similar advertising.

The commissioner shall adopt regulations pertaining to the submittal and clearance of such advertising and establishing criteria for approval to insure that the public will be protected against false or misleading representations.

Except as provided in subdivision (b), "advertisement" includes dissemination in any newspaper, circular, form letter, brochure or similar publication, display, sign, radio broadcast or telecast, which concerns (1) the use, terms, rates, conditions, or the amount of any loan or sale referred to in subdivisions (d) and (e) of Section 10131 or Section 10131.1 or (2) the security, solvency, or stability of any person carrying on the activities described in those sections.

(b) "Advertisement" does not include a letter or brochure which is:

(1) Restricted in distribution to other real estate brokers and to persons for whom the broker has previously acted as agent in arranging a loan secured by real property or in the purchase, sale, or exchange of a deed of trust or real property sales contract; and

(2) Restricted in content to the identification and a description of the terms of loans, mortgages, deeds of trust, and real property sales contracts offered for funding or purchase through the broker as agent.

(c) Subdivision (a) is not applicable to advertising that is used exclusively in connection with an offering authorized by permit issued pursuant to the provisions of Article 6 (commencing with Section 10237) or applicable provisions of the Corporate Securities Law of 1968 (Section 25000 and following of the Corporations Code).

(d) All advertising approvals shall be for a period of five years after the date of approval. The approval period applies to all advertising, including that which was previously submitted on a mandatory basis.

SEC. 3. Section 10249.11 of the Business and Professions Code is amended to read:

10249.11. (a) "Improved out-of-state residential subdivision," as used in this article, means a subdivision, other than a time-share project as defined in Sections 11003.5 and 11004.5, in which all lots or parcels to be offered for residential use will be sold or leased, or offered for sale or lease, with all improvements completed that are necessary to occupancy after addition of a completed residential structure, or with the structure already completed, or with financial arrangements for those improvements determined to be adequate by the city or other appropriate governmental jurisdiction.

(b) "Improved out-of-state time-share project," as used in this article, means a time-share project as defined in Sections 11003.5 and 11004.5, other than a qualified resort vacation club as defined in Section 10260, in which all time-share interests to be offered for residential use will be sold or offered for sale with all improvements

completed that are necessary to occupancy, or with financial arrangements for the completion of those improvements determined to be adequate by the commissioner.

SEC. 4. Section 10249.2 of the Business and Professions Code is amended to read:

10249.2. (a) The sale or lease, or the offering for sale or lease, of lots or parcels in a subdivision situated outside of this state shall be governed by Article 6 (commencing with Section 10237) and by Chapter 1 (commencing with Section 11000) of Part 2, insofar as applicable, except that:

(1) Sections 10237.6, 10237.7, 10237.8, and 10238.4 shall not be applicable to an improved out-of-state residential subdivision, as defined in subdivision (a) of Section 10249.11.

(2) Sections 10237.6, 10237.8, and 10238.4 shall not be applicable to an improved out-of-state time-share project, as defined in subdivision (b) of Section 10249.11.

(3) Section 10237.6 shall not be applicable to a qualified resort vacation club, as defined in Section 10260.

(4) The provisions of Article 6 (commencing with Section 10237) shall not be applicable to a subdivision described in Section 11010.3.

(b) The commissioner shall apply the provisions of Sections 11018 and 11018.5, after taking into consideration the differences in the applicable laws of the various states with respect to subdivisions, to afford substantially the same level of public protection to purchasers of an interest in an improved out-of-state residential subdivision or an improved out-of-state time-share project as is afforded to purchasers of subdivision interests situated within this state.

(c) The commissioner may adopt regulations reasonably necessary to enforce this article.

SEC. 5. Section 10249.3 of the Business and Professions Code is amended to read:

10249.3. (a) The Real Estate Commissioner may by regulation prescribe filing fees in connection with applications to the Department of Real Estate pursuant to the provisions of this article which are lower than the maximum fees specified in subdivision (b) if the commissioner determines that the lower fees are sufficient to offset the costs and expenses incurred in the administration of this article. The commissioner shall hold at least one hearing each calendar year to determine if lower fees than those specified in subdivision (b) should be prescribed.

(b) The filing fee for an application for a permit to be issued under authority of this article shall not exceed the following for each subdivision or phase of the subdivision in which interests are to be offered for sale or lease:

(1) An application for an original permit: One thousand seven hundred dollars (\$1,700) plus ten dollars (\$10) for each subdivision interest to be offered.

(2) An application for a renewal permit: Six hundred dollars (\$600) plus ten dollars (\$10) for each subdivision interest to be

offered which was not permitted to be offered under the permit to be renewed.

(3) An application for an amended permit: Five hundred dollars (\$500) plus ten dollars (\$10) for each subdivision interest to be offered under the amended permit for which a fee has not previously been paid.

(4) An application for a preliminary permit: Five hundred dollars (\$500).

(c) All fees collected by the Department of Real Estate under authority of this article shall be deposited into the Real Estate Fund under Chapter 6 (commencing with Section 10450) of Part 1. All fees received by the department pursuant to the provisions of this article shall be deemed earned upon receipt. No part of any fee is refundable unless the commissioner determines that it was paid as a result of mistake or inadvertence.

SEC. 6. Section 10249.5 of the Business and Professions Code is repealed.

SEC. 7. Section 10249.6 of the Business and Professions Code is amended to read:

10249.6. (a) The commissioner may issue a preliminary permit for an improved out-of-state residential subdivision upon receipt of a substantially complete application for the subdivision. The preliminary permit shall issue on the same basis and conditions upon which the department issues preliminary public reports on subdivisions situated within the state.

(b) The commissioner may issue a conditional permit for an improved out-of-state residential subdivision. The conditional permit shall be issued on the same basis and conditions upon which the commissioner may issue conditional public reports for subdivisions located within the state.

SEC. 8. Section 10249.91 is added to the Business and Professions Code, to read:

10249.91. The term of any final permit issued pursuant to this article shall be one year, unless the commissioner by regulation prescribes a longer term. No permit shall be issued for a term longer than one year unless the developer or subdivider is required to submit to the commissioner annual reports containing information the commissioner may require by regulation.

SEC. 9. Section 10249.92 is added to the Business and Professions Code, to read:

10249.92. Every nonresident applicant for a permit pursuant to the provisions of this article shall, along with the application, file with the commissioner an irrevocable consent stating that if in any action commenced against the applicant in this state personal service of process upon the applicant cannot be made after the exercise of due diligence, a valid service may thereupon be made upon the applicant by delivering the process to the Secretary of State.

Insofar as possible, the provisions of Section 1018 of the Code of Civil Procedure relating to service of process on the Secretary of

State are applicable to this section.

SEC. 10. Section 11018.12 of the Business and Professions Code is amended to read:

11018.12. (a) The commissioner may issue a conditional public report for a subdivision specified in Section 11004.5 if the requirements of subdivision (e) are met, all deficiencies and substantive inadequacies in the documents that are required to make an application for a final public report for the subdivision substantially complete have been corrected, the material elements of the setup of the offering to be made under the authority of the conditional public report have been established, and all requirements for issuance of a public report set forth in the regulations of the commissioner have been satisfied except for one or more of the following requirements, as applicable:

- (1) A final map has not been recorded.
- (2) A condominium plan pursuant to subdivision (e) of Section 1351 of the Civil Code has not been recorded.
- (3) A declaration of covenants, conditions, and restrictions pursuant to Section 1353 of the Civil Code has not been recorded.
- (4) A declaration of annexation has not been recorded.
- (5) A recorded subordination of existing liens to the declaration of covenants, conditions, and restrictions or declaration of annexation or escrow instructions to effect recordation prior to the first sale are lacking.
- (6) Filed articles of incorporation are lacking.
- (7) A current preliminary report of a licensed title insurance company issued after filing of the final map and recording of the declaration covering all subdivision interests to be included in the public report has not been provided.
- (8) Other requirements the commissioner determines are likely to be timely satisfied by the applicant, notwithstanding the fact that the failure to meet these requirements makes the application qualitatively incomplete.

(b) The commissioner may issue a conditional public report for a subdivision not referred to or specified in Section 11000.1, 11000.5, or 11004.5 if the requirements of subdivision (e) are met, all deficiencies and substantive inadequacies in the documents that are required to make an application for a final public report for the subdivision substantially complete have been corrected, the material elements of the setup of the offering to be made under the authority of the conditional public report have been established, and all requirements for issuance of a public report set forth in the regulations of the commissioner have been satisfied except for one or more of the following requirements, as applicable:

- (1) A final map has not been recorded.
- (2) A declaration of covenants, conditions, and restrictions has not been recorded.
- (3) A current preliminary report of a licensed title insurance company issued after filing of the final map and recording of the

declaration covering all subdivision interests to be included in the public report has not been provided.

(4) Other requirements the commissioner determines are likely to be timely satisfied by the applicant, notwithstanding the fact that the failure to meet these requirements makes the application qualitatively incomplete.

(c) A decision by the commissioner to not issue a conditional public report shall be noticed in writing to the applicant within five business days and that notice shall specifically state the reasons why the report is not being issued.

(d) Notwithstanding the provisions of Section 11018.2, a person may sell or lease, or offer for sale or lease, lots or parcels in a subdivision pursuant to a conditional public report if, as a condition of the sale or lease or offer for sale or lease, delivery of legal title or other interest contracted for will not take place until issuance of a public report and provided that the requirements of subdivision (e) are met.

(e) (1) Evidence shall be supplied that all purchase money will be deposited in compliance with subdivision (a) of Section 11013.2 or subdivision (a) of Section 11013.4, and in the case of a subdivision referred to in subdivision (a), evidence is given of compliance with paragraphs (1) and (2) of subdivision (a) of Section 11018.5.

(2) A description of the nature of the transaction shall be supplied.

(3) Provision shall be made for the return of the entire sum of money paid or advanced by the purchaser if a subdivision public report has not been issued within six months of the date of issuance of the conditional public report or the purchaser is dissatisfied with the public report because of a change pursuant to Section 11012.

(f) A subdivider, principal, or his or her agent shall provide a prospective purchaser a copy of the conditional public report and a written statement including all of the following:

(1) Specification of the information required for issuance of a public report.

(2) Specification of the information required in the public report which is not available in the conditional public report, along with a statement of the reasons why that information is not available at the time of issuance of the conditional public report.

(3) A statement that no person acting as a principal or agent shall sell or lease or offer for sale or lease lots or parcels in a subdivision for which a conditional public report has been issued except as provided in this article.

(4) Specification of the requirements of subdivision (e).

(g) The prospective purchaser shall sign a receipt that he or she has received and has read the conditional public report and the written statement provided pursuant to subdivision (f).

(h) The term of a conditional public report shall not exceed six months, and may be renewed for one additional term of six months if the commissioner determines that the requirements for issuance of a public report are likely to be satisfied during the renewal term.

SEC. 11. Section 11022 of the Business and Professions Code is amended to read:

11022. (a) It is unlawful for an owner, subdivider, agent or employee of a subdivision or other person, with intent directly or indirectly to sell or lease subdivided lands or lots or parcels therein, to authorize, use, direct, or aid in the publication, distribution, or circularization of an advertisement, radio broadcast, or telecast concerning subdivided lands, that contains a statement, pictorial representation, or sketch that is false or misleading.

(b) An owner, subdivider, agent, or employee of an owner or subdivider may, prior to the use, publication, distribution, or circulation of any advertisement concerning subdivided lands, submit the same to the department for approval. The submission shall be accompanied by a fee of not more than seventy-five dollars (\$75). The commissioner shall prescribe by regulation the amount of the fee.

If disapproval of the proposed advertisement is not communicated by the department to the owner, subdivider, agent, or employee within 15 calendar days after receipt of the copy of the proposed advertisement, the advertisement shall be deemed approved, but the department shall not be estopped from disapproving a later distribution, circulation, or use of the same or similar advertising.

(c) Nothing in this section shall be construed to hold the publisher or employee of any newspaper, or any job printer, or any broadcaster, or telecaster, or any magazine publisher, or any of the employees thereof, liable for any publication herein referred to unless the publisher, employee, or printer has actual knowledge of the falsity thereof or has an interest either as an owner or agent in the subdivided lands so advertised.

SEC. 12. Section 11029 of the Business and Professions Code is repealed.

CHAPTER 1109

An act to amend Section 8842 of, and to add Section 5653.8 to, the Fish and Game Code, relating to fish and game, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 5653.8 is added to the Fish and Game Code, to read:

5653.8. For purposes of Sections 5653, 5653.1, 5653.2, and 5653.3, "person" does not include a partnership, corporation, or other type

of association.

SEC. 2. Section 5653.8 is added to the Fish and Game Code, to read:

5653.8. For purposes of Sections 5653 and 5653.3, "person" does not include a partnership, corporation, or other type of association.

SEC. 3. Section 8842 of the Fish and Game Code, as amended by Section 1 of Chapter 1104 of the Statutes of 1993, is amended to read:

8842. (a) Trawl nets of a design prescribed by the commission may be used or possessed to take shrimp or prawns under a revocable, nontransferable permit issued by the department under regulations that the commission shall prescribe that are not inconsistent with this section. A permit is valid, unless revoked or canceled, from April 1 to March 31 of the next succeeding calendar year. A permit issued under this section for the permit year beginning on April 1, 1994, and thereafter, may be issued pursuant to paragraph (2) of subdivision (c) to the owner of a vessel registered pursuant to Section 7881, as designated in the application for the permit. That permit shall authorize the use of that designated vessel for the purpose of using trawl nets to take shrimp or prawns pursuant to this section.

Sections 8831, 8833, 8835, and 8836 do not apply to trawl nets used or possessed under a permit issued pursuant to this section.

(b) When fishing for pink shrimp (*Pandalus jordani*) under a permit issued pursuant to this section, it is unlawful to possess in excess of 1,500 pounds of incidentally taken fish per calendar day of a fishing trip, except Pacific whiting, shortbelly rockfish, and arrowtooth flounder that may be taken in any amount. Not more than 150 pounds of California halibut shall be possessed or landed when fishing under a permit issued pursuant to this section. When fishing for ridgeback prawn and spotted prawn under a permit issued pursuant to this section, it is unlawful to possess in excess of 1,000 pounds of incidentally taken fish per trip, except for sea cucumbers that may be taken in any amount.

(c) (1) For the 1994-95 permit year, a pink shrimp permit shall be issued only to those applicants who meet one of the following criteria:

(A) Possessed a permit issued under this section, or any regulations adopted pursuant to this section, during the 1993-94 permit year or for any permit year prior to the 1993-94 permit year.

(B) Is the registered owner of a vessel that landed pink shrimp on or before March 31, 1994. If a vessel owner applies for a permit pursuant to this subparagraph, he or she shall specify the vessel he or she will use in the operations authorized by the permit. Landings used to qualify for permits shall have been reported to the department pursuant to Section 8043.

(2) Beginning with the 1995-96 permit year, a pink shrimp permit shall be issued only to applicants who possessed a valid pink shrimp permit in the immediately preceding permit year.

(d) The fee for the permit to take pink shrimp shall be two

hundred eighty-five dollars (\$285).

(e) This section shall remain in effect only until January 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1997, deletes or extends that date.

SEC. 4. The Legislature finds and declares that the Department of Fish and Game has interpreted the permit eligibility provisions enacted by subdivision (c) of Section 8842 of the Fish and Game Code, as amended by Section 1 of Chapter 1104 of the Statutes of 1993, to apply commencing with the 1994-95 permit year, consistent with the intent of the Legislature. The Legislature hereby validates that interpretation.

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

SEC. 6. Section 1 of this act shall become operative only if (a) this bill and AB 399 are enacted and become effective on or before January 1, 1995, and (b) AB 399 adds Sections 5653.1 and 5653.2 to the Fish and Game Code, in which case Section 2 of this act shall not become operative.

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

In order to clarify certain provisions of law relating to vacuum and suction dredging and to revise certain provisions of law relating to the taking of shrimp as soon as possible, it is necessary for this act to take effect immediately.

CHAPTER 1110

An act to amend Section 311 of, and to add Section 311.5 to, the Public Utilities Code, relating to the Public Utilities Commission.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 311 of the Public Utilities Code is amended to read:

311. (a) The commission, each commissioner, the executive

director, and the assistant executive directors may administer oaths, certify to all official acts, and issue subpoenas for the attendance of witnesses and the production of papers, waybills, books, accounts, documents, and testimony in any inquiry, investigation, hearing, or proceeding in any part of the state.

(b) The administrative law judges may administer oaths, examine witnesses, issue subpoenas, and receive evidence, under rules that the commission adopts. The commission, upon scheduling hearings and specifying the scope of issues to be heard in any proceeding involving an electrical, gas, telephone, railroad, or water corporation, or a highway carrier, shall assign an administrative law judge to preside over the hearings, either sitting alone or assisting the commissioner or commissioners who will hear the case.

(c) The evidence in any hearing shall be taken by the administrative law judge designated for that purpose. The administrative law judge may receive and exclude evidence offered in the hearing in accordance with the rules of practice and procedure of the commission.

(d) The administrative law judge shall prepare and file an opinion setting forth recommendations, findings, and conclusions. The opinion of the administrative law judge is the proposed decision and a part of the public record in the proceeding. The proposed decision of the administrative law judge shall be filed with the commission and served upon all parties to the action or proceeding without undue delay, not later than 90 days after the matter has been submitted for decision. The commission shall issue its decision not sooner than 30 days following filing and service of the proposed decision by the administrative law judge, except that the 30-day period may be reduced or waived by the commission in an unforeseen emergency situation or upon the stipulation of all parties to the proceeding. The commission may, in issuing its decision, adopt, modify, or set aside the proposed decision or any part of the decision. Every finding, opinion, and order made in the proposed decision and approved or confirmed by the commission shall, upon that approval or confirmation, be the finding, opinion, and order of the commission.

(e) Beginning January 1, 1995, any item appearing on the commission's public agenda as an alternate item to an administrative law judge's proposed decision shall be served upon all parties to the proceeding without undue delay and shall be subject to public review and comment before it may be voted upon. For purposes of this subdivision "alternate" means either a substantive revision to a proposed decision that materially changes the resolution of a contested issue or any substantive addition to findings of fact, conclusions of law, or ordering paragraphs. The commission shall adopt rules by October 1, 1995, that provide for the time and manner of review and comment and the rescheduling of the item on a subsequent public agenda. The commission's rules may provide that the time and manner of review and comment on an alternate item

may be reduced or waived by the commission in an unforeseen emergency situation.

(f) The commission may specify that the administrative law judge assigned to a proceeding involving an electrical, gas, telephone, railroad, or water corporation, or a highway carrier, initiated by customer or subscriber complaint need not prepare, file, and serve an opinion, unless the commission finds that to do so is required in the public interest in a particular case.

SEC. 2. Section 311.5 is added to the Public Utilities Code, to read:

311.5. Prior to commencement of any meeting at which commissioners vote on items on the public agenda the commission shall make available to the public copies of the agenda, and upon request, any agenda item documents that are proposed to be considered by the commission for action or decision at a commission meeting.

CHAPTER 1111

An act to amend Section 17780 of, and to add Section 17705.15 to, the Education Code, relating to school facilities, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 17705.15 is added to the Education Code, to read:

17705.15. The board may provide a loan to any school district from the proceeds of the sale of bonds pursuant to the School Facilities Bond Act of 1992 (Chapter 21.2 (commencing with Section 17640)), and the 1992 School Facilities Bond Act (Chapter 21.25 (commencing with Section 17645)), to provide aid for school districts in accordance with this chapter, when those proceeds are available in the State School Building Lease-Purchase Fund. In order to provide a loan, both of the following conditions shall be met:

(a) The amount of the loan shall not exceed the amount set forth in legislation enacted that specifies the loan amount.

(b) The loan shall be repaid pursuant to a schedule set forth in legislation enacted that specifies a loan repayment schedule.

SEC. 2. Section 17780 of the Education Code is amended to read:

17780. (a) Notwithstanding any other provision of law, whenever moneys transferred to the General Fund each year from (1) moneys deposited in the Public School Building Loan Fund pursuant to Section 15735, and (2) moneys deposited in the State

School Building Aid Fund pursuant to Section 16080, are in excess of the amounts required to reimburse the General Fund on account of principal and interest due and payable for that fiscal year on all school building aid bonds outstanding against the state, an amount equal to such excess is appropriated from the General Fund for purposes of the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700)) and Section 39619. The Controller shall transfer, as directed by the State Allocation Board, such appropriated amount to the State School Building Lease-Purchase Fund and to the State School Deferred Maintenance Fund, which is hereby established.

(b) In addition to the amount transferred pursuant to subdivision (a), the Controller shall transfer annually from the General Fund to the State School Deferred Maintenance Fund an amount equal to any amount transferred to or deposited in the General Fund as a result of repayment of any loan made by the board pursuant to Section 17705.15.

(c) Notwithstanding Section 13340 of the Government Code, the State School Deferred Maintenance Fund is continuously appropriated for the purposes for which it is established.

SEC. 3. (a) Pursuant to Section 17705.15 of the Education Code, the State Allocation Board may provide a loan to the Colfax Elementary School District, for purposes of its school construction project (Application Number 22-66795-00-03), in the amount of four hundred forty-eight thousand six hundred dollars (\$448,600), which shall be repaid in full pursuant to this section. The board shall not reduce or forgive this loan.

(b) Commencing with the 1994-95 fiscal year and each fiscal year thereafter through the 2013-14 fiscal year, the Controller shall, as debt service, including interest, on the loan made to the Colfax Elementary School District pursuant to this section, reduce the apportionment under Section 42238 of the Education Code made to the Colfax Elementary School District by the amount of thirty-six thousand dollars (\$36,000).

(c) The Controller shall transfer the amount of the annual reduction set forth in subdivision (b) to the General Fund, if the appropriation under Section 14002 of the Education Code is not operative for that fiscal year.

(d) This section shall become inoperative on July 1, 2014, and, as of January 1, 2015, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2015, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 4. (a) In addition to the loan specified in Section 3 of this act, the State Allocation Board may provide an additional loan pursuant to Section 17705.15 of the Education Code to the Colfax Elementary School District, for purposes of its school construction project (Application Number 22-66795-00-03), in the amount of two hundred twenty-five thousand dollars (\$225,000), which shall be repaid in full pursuant to this section. The board shall not reduce or

forgive this loan.

(b) Any funds received by the Colfax Elementary School District from the proceeds from the sale of the former schoolsite of the Colfax Elementary School shall be transferred to the Controller for deposit by the Controller in the General Fund within 30 days of receipt by the school district of those proceeds and shall reduce the loan repayment amount specified in subdivision (a) by the amount deposited in the General Fund. If the purchaser of the schoolsite is in default on any payment and in accordance with the terms of that sale, the Colfax Elementary School District shall enter into an agreement to sell the schoolsite and any proceeds of that sale shall be transferred to the Controller for deposit in the General Fund in accordance with this section.

(c) (1) If the amount of proceeds from any sale of the schoolsite pursuant to subdivision (b) is insufficient to repay in full the amount of the loan made pursuant to subdivision (a), the Controller shall increase the annual reduction of the apportionment to the Colfax Elementary School District as specified in Section 3 of this act by the amount of the difference between the proceeds of the sale pursuant to this section and the amount of the loan made pursuant to this section. The Controller shall transfer the amount of the increase in the annual reduction to the General Fund made pursuant to this paragraph, if the appropriation under Section 14002 of the Education Code is not operative for that fiscal year.

(2) The amount of the annual increase in the reduction specified in paragraph (1) shall be calculated to ensure full payment of the difference plus 5 percent interest amortized through June 30, 2014.

SEC. 5. The Controller shall establish a process for the Colfax Elementary School District to pay a supplemental amount in any fiscal year on the loan made pursuant to Section 3 of this act. The Controller shall reschedule the annual reductions made pursuant to Section 3 of this act if the Colfax Elementary School District pays more than thirty-six thousand dollars (\$36,000) in any fiscal year.

SEC. 6. In repayment of any other funds provided to the Colfax Elementary School District by the State Allocation Board for purposes of the school district's school construction project (Application Number 22-66795-00-03), the school district shall transfer to the Controller for deposit by the Controller in the General Fund the proceeds of any settlement or judgment received by the school district from litigation related to that school construction project. The school district may retain from the amount of any settlement or judgment an amount to pay any attorney's fees and costs incurred by the school district plus 10 percent of the settlement or judgment.

SEC. 7. (a) The annual reduction in apportionment to the Colfax Elementary School District made in accordance with subdivision (b) of Section 3 and paragraph (1) of subdivision (c) of Section 4, if applicable, of this act shall be deemed to be an allocation to a school district for purposes of subdivision (b) of Section 8 of Article XVI of

the California Constitution and for purposes of Chapter 2 (commencing with Section 41200) of Part 24 of the Education Code.

(b) For purposes of subdivision (b) of Section 42238 of the Education Code, the base revenue limit for the school district for the 1995-96 fiscal year and each fiscal year thereafter through the 2013-14 fiscal year shall be determined as if the base revenue limit for the school district had been determined for the prior fiscal year without being reduced pursuant to subdivision (b) of Section 3 and paragraph (1) of subdivision (c) of Section 4, if applicable, of this act.

(c) This section shall become inoperative on July 1, 2014, and, as of January 1, 2015, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2015, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 8. Due to the unique circumstances relating to the Colfax Elementary School District, the Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act is in accordance with the request of a local agency or school district which desired legislative authority to carry out the programs specified in this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

The Colfax Elementary School District has unfunded school construction costs in excess of 175 percent of the annual operating budget of the school district and will become fiscally insolvent unless this act takes effect immediately.

CHAPTER 1112

An act to amend Section 25200.8 of the Health and Safety Code, and to amend the heading of Division 34 (commencing with Section 71000) of, to add the heading of Part 1 (commencing with Section 71000) to Division 34 of, and to add Part 2 (commencing with Section 71050) to Division 34 of, the Public Resources Code, relating to environmental protection.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 25200.8 of the Health and Safety Code is amended to read:

25200.8. Any applicant for a final hazardous waste facilities permit pursuant to Section 25200 who receives a notice of deficiency from the department concerning the permit application shall submit the information specified in the notice of deficiency by the date specified in the notice of deficiency or by a later alternative date approved by the department. The department may initiate an enforcement action pursuant to Section 25187 against any hazardous waste facilities permit applicant who does not provide the information specified in the notice of deficiency by the date specified in the notice of deficiency or by a later alternative date approved by the department. If an applicant does not respond to three or more of these notices of deficiency regarding the same or different deficiencies or responds with substantially incomplete or substantially unsatisfactory information on three or more occasions, the department shall, pursuant to regulations adopted by the department, initiate proceedings to deny the permit application. This section does not limit the department's authority to take action concerning the permit application before sending three notices of deficiency.

SEC. 2. The heading of Division 34 (commencing with Section 71000) of the Public Resources Code is amended to read:

DIVISION 34. ENVIRONMENTAL PROTECTION

SEC. 3. The heading of Part 1 (commencing with Section 71000) is added to Division 34 of the Public Resources Code, to read:

PART 1. PERMITS

SEC. 4. Part 2 (commencing with Section 71050) is added to Division 34 of the Public Resources Code, to read:

PART 2. ENVIRONMENTAL DATA REPORTING

CHAPTER 1. LEGISLATIVE FINDINGS AND DECLARATIONS

71050. The Legislature hereby finds and declares all of the following:

(a) Environmental data is currently required by, and submitted to, a variety of public agencies with jurisdiction at the state, regional, and local levels of government. The same information is often submitted by the regulated community to different public agencies,

almost always on one or more paper forms. Since a different format is now required for each such report, data items are required to be reformatted one or more additional times at a cost of time and money that brings no accompanying environmental benefit.

(b) The blizzard of incoming paper reports often exceeds the capacity of a public agency to digest the information. In some cases, the public agency cannot look at or evaluate all of the data received on paper. That problem of data utility is aggravated further by the current wasteful and error-laden practice of retyping data from paper forms into the public agency's computer data base.

(c) In many cases, reported data originates in a computer data base maintained by the company submitting the report. The retyping of data by the public agency could be completely eliminated if business entities were permitted to submit the data in a single electronic format which every public agency could then use. That standard approach would permit both business entities and public agencies to save time and money that is now spent in reformatting, reentering, and reediting data. The data would also be available more quickly to any member of the public interested in using the data.

(d) Business entities already use common, standardized electronic data formats and protocols to exchange commercial and technical information on materials to be transported and used in manufacturing. That application of electronic data interchange is an important factor in determining the competitiveness of business entities in this state. The imposition by government of barriers to, or multiple incompatible data format requirements on, those existing electronic interchanges impairs the competitiveness of business entities without bringing any accompanying environmental benefit.

(e) It is the policy of the state, for environmental and hazardous materials reporting purposes, to employ nonproprietary electronic data formats and transmission protocols that already function effectively for ongoing commercial and industrial data exchanges between business entities and across different computer operating systems instead of expending public funds to develop public agency-specific formats and protocols.

CHAPTER 2. DEFINITIONS

71053. "Advisory committee" means the Environmental Data Management Advisory Committee established pursuant to Section 71064.

71054. "Agency" means the California Environmental Protection Agency.

71055. "Secretary" means the Secretary for Environmental Protection.

CHAPTER 3. DATA MANAGEMENT

71060. The secretary shall develop and adopt information technology standards by which public agencies and regulated business entities and the other members of the regulated community may use computers and other information technology to specify, request, report, collect, communicate, process, display, disseminate, or otherwise utilize data for environmental data reporting requirements that are imposed in the course of granting permits or other authorizations to operate issued pursuant to specified provisions of state and federal law and regulations.

71061. The secretary shall establish a standardized electronic format and protocol for the exchange of electronic data for the purpose of meeting environmental data reporting or other usage requirements that are imposed in the course of granting permits or other authorizations to operate pursuant to all of the following laws and regulations adopted pursuant to those laws:

(a) Chapter 6.5 (commencing with Section 25100), Chapter 6.7 (commencing with Section 25280), and Chapter 6.95 (commencing with Section 25500) of Division 20 of the Health and Safety Code.

(b) Article 1 (commencing with Section 42300) of Chapter 4 of Part 4 of Division 26 of the Health and Safety Code.

(c) Division 7 (commencing with Section 13000) of the Water Code.

(d) The Solid Waste Disposal Act (42 U.S.C. Sec. 6901 et seq.).

(e) The Emergency Planning and Community Right-to-Know Act (42 U.S.C. Sec. 11001 et seq.).

(f) Any other law relating to environmental protection, including, but not limited to, hazardous waste, substances, and materials, as determined by the secretary.

71062. The secretary shall identify the environmental data reporting or usage requirements imposed pursuant to the laws listed in Section 71061 and reflect those requirements in the elements of the standardized electronic format and protocol, develop a data dictionary that describes the characteristics of each format element and its relationship to each environmental data reporting or usage requirement, and develop evaluation criteria by which the successful use of the standardized electronic format and protocol may be measured.

71063. (a) The proposed standardized electronic format and protocol required by Section 71061 and the alternative signature techniques required by Section 71066 shall be tested in the Counties of Santa Clara and San Mateo as a pilot program, for a period determined by the secretary, and at the initiative of business entity report submitters who have organized to implement electronic data interchange among themselves for other business purposes and who wish to employ the same technology for exchanging environmental data. Any of the participating business entities located within those counties who are required to comply with the environmental data

reporting requirements imposed pursuant to the laws listed in Section 71061, may comply by submitting the data in the prescribed standardized electronic format.

(b) The secretary shall meet the requirements of Section 71063 using resources contributed exclusively by business participants. The secretary may accept and use computer hardware, software, and support services furnished by the industry or business participants at their own cost in order for the agency to participate in the pilot program. No public funds shall be encumbered in order to conduct, or pay for, any part of the pilot program originally undertaken or provided by any business participant. The brands of products employed shall not be identified in public, nor shall their use be deemed an endorsement of any particular brand or proprietary approach to electronic data interchange.

71064. (a) There is in the agency the Environmental Data Management Advisory Committee. The advisory committee shall consist of not more than seven members appointed by the secretary. The secretary shall select members who represent business, government, and environmental groups, and who have proven expertise and current knowledge in the field of electronic data exchange.

(b) The advisory committee shall commence to function by March 1, 1995. The advisory committee shall advise the secretary on the quickest, most effective, and least expensive alternative systems of electronic standards for formatting data.

(c) On or before July 1, 1996, the advisory committee shall submit a report to the secretary which describes the pilot program conducted pursuant to Section 71063. This report shall include, but is not limited to, an analysis of the costs and benefits of the format, protocol, and signature techniques used in the pilot program, a discussion of the results obtained by using the evaluation criteria developed pursuant to Section 71062, and a discussion of the implications for statewide implementation of the program.

(d) The meetings of the advisory committee shall be open to the public and shall provide an opportunity for the public to be heard on matters considered by the advisory committee.

71065. To the fullest extent practicable to public agencies and business entities, the secretary, in close consultation with the advisory committee, shall ensure that the standardized electronic format and protocol established pursuant to Section 71061 meets all of the following criteria:

(a) The format and protocol conforms with, or is compatible with, data interchange formats and protocols already in use in the regulated community for moving data from computer to computer, so that the format and pilot program may be implemented promptly, without the need for research and development into untried formats and protocols.

(b) The format and protocol works independently of the type of computer hardware, software, operating system, data storage device,

and telecommunications equipment employed by prospective senders and receivers.

(c) The format and protocol accommodates the addition of new or revised data element specifications without requiring users to make costly modifications to the hardware or software that they employ to submit electronic data.

71066. The secretary shall prescribe one or more techniques by which a report may be signed electronically by a person who would otherwise place a written signature on a paper version of the report. The prescribed electronic signature shall be binding on all persons and for all purposes under the law as if the signature had been made in ink on the equivalent paper document. The secretary may also prescribe a paper form for signature and certification of a report submitted in the prescribed file format on tangible magnetic media, including, but not limited to, floppy disks or magnetic tape.

71067. Public agencies shall continue their current data auditing practices, and shall work with data submitters to correct all kinds of data error encountered. The pilot program shall require that each participant maintain an audit trail as part of the evaluation criteria so that inspectors and other evaluators may ensure that the data submitted comport with the data received along the electronic link.

CHAPTER 1113

An act to add Section 1853.97 to the Insurance Code, relating to insurance.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 29, 1994.]

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

SECTION 1. Section 1853.97 is added to the Insurance Code, to read:

1853.97. Automobile liability insurance and automobile physical damage insurance may, at the option of the insurer, be considered a single line for rate filing purposes.

CHAPTER 1114

An act to amend Sections 7502.2 and 7510.2 of the Business and Professions Code, to amend Sections 22005, 22465.5, 24005, and 24465.5 of the Financial Code, and to amend Sections 26751 and 41612 of the Government Code, relating to reposseors.

[Approved by Governor September 28, 1994. Filed with Secretary of State September 29, 1994.]

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

SECTION 1. Section 7502.2 of the Business and Professions Code is amended to read:

7502.2. (a) Any financial institution that knowingly engages a nonexempt unlicensed person to repossess personal property on its behalf is guilty of a misdemeanor, and is punishable by a fine of five thousand dollars (\$5,000).

(b) A proceeding to impose the fine specified in subdivision (a) may be brought in any court of competent jurisdiction in the name of the people of the State of California by the Attorney General or by any district attorney or city attorney, or with the consent of the district attorney, by the city prosecutor in any city or city and county having a full-time city prosecutor, for the jurisdiction in which the violation occurred. If the action is brought by a district attorney, the penalty collected shall be paid to the treasurer of the county in which the judgment is entered. If the action is brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered and one-half to the treasurer of the county in which the judgment was entered. If the action is brought by the Attorney General, all of the penalty collected shall be deposited in the Private Investigator Fund.

SEC. 2. Section 7510.2 of the Business and Professions Code is amended to read:

7510.2. (a) Any licensee, or any officer, partner, employee, or manager of a licensee, who is found by the director to have committed any acts prohibited by Section 7510.1, resulting in revocation of a license, shall dispose of any financial interest in any repossession agency required to be licensed by this act within 90 days of the effective date of the revocation, or at a later date, approved in writing by the director, not to exceed 180 days.

(b) No licensee, or any officer, partner, employee, or manager of a licensee, who is found by the director to have committed any acts prohibited by Section 7510.1, shall, during the period of suspension or revocation, acquire any financial interest in any repossession agency required to be licensed by this act.

(c) The requirements and prohibitions of this section shall also apply to any immediate family member of a licensee, or officer, partner, employee, or manager of a licensee, if the family member

actively participated in the management or operation of the repossession agency whose license was revoked.

(d) Any immediate family member of a licensee, or officer, partner, employee, or manager of a licensee, not subject to subdivision (c), shall dispose of all financial interest in the repossession agency of the licensee whose license was revoked, within the time period required in subdivision (a).

(e) Any financial interest transferred for the purpose of avoiding the prohibitions of this section shall be deemed a financial interest of the transferor.

(f) As used in this section, "financial interest" includes, but is not limited to, any type of ownership interest, debt, loan, lease, compensation, remuneration, discount, rebate, refund, dividend, distribution, subsidy, or other form of direct or indirect payment, whether in money or otherwise.

(g) As used in this section, "immediate family" includes one's spouse, children, parents, siblings, and spouses of one's children or siblings.

SEC. 3. Section 22005 of the Financial Code is amended to read: 22005. "Charges" do not include any of the following:

(a) Commissions received as a licensed insurance agent or broker in connection with insurance written as provided in Section 22458.

(b) Amounts not in excess of the amounts specified in subdivision (c) of Section 3068 of the Civil Code paid to holders of possessory liens, imposed pursuant to Chapter 6.5 (commencing with Section 3067) of Title 14 of Part 4 of Division 3 of the Civil Code, to release motor vehicles which secure loans subject to this division.

(c) Court costs, excluding attorney's fees, incurred in a suit and recovered against a debtor who defaults on his or her loan.

(d) Fees paid to a licensee for the privilege of participating in an open-end credit program, which fees are to cover administrative costs and are imposed upon executing the open-end loan agreement and on annual renewal dates or anniversary dates thereafter.

(e) Amounts received by a licensee from a seller, from whom the borrower obtains money, goods, labor, or services on credit, in connection with a transaction under an open-end credit program which are paid or deducted from the loan proceeds paid to the seller at the direction of the borrower and which are an obligation of the seller to the licensee for the privilege of allowing the seller to participate in the licensee's open-end credit program. Amounts received by a licensee from a seller pursuant to this subdivision may not exceed 6 percent of the loan proceeds paid to the seller at the direction of the borrower.

(f) Actual fees not exceeding three hundred dollars (\$300) paid in connection with the repossession of a motor vehicle to repossession agencies licensed pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code provided the licensee complies with Sections 22465 and 22465.5, and actual fees paid to a licensee in conformity with Sections 26751 and 41612 of the

Government Code in an amount not exceeding the amount specified in those sections of the Government Code.

(g) Moneys paid to, and commissions and benefits received by, a licensee for the sale of goods, services, or insurance, whether or not the sale is in connection with a loan, that the buyer by a separately signed authorization acknowledges is optional, if sale of the goods, services, or insurance has been authorized pursuant to Section 22404.

SEC. 4. Section 22465.5 of the Financial Code is amended to read:

22465.5. (a) This section applies to a loan secured in whole or in part by a lien on a motor vehicle as defined by subdivision (k) of Section 2981 of the Civil Code.

(b) In the absence of default in the performance of any of the borrower's obligations under the loan, the licensee may not accelerate the maturity of any part or all of the amount due thereunder or repossess the motor vehicle.

(c) If, after default by the borrower, the licensee repossesses or voluntarily accepts surrender of the motor vehicle, any person liable on the loan shall have a right to reinstate the loan and the licensee shall not accelerate the maturity of any part or all of the loan prior to the expiration of the right to reinstate, unless the licensee reasonably and in good faith determines that:

(1) The borrower or any other person liable on the loan by omission or commission intentionally provided false or misleading information of material importance on his or her credit application.

(2) The borrower or any other person liable on the loan in order to avoid repossession has concealed the motor vehicle or removed it from the state.

(3) The borrower or any other person liable on the loan has committed or threatens to commit acts of destruction, or has failed to take care of the motor vehicle in a reasonable manner, so that the motor vehicle has or may become substantially impaired in value.

(d) Exercise of the right to reinstate the loan shall be limited to once in any 12-month period and twice during the term of the loan.

(e) The provisions of this subdivision shall govern the method by which a loan shall be reinstated with respect to curing events of default which were a ground for repossession or occurred subsequent to repossession.

(1) Where the default is the result of the borrower's failure to make any payment due under the loan, the borrower or any other person liable on the loan shall make the defaulted payments and pay any applicable delinquency charges.

(2) Where the default is the result of the borrower's failure to keep and maintain the motor vehicle free from all encumbrances and liens of every kind, the borrower or any other person liable on the loan shall either satisfy all the encumbrances and liens or, in the event the licensee satisfies the encumbrances and liens, the borrower or any other person liable on the loan shall reimburse the licensee for all reasonable costs and expenses incurred therefor.

(3) Where the default is the result of the borrower's failure to

keep and maintain insurance on the motor vehicle, the borrower or any other person liable on the loan shall either obtain the insurance or, in the event the licensee has obtained the insurance, the borrower or any other person liable on the loan shall reimburse the licensee for premiums paid and all reasonable costs and expenses incurred therefor.

(4) Where the default is the result of the borrower's failure to perform any other obligation under the loan, unless the licensee has made a good faith determination that the default is so substantial as to be incurable, the borrower or any other person liable on the loan shall reimburse the licensee for all reasonable costs and expenses incurred therefor.

(5) Additionally, the borrower or any other person liable on the loan shall reimburse the licensee for actual fees in an amount not exceeding the amount specified in subdivision (f) of Section 22005 paid in connection with the repossession of a motor vehicle to a repossession agency licensed pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code, and actual fees in conformity with Sections 26751 and 41612 of the Government Code in an amount not exceeding the amount specified in those sections of the Government Code.

(f) If the licensee denies the right to reinstatement under subdivision (c) or paragraph (4) of subdivision (e), the licensee shall have the burden of proof that the denial was justified in that it was reasonable and made in good faith. If the licensee fails to sustain the burden of proof, the licensee shall not be entitled to a deficiency.

SEC. 5. Section 24005 of the Financial Code is amended to read: 24005. "Charges" do not include any of the following:

(a) Commissions received as a licensed insurance agent or broker in connection with insurance written as provided in Section 24458.

(b) Amounts not in excess of the amounts specified in subdivision (c) of Section 3068 of the Civil Code paid to holders of possessory liens, imposed pursuant to Chapter 6.5 (commencing with Section 3067) of Title 14 of Part 4 of Division 3 of the Civil Code, to release motor vehicles which secure loans subject to this division.

(c) Court costs, excluding attorney's fees, incurred in a suit and recovered against a debtor who defaults on his or her loan.

(d) Fees paid to a licensee for the privilege of participating in an open-end credit program, which fees are to cover administrative costs and are imposed upon executing the open-end loan agreement and on annual renewal dates or anniversary dates thereafter.

(e) Amounts received by a licensee from a seller, from whom the borrower obtains money, goods, labor, or services on credit, in connection with a transaction under an open-end credit program which are paid or deducted from the loan proceeds paid to the seller at the direction of the borrower and which are an obligation of the seller to the licensee for the privilege of allowing the seller to participate in the licensee's open-end credit program. Amounts received by a licensee from a seller pursuant to this subdivision may

not exceed 6 percent of the loan proceeds paid to the seller at the direction of the borrower.

(f) Actual fees not exceeding three hundred dollars (\$300) paid in connection with the repossession of a motor vehicle to repossession agencies licensed pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code provided the licensee complies with Sections 24465 and 24465.5, and actual fees paid to a licensee in conformity with Sections 26751 and 41612 of the Government Code in an amount not exceeding the amount specified in those sections of the Government Code.

(g) Moneys paid to, and commissions and benefits received by, a licensee for the sale of goods, services, or insurance, whether or not the sale is in connection with a loan, that the buyer by a separately signed authorization acknowledges is optional, if sale of the goods, services, or insurance has been authorized pursuant to Section 24404.

SEC. 6. Section 24465.5 of the Financial Code is amended to read:

24465.5. (a) This section applies to a loan secured in whole or in part by a lien on a motor vehicle as defined by subdivision (k) of Section 2981 of the Civil Code.

(b) In the absence of default in the performance of any of the borrower's obligations under the loan, the licensee may not accelerate the maturity of any part or all of the amount due thereunder or repossess the motor vehicle.

(c) If, after default by the borrower, the licensee repossesses or voluntarily accepts surrender of the motor vehicle, any person liable on the loan shall have a right to reinstate the loan and the licensee shall not accelerate the maturity of any part or all of the loan prior to the expiration of the right to reinstate, unless the licensee reasonably and in good faith determines that:

(1) The borrower or any other person liable on the loan by omission or commission intentionally provided false or misleading information of material importance on his or her credit application.

(2) The borrower or any other person liable on the loan in order to avoid repossession has concealed the motor vehicle or removed it from the state.

(3) The borrower or any other person liable on the loan has committed or threatens to commit acts of destruction, or has failed to take care of the motor vehicle in a reasonable manner, so that the motor vehicle has or may become substantially impaired in value.

(d) Exercise of the right to reinstate the loan shall be limited to once in any 12-month period and twice during the term of the loan.

(e) The provisions of this subdivision shall govern the method by which a loan shall be reinstated with respect to curing events of default which were a ground for repossession or occurred subsequent to repossession.

(1) Where the default is the result of the borrower's failure to make any payment due under the loan, the borrower or any other person liable on the loan shall make the defaulted payments and pay any applicable delinquency charges.

(2) Where the default is the result of the borrower's failure to keep and maintain the motor vehicle free from all encumbrances and liens of every kind, the borrower or any other person liable on the loan shall either satisfy all the encumbrances and liens or, in the event the licensee satisfies the encumbrances and liens, the borrower or any other person liable on the loan shall reimburse the licensee for all reasonable costs and expenses incurred therefor.

(3) Where the default is the result of the borrower's failure to keep and maintain insurance on the motor vehicle, the borrower or any other person liable on the loan shall either obtain the insurance or, in the event the licensee has obtained the insurance, the borrower or any other person liable on the loan shall reimburse the licensee for premiums paid and all reasonable costs and expenses incurred therefor.

(4) Where the default is the result of the borrower's failure to perform any other obligation under the loan, unless the licensee has made a good faith determination that the default is so substantial as to be incurable, the borrower or any other person liable on the loan shall reimburse the licensee for all reasonable costs and expenses incurred therefor.

(5) Additionally, the borrower or any other person liable on the loan shall reimburse the licensee for actual fees in an amount not exceeding the amount specified in subdivision (f) of Section 24005 paid in connection with the repossession of a motor vehicle to a repossession agency licensed pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code, and actual fees in conformity with Sections 26751 and 41612 of the Government Code in an amount not exceeding the amount specified in those sections of the Government Code.

(f) If the licensee denies the right to reinstatement under subdivision (c) or paragraph (4) of subdivision (e), the licensee shall have the burden of proof that the denial was justified in that it was reasonable and made in good faith. If the licensee fails to sustain the burden of proof, the licensee shall not be entitled to a deficiency.

SEC. 7. Section 26751 of the Government Code is amended to read:

26751. After possession is taken of any vehicle by or on behalf of any legal owner thereof under the terms of a security agreement or lease agreement, the debtor shall pay the sheriff a fee of fifteen dollars (\$15) for the receipt and filing of the report of repossession pursuant to Section 28 of the Vehicle Code before the vehicle may be redeemed by the debtor. Except as provided herein, any person in possession of the vehicle shall not release it to the debtor without first obtaining proof of payment of the fee to the sheriff. At the request of the debtor, a person in possession of the vehicle, or the legal owner, may also release the vehicle to the debtor provided the debtor pays the fifteen dollar (\$15) fee, plus an administrative fee not to exceed five dollars (\$5), to the person in possession or the legal owner, who shall transmit the fifteen dollar (\$15) fee to the sheriff

within three business days. The failure to transmit the fee within three business days shall subject the person in possession or legal owner receiving the fee from the debtor to a fine of fifty dollars (\$50). The proof of payment, or a copy thereof, shall be retained by the party releasing possession to the debtor for the period required by law, and the party releasing possession shall provide a copy of the proof of payment to the debtor upon request of the debtor.

SEC. 8. Section 41612 of the Government Code is amended to read:

41612. After possession is taken of any vehicle by or on behalf of any legal owner thereof under the terms of a security agreement or lease agreement, the debtor shall pay the chief of police or a parking authority operated by a city and county a fee of fifteen dollars (\$15) for the receipt and filing of the report of repossession pursuant to Section 28 of the Vehicle Code before the vehicle may be redeemed by the debtor. Except as provided herein, any person in possession of the vehicle shall not release it to the debtor without first obtaining proof of payment of the fee to the chief of police or parking authority. At the request of the debtor, a person in possession of the vehicle, or the legal owner, may also release the vehicle to the debtor provided the debtor pays the fifteen dollar (\$15) fee, plus an administrative fee not to exceed five dollars (\$5), to the person in possession or the legal owner who shall transmit the fifteen dollar (\$15) fee to the chief of police or parking authority within three business days. Failure to transmit the fee within three business days shall subject the person in possession or the legal owner receiving the fee from the debtor to a fine of fifty dollars (\$50). The proof of payment, or a copy thereof, shall be retained by the party releasing possession to the debtor for the period required by law, and the party releasing possession shall provide a copy of the proof of payment to the debtor upon request of the debtor.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1115

An act to repeal Division 10 (commencing with Section 24000) and Division 11 (commencing with Section 26000) of, and to repeal and add Division 9 (commencing with Section 22000) of, the Financial Code, relating to financial institutions.

[Approved by Governor September 28, 1994. Filed with Secretary of State September 29, 1994.]

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

SECTION 1. Division 9 (commencing with Section 22000) of the Financial Code is repealed.

SEC. 2. Division 9 (commencing with Section 22000) is added to the Financial Code, to read:

DIVISION 9. CALIFORNIA FINANCE LENDERS LAW

CHAPTER 1. GENERAL PROVISIONS

Article 1. Definitions

22000. This division is known and may be cited as the "California Finance Lenders Law."

22001. This division shall be liberally construed and applied to promote its underlying purposes and policies, which are:

(a) To ensure an adequate supply of credit to borrowers in this state.

(b) To simplify, clarify, and modernize the law governing loans made by finance lenders.

(c) To foster competition among finance lenders.

(d) To protect borrowers against unfair practices by some lenders, having due regard for the interests of legitimate and scrupulous lenders.

(e) To permit and encourage the development of fair and economically sound lending practices.

(f) To encourage and foster a sound economic climate in this state.

22002. To accomplish its underlying purposes and policies, this division creates a class of exempt persons pursuant to Section 1 of Article XV of the California Constitution.

It is the intent of the Legislature to preserve existing exemptions under Section 1 of Article XV of the Constitution and statutory law for (a) personal property brokers formerly regulated by the Personal Property Brokers Law; (b) lenders formerly regulated by the Consumer Finance Lenders Law; and (c) lenders formerly regulated by the Commercial Finance Lenders Law; and no finding that any provision of this division is invalid with respect to a

particular lender or class of lenders shall affect the enforceability of this division with respect to any of the foregoing classifications of lenders, which shall in all events continue to be exempted by this division.

22003. Unless the context otherwise requires, the definitions given in this article govern the construction of this division.

22004. "Broker" includes any person who is engaged in the business of negotiating or performing any act as broker in connection with loans made by a finance lender.

22005. "Commissioner" means the Commissioner of Corporations.

22006. As used in this division, the terms "security interest," "accounts," "chattel paper," "documents," "general intangibles," "goods," and "instruments" are as defined in the Uniform Commercial Code.

22007. "Licensee" means any finance lender or broker who receives a license in accordance with this division.

22008. "Person" means an individual, a corporation, a partnership, a limited liability company, a joint venture, an association, a joint stock company, a trust, an unincorporated organization, a government, or a political subdivision of a government.

22009. "Finance lender" includes any person who is engaged in the business of making consumer loans or making commercial loans. The business of making consumer loans or commercial loans may include lending money and taking, in the name of the lender, or in any other name, in whole or in part, as security for a loan, any contract or obligation involving the forfeiture of rights in or to personal property, the use and possession of which property is retained by other than the mortgagee or lender, or any lien on, assignment of, or power of attorney relative to wages, salary, earnings, income, or commission.

It is the intent of the Legislature that the definition of finance lender shall be interpreted to include a personal property broker as referenced in Section 1 of Article XV of the California Constitution.

22010. "Finance lender" and "broker" do not include employees regularly employed at the location specified in the license of the finance lender or broker, except that an employee, when acting within the scope of his or her employment, shall be exempt from any other law from which his or her employer is exempt.

22011. A "regulatory ceiling provision" is a statement in a section or subdivision that specifies an original bona fide principal loan amount at or above which that section or subdivision does not apply to a loan.

Article 2. Exemptions

22050. (a) This division does not apply to any person doing business under any law of this state or of the United States relating

to banks, trust companies, savings and loan associations, industrial loan companies, credit unions, small business investment companies, California business and industrial development corporations, or licensed pawnbrokers.

(b) This division does not apply to a broker-dealer acting pursuant to a certificate, then in effect, issued pursuant to Section 25211 of the Corporations Code.

(c) This division does not apply to a college or university making a loan for the purpose of permitting a person to pursue a program or course of study leading to a degree or certificate.

22051. This division does not apply to the following:

(a) Any nonprofit cooperative association organized under Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code that loans or advances money in connection with any activity mentioned in that chapter.

(b) Any corporation, association, syndicate, joint stock company, or partnership engaged exclusively in the business of marketing agricultural, horticultural, viticultural, dairy, livestock, poultry, or bee products on a cooperative nonprofit basis that loans or advances money to its members or in connection with those businesses.

(c) Any corporation securing money or credit from any federal intermediate credit bank organized and existing pursuant to the provisions of an act of Congress entitled "Agricultural Credits Act of 1923" that loans or advances money or credit so secured.

(d) Any corporation created pursuant to the provisions of Part 5 (commencing with Section 14000) of Division 3 of Title 1 of the Corporations Code.

22052. This division does not apply to any loan of credit made by a person not licensed under this division pursuant to a plan having all of the following characteristics:

(a) Credit cards issued pursuant to a written application and to the plan whereby the organization issuing the cards can acquire those obligations that its members in good standing incur with those persons with whom the organization has entered into written agreements setting forth the plan, and where the obligations are incurred pursuant to those agreements; or whereby the organization issuing the cards can extend credit to its members.

(b) The fee for the credit cards is designed to cover the administrative costs of the plan and is imposed upon the issuance of the card and on annual renewal dates thereafter.

(c) Any charges, discounts, or fees resulting from the acquisition of the charges is paid to the organization issuing the credit cards by the persons, corporations, or associations with whom the organization has entered into written agreements.

22053. In any proceeding under this law, the burden of proving an exemption is upon the person claiming it.

22054. This division does not apply to bona fide conditional contracts of sale involving the disposition of personal property when these forms of sales agreements are not used for the purpose of

evading this division.

22055. This division does not apply to premium financing as defined in Section 18563.

22056. This division does not apply to the Department of Commerce.

22057. This division does not apply to any loan that is made or arranged by any person licensed as a real estate broker by the state and secured by a lien on real property, or to any licensed real estate broker when making such a loan. A licensed real estate broker may make a loan secured by a lien on real property for sale to a finance lender or arrange for a loan secured by a lien on real property to be made by a finance lender without obtaining a license under this division.

22058. This division does not apply to any cemetery broker licensed under the Cemetery Act (Chapter 19 (commencing with Section 9600) of Division 3 of the Business and Professions Code).

22059. A license to act as a broker under this division does not authorize the licensee to negotiate or perform any act as a broker in connection with loans made or to be made by a lender not licensed as a finance lender under this division.

Article 3. Licensing

22100. No person shall engage in the business of a finance lender or broker without obtaining a license from the commissioner.

22101. An application for a license under this division shall be in the form and contain the information that the commissioner may by rule require and shall be filed upon payment of the fee specified in Section 22103. A license issued pursuant to an application filed under this section shall be designated a master license.

22102. (a) A person licensed pursuant to an application filed under Section 22101 may conduct business under this division, either directly or through one or more subsidiary corporations, at the locations that are authorized by the commissioner pursuant to this section. An application to establish a location pursuant to this section shall be in the form and contain the information that the commissioner may by rule require, and shall be filed upon payment of the fee specified in Section 22103. A license issued pursuant to an application filed under this section shall be designated a subsidiary license.

(b) On approval of an application filed pursuant to this section, the commissioner shall issue an original license endorsed to authorize the conduct of business at the location specified in the application.

(c) For the purpose of this section, "subsidiary corporation" means a corporation that is wholly owned by a licensee.

(d) This section does not apply to changes in the address or location of a location previously authorized or licensed under this section.

22103. At the time of filing the application, the applicant shall pay

to the commissioner the sum of one hundred dollars (\$100) as a fee for investigating the application and two hundred dollars (\$200) as an application fee. The investigation fee and application fee are not refundable if an application is denied or withdrawn.

22104. The applicant shall file with the application financial statements prepared in accordance with generally accepted accounting principles and acceptable to the commissioner that indicate a net worth of at least twenty-five thousand dollars (\$25,000). A licensee shall maintain a net worth of at least twenty-five thousand dollars (\$25,000) at all times.

22105. Upon the filing of an application pursuant to Section 22101 or 22102 and the payment of the fees, the commissioner shall investigate the applicant, and its general partners and persons owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests if the applicant is a partnership, and its officers, directors, and persons owning or controlling, directly or indirectly, 10 percent or more of the outstanding equity securities if the applicant is a corporation, trust, or association, including an unincorporated organization. If the commissioner determines that the applicant has satisfied this division and does not find facts constituting reasons for denial as specified in Section 22109, the commissioner shall issue and deliver a license to the applicant to engage in business in accordance with this division.

22106. (a) The license shall state the name of the licensee, and if the licensee is a partnership, the names of its general partners, and if a corporation or an association, the date and place of its incorporation or organization, and the address of the licensee's principal business location. On the approval and licensing of a location pursuant to Section 22102, the commissioner shall issue an original license endorsed to show the address of the authorized location and, if applicable, the name of the subsidiary corporation licensed to operate the location. The license shall state whether the licensee is licensed as a finance lender or a broker.

(b) A license for a business location outside this state may be issued if the licensee agrees in writing in the license application to do, at the option of the applicant, one of the following:

(1) Make the licensee's books, accounts, papers, records, and files available to the commissioner or the commissioner's representatives in this state.

(2) Pay the reasonable expenses for travel, meals, and lodging of the commissioner or the commissioner's representatives incurred during any investigation or examination made at the licensee's location outside this state.

A licensee located outside this state is not required to maintain books and records regarding licensed loans separate from those for other loans if the licensed loans can be readily identified.

22107. (a) Each licensee shall pay to the commissioner its pro rata share of all costs and expenses reasonably incurred in the administration of this division, as estimated by the commissioner, for

the ensuing year and any deficit actually incurred or anticipated in the administration of the program in the year in which the assessment is made. The pro rata share shall be the proportion that a licensee's gross income bears to the aggregate gross income of all licensees as shown by the annual financial reports to the commissioner, for the costs and expenses remaining after the amount assessed pursuant to subdivision (c).

(b) On or before the 30th day of May in each year, the commissioner shall notify each licensee by mail of the amount assessed and levied against it and that amount shall be paid within 20 days thereafter. If payment is not made within 20 days, the commissioner shall assess and collect a penalty, in addition to the assessment, of 1 percent of the assessment for each month or part of a month that the payment is delayed or withheld.

(c) In the levying and collection of the assessment, a licensee shall neither be assessed for nor be permitted to pay less than two hundred fifty dollars (\$250) per licensed location per year.

(d) If a licensee fails to pay the assessment on or before the 30th day of June following the day upon which payment is due, the commissioner may by order summarily suspend or revoke the certificate issued to the licensee. If, after an order is made, a request for hearing is filed in writing within 30 days, and a hearing is not held within 60 days thereafter, the order is deemed rescinded as of its effective date. During any period when its certificate is revoked or suspended, a licensee shall not conduct business pursuant to this division except as may be permitted by order of the commissioner. However, the revocation, suspension, or surrender of a certificate shall not affect the powers of the commissioner as provided in this division.

22108. The commissioner may by regulation require licensees to file, at the times that he or she may specify, the information that he or she may reasonably require regarding any changes in the information provided in any application filed pursuant to this division.

22109. (a) Upon reasonable notice and opportunity to be heard, the commissioner may deny the application for any of the following reasons:

(1) A false statement of a material fact has been made in the application.

(2) Any officer, director, general partner, or person owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the applicant has, within the last 10 years (A) been convicted of or pleaded nolo contendere to a crime, or (B) committed any act involving dishonesty, fraud, or deceit, if the crime or act is substantially related to the qualifications, functions, or duties of a person engaged in business in accordance with this division.

(3) The applicant or any officer, director, general partner, or person owing or controlling, directly or indirectly, 10 percent or

more of the outstanding interests or equity securities of the applicant has violated any provision of this division or the rules thereunder or any similar regulatory scheme of a foreign jurisdiction.

(b) The application shall be considered withdrawn within the meaning of this section if the applicant fails to respond to a written notification of a deficiency in the application within 90 days of the date of the notification.

(c) The commissioner shall, within 60 days from the filing of a full and complete application for a license with the fees, either issue a license or file a statement of issues prepared in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

22110. The proceedings for a denial of a license shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner has all the powers granted therein.

22111. All money paid or collected under this division shall be deposited in the State Treasury to the credit of the State Corporations Fund. The administration of this division shall be supported out of the State Corporations Fund.

Article 4. Regulations

22150. The commissioner may make general rules and regulations and specific rulings, demands, and findings for the enforcement of this division, in addition to, and within the general purposes of, this division.

22151. (a) A license, along with any currently effective order of the commissioner approving a different name pursuant to Section 22155, shall be conspicuously posted in the place of business authorized by the license.

(b) A license is not transferable or assignable. A license issued to a partnership or a limited partnership is not transferred or assigned within the meaning of this section by the death, withdrawal, or admission of a partner, general partner, or limited partner, unless the death, withdrawal, or admission dissolves the partnership to which the license was issued.

22152. A licensee shall maintain only one place of business under a duplicate or original license issued pursuant to Section 22102. The commissioner may issue more than one license to the same licensee upon compliance with all the provisions of this division governing an original issuance of a license.

22153. (a) If a licensee desires to change its place of business to a street address other than that designated in its license, the licensee shall give written notice to the commissioner on a form provided by the commissioner at least 10 days prior to the change. The commissioner shall then provide a written approval of the change and the date of the approval.

(b) If notice is not given at least 10 days prior to the change, as

required by subdivision (a), the commissioner may assess a civil penalty on the licensee not to exceed five hundred dollars (\$500).

22154. No licensee shall conduct the business of making loans under this division within any office, room, or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, except as is authorized in writing by the commissioner upon the commissioner's finding that the character of the other business is such that the granting of the authority would not facilitate evasions of this division or of the rules and regulations made pursuant to this division. An authorization once granted remains in effect until revoked by the commissioner.

22155. No licensee shall transact the business licensed or make any loan provided for by this division under any other name or at any other place of business than that named in the license except pursuant to a currently effective written order of the commissioner authorizing the other name or other place of business. The commissioner's order, while effective, shall be deemed to amend the original license issued pursuant to Section 22106.

22156. Licensees shall keep and use in their business, books, accounts, and records which will enable the commissioner to determine if the licensee is complying with the provisions of this division and with the rules and regulations made by the commissioner. On any loan secured by real property in which loan proceeds were disbursed to an independent escrowholder, the licensee shall retain records and documents as set forth by rules of the commissioner adopted pursuant to Section 22150. Upon request of the commissioner, licensees shall file an authorization for disclosure to the commissioner of financial records of the licensed business pursuant to Section 7473 of the Government Code.

22157. Licensees shall preserve their books, accounts, and records, including cards used in the card system, if any, for at least two years after making the final entry on any loan recorded therein.

22158. Nothing contained in Sections 22156 and 22157 shall require the maintenance or preservation of original records, provided that any information requested by the commissioner can be furnished within 48 hours, excluding Saturdays, Sundays, and holidays as defined in Sections 6700 and 6701 of the Government Code.

22159. (a) Each licensee shall file an annual report with the commissioner, on or before the 15th day of March, giving the relevant information that the commissioner reasonably requires concerning the business and operations conducted by the licensee within the state during the preceding calendar year for each licensed place of business. The individual annual reports filed pursuant to this section shall be made available to the public for inspection. The report shall be made under oath and in the form prescribed by the commissioner.

(b) A licensee shall make other special reports that may be required by the commissioner.

22160. The commissioner shall make and file annually with the Department of Corporations as a public record a composite of the annual reports and any comments on the reports that he or she deems to be in the public interest.

22161. No person shall advertise, print, display, publish, distribute, or broadcast, or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast in any manner, any statement or representation with regard to the business subject to the provisions of this division, including the rates, terms, or conditions for making or negotiating loans, that is false, misleading, or deceptive, or that omits material information that is necessary to make the statements not false, misleading, or deceptive, or in the case of a licensee, that refers to the supervision of the business by the state or any department or official of the state.

22162. No licensee shall place an advertisement disseminated primarily in this state for a loan unless the licensee discloses in the printed text of the advertisement, or in the oral text in the case of a radio or television advertisement, the license under which the loan would be made or arranged.

22163. The commissioner may require that rates of charge, if stated by a licensee, be stated fully and clearly in the manner that the commissioner deems necessary to prevent misunderstanding by prospective borrowers.

22164. If any person engaged in the business regulated by this division refers in any advertising to rates of interest, charges, or cost of loans, the commissioner shall require that the rates, charges, or costs are stated fully and clearly in the manner that he or she deems necessary to give adequate information to prospective borrowers. If the rates or costs advertised do not apply to loans of all classes made or negotiated by the person, this fact shall be clearly indicated in the advertisement.

22165. No advertising copy shall be used after its use has been disapproved by the commissioner and the licensee is notified in writing of the disapproval.

22166. The commissioner may require licensees to maintain a file of all advertising copy for a period of 90 days from the date of its use. The file shall be available to the commissioner upon request.

22167. A licensed finance lender may act as a broker as defined in Section 22004 at its licensed place of business without obtaining an additional license as a broker under this division provided the licensee has notified the commissioner of the action in writing.

CHAPTER 2. CONSUMER LOANS

Article 1. Definitions

22200. "Charges" include the aggregate interest, fees, bonuses, commissions, brokerage, discounts, expenses, and other forms of costs charged, contracted for, or received by a licensee or any other

person in connection with the investigating, arranging, negotiating, procuring, guaranteeing, making, servicing, collecting, and enforcing of a loan or forbearance of money, credit, goods, or things in action, or any other service rendered.

22201. "Charges" include any profit or advantage of any kind that a licensee may contract for, collect, receive, or obtain by a collateral sale, purchase, or agreement, in connection with negotiating, arranging, making, or otherwise in connection with any loan.

22202. "Charges" do not include any of the following:

(a) Commissions received as a licensed insurance agent or broker in connection with insurance written as provided in Section 22313.

(b) Amounts not in excess of the amounts specified in subdivision (c) of Section 3068 of the Civil Code paid to holders of possessory liens, imposed pursuant to Chapter 6.5 (commencing with Section 3067) of Title 14 of Part 4 of Division 3 of the Civil Code, to release motor vehicles that secure loans subject to this division.

(c) Court costs, excluding attorney's fees, incurred in a suit and recovered against a debtor who defaults on his or her loan.

(d) Fees paid to a licensee for the privilege of participating in an open-end credit program, which fees are to cover administrative costs and are imposed upon executing the open-end loan agreement and on annual renewal dates or anniversary dates thereafter.

(e) Amounts received by a licensee from a seller, from whom the borrower obtains money, goods, labor, or services on credit, in connection with a transaction under an open-end credit program that are paid or deducted from the loan proceeds paid to the seller at the direction of the borrower and which are an obligation of the seller to the licensee for the privilege of allowing the seller to participate in the licensee's open-end credit program. Amounts received by a licensee from a seller pursuant to this subdivision may not exceed 6 percent of the loan proceeds paid to the seller at the direction of the borrower.

(f) Actual fees not exceeding three hundred dollars (\$300) paid in connection with the repossession of a motor vehicle to repossession agencies licensed pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code provided that the licensee complies with Sections 22328 and 22329, and actual fees paid to a licensee in conformity with Sections 26751 and 41612 of the Government Code in an amount not exceeding the amount specified in those sections of the Government Code.

(g) Moneys paid to, and commissions and benefits received by, a licensee for the sale of goods, services, or insurance, whether or not the sale is in connection with a loan, that the buyer by a separately signed authorization acknowledges is optional, if sale of the goods, services, or insurance has been authorized pursuant to Section 22154.

22203. "Consumer loan" means a loan, whether secured by either real or personal property, or both, or unsecured, the proceeds of which are intended by the borrower for use primarily for personal, family, or household purposes. For purposes of determining whether

a loan is a consumer loan, the lender may rely on any written statement of intended purposes signed by the borrower. The statement may be a separate statement signed by the borrower, or may be contained in a loan application or other document signed by the borrower. The lender shall not be required to ascertain that the proceeds of the loan are used in accordance with the statement of intended purposes. Nothing in this section shall authorize the taking of real property as security if the principal of the loan amount is less than five thousand dollars (\$5,000).

22204. (a) In addition to the definition of consumer loan in Section 22203, a "consumer loan" also means a loan of a principal amount of less than five thousand dollars (\$5,000), the proceeds of which are intended by the borrower for use primarily for other than personal, family, or household purposes.

For purposes of determining whether a loan is or is not a consumer loan, the lender may rely on any written statement of intended purposes signed by the borrower. The statement may be a separate statement signed by the borrower or may be contained in a loan application or other document signed by the borrower. The lender shall not be required to ascertain that the proceeds of the loan are used in accordance with the statement of intended purposes.

(b) A consumer loan under this section is a loan secured in the manner provided for in this division if it is secured, in whole or in part, by any lien on, security interest in, assignment of, or power of attorney relative to income arising from the operation of a business by the borrower, such as accounts, and chattel paper, including the right to payment for accounts or chattel paper sold by the borrower prior to or contemporaneously with the making of the loan.

Article 2. Exemptions

22250. (a) The following sections do not apply to any loan of a bona fide principal amount of ten thousand dollars (\$10,000) or more, or to a duly licensed finance lender in connection with any such loan or loans, if the provisions of this section are not used for the purpose of evading this division: Sections 22154, 22155, 22307, 22313, 22314, 22315, and 22752, and the sections enumerated in subdivision (b).

(b) The following sections do not apply to any loan of a bona fide principal amount of five thousand dollars (\$5,000) or more, or to a duly licensed finance lender in connection with any such loan or loans, if the provisions of this section are not used for the purpose of evading this division: Sections 22201, 22202, 22300, and 22306, subdivision (a) of Section 22307, and Sections 22309, 22322, 22323, 22325, 22326, 22327, 22334, 22400, and 22751.

22251. Any section that refers to this section does not apply to any loan of the bona fide principal amount specified in the regulatory ceiling provision of that section or more if that provision is not used for the purpose of evading this division. In determining under Section 22250, 22303, or 22304 or any section that refers to this section

whether a loan is a loan of a bona fide principal amount of the amount specified in that section or more and whether the regulatory ceiling provision of that section is used for the purpose of evading this division, the following principles apply:

(a) If a borrower applies for a loan in a principal amount of less than the specified amount and a loan to that borrower of a principal amount of the specified amount or more if made by a licensed finance lender, no adequate economic reason for the increase in the size of the loan exists, and by prearrangement or understanding between the borrower and the licensee a substantial payment is to be made upon the loan with the effect of reducing the principal amount of the loan to less than the specified amount within a short time after the making of the loan other than by reason of a requirement that the loan be paid in substantially equal periodical installments, then the loan shall not be deemed to be a loan of the bona fide principal amount of the specified amount or more and the regulatory ceiling provisions shall be deemed to be used for the purpose of evading this division unless the loan complies with the other provisions of the section that includes the regulatory ceiling provisions.

(b) If a loan made by a licensed finance lender is in a principal amount of the specified amount or more, the fact that the transaction is in the form of a sale of accounts, chattel paper, goods, or instruments or a lease of goods, or in the form of an advance on the purchase price of any of the foregoing, shall not be deemed to affect the loan or the bona fides of the amount thereof or to indicate that the regulatory ceiling provisions are used for the purpose of evading this division.

Article 3. Loan Regulations

22300. No licensee shall directly or indirectly charge, contract for, or receive any interest or charge of any nature unless a loan is made.

22301. (a) No licensee shall directly or indirectly charge, contract for, or receive any interest or charge of any nature with respect to a loan of five thousand dollars (\$5,000) or more unless the loan is made.

(b) Notwithstanding subdivision (a), whenever a loan of five thousand dollars (\$5,000) or more is not consummated because of the borrower's failure to disclose outstanding liens or other information essential to making the loan or solely because of the borrower's failure to complete the loan in accordance with the loan application, a licensee may charge, contract for, and receive an amount equal to the actual expenses incurred by the licensee in connection with the preparation for the loan.

22302. (a) Section 1670.5 of the Civil Code applies to the provisions of a loan contract that is subject to this division.

(b) A loan found to be unconscionable pursuant to Section 1670.5 of the Civil Code shall be deemed to be in violation of this division

and subject to the remedies specified in this division.

22303. Every licensee who lends any sum of money may contract for and receive charges at a rate not exceeding the sum of the following:

(a) Two and one-half percent per month on that part of the unpaid principal balance of any loan up to, including, but not in excess of two hundred twenty-five dollars (\$225).

(b) Two percent per month on that portion of the unpaid principal balance in excess of two hundred twenty-five dollars (\$225) up to, including, but not in excess of nine hundred dollars (\$900).

(c) One and one-half percent per month on that part of the unpaid principal balance in excess of nine hundred dollars (\$900) up to, including, but not in excess of one thousand six hundred fifty dollars (\$1,650).

(d) One percent per month on any remainder of such unpaid balance in excess of one thousand six hundred fifty dollars (\$1,650).

This section does not apply to any loan of a bona fide principal amount of two thousand five hundred dollars (\$2,500) or more as determined in accordance with Section 22251.

22304. As an alternative to the charges authorized by Section 22303, a licensee may contract for and receive charges at the greater of the following:

(a) A rate not exceeding 1.6 percent per month on the unpaid principal balance.

(b) A rate not exceeding five-sixths of 1 percent per month plus a percentage per month equal to one-twelfth of the annual rate prevailing on the 25th day of the second month of the quarter preceding the quarter in which the loan is made, as established by the Federal Reserve Bank of San Francisco, on advances to member banks under Sections 13 and 13a of the Federal Reserve Act, as now in effect or hereafter from time to time amended, or if there is no such single determinable rate for advances, the closest counterpart of this rate as shall be determined by the Superintendent of Banks of the State of California. Charges shall be calculated on the unpaid principal balance.

This section does not apply to any loan of a bona fide principal amount of two thousand five hundred dollars (\$2,500) or more as determined in accordance with Section 22251.

22305. In addition to the charges authorized by Section 22303 or 22304, a licensee may contract for and receive an administrative fee, which shall be fully earned immediately upon making the loan, with respect to a loan of a principal amount of not more than two thousand five hundred dollars (\$2,500) at a rate not in excess of 5 percent of the principal amount or fifty dollars (\$50), whichever is less. No administrative fee may be contracted for or received in connection with the refinancing of a loan unless at least one year has elapsed since the receipt of a previous administrative fee paid by the borrower. Only one administrative fee may be contracted for or received until the loan has been repaid in full.

22306. No amount in excess of that allowed by this article shall be directly or indirectly charged, contracted for, or received by any person, and the total charges of the finance lender and broker and any other person in the aggregate shall not exceed the maximum rate provided for in this article.

22307. (a) Except as provided in Section 22305 and Article 4 (commencing with Section 22400), all charges on loans made under this division shall be computed and paid only as a percentage per month of the unpaid principal balance or portions thereof, and shall be so expressed in every obligation signed by the borrower. The charges on loans shall be computed on the basis of the number of days actually elapsed. For the purpose of these computations, a month is any period of 30 consecutive days.

(b) The loan contract shall provide for payment of the aggregate amount contracted to be paid in substantially equal periodical installments, the first of which shall be due not less than 15 days nor more than one month and 15 days from the date the loan is made. This subdivision shall not apply to a loan made to a graduate student at an accredited college or university while the student is actively pursuing a study program leading to a postbaccalaureate degree, or to a student loan made by an eligible lender under the Higher Education Act of 1965, as amended (20 U.S.C. Sec. 1070 et seq.), or to a student loan made pursuant to the Public Health Service Act, as amended (42 U.S.C. Sec. 294 et seq.).

(c) This section shall not apply to open-end loans.

22308. Notwithstanding Section 22307, a licensee may contract for and receive charges on the unpaid principal balance at a single annual percentage rate, applied on the basis of the number of days actually elapsed, if the annual rate would produce a finance charge at the maturity of the contract not in excess of the finance charge resulting from the application of the graduated rates specified in Section 22303, when the loan is paid according to its terms, and charges are computed on the basis that a month is any period of 30 consecutive days, as provided in Section 22307; provided, however, that if prepayment in full occurs on or before the third installment date, all charges shall be recomputed as a percentage per month of the unpaid principal balance or portions thereof, based on the number of days actually elapsed.

22309. Except as provided in Section 22305 and Article 4 (commencing with Section 22400), no charges on loans made pursuant to this division shall be paid, deducted, or received in advance, or compounded. However, if part or all of the consideration for a new loan contract is the unpaid balance of a prior loan, the principal amount payable under the new loan contract may include any unpaid interest that has accrued on the prior loan. The unpaid principal balance of a precomputed loan is the balance due after refund or credit of unearned interest as provided in Section 22400. At the time of making the loan, the licensee shall deliver to the borrower, or, at the direction of the borrower, deliver to another

person, an amount equal to the face value of the loan and the note evidencing the loan.

22310. (a) Except for a rebate or refund pursuant to any administrative, civil, or criminal action, or any act of the commissioner, a rebate or refund required to be made upon payment in full of a loan pursuant to this division need not be made if the aggregate of all rebates or refunds required in connection with a loan is less than one dollar (\$1).

(b) No licensee shall contract for or receive any payment required in connection with a loan for the purpose of avoiding a rebate or refund of less than one dollar (\$1).

22311. No person in connection with or incidental to the making of any loan regulated by this division may require the borrower to contract for purchase, or agree to purchase, any other thing in connection with the loan. A policy of insurance of the type specified in Section 22313 and credit life and disability insurance is not prohibited by this section. A policy of insurance of the type defined by subdivision (a) of Section 12640.02 of the Insurance Code shall not be deemed to be a collateral sale, purchase, or agreement within the terms of this section or of Section 22201 or 22312.

22312. No person in connection with or incidental to the making of a loan shall require the borrower to enter into any collateral sales agreements or contracts, other than the contract of pledge, assignment, or mortgage or personal property, or if otherwise permitted by this division, the deed of trust, mortgage, or lien on real property, by the borrower to the lender as security for the repayment of the loan and charges on the loan. Insurance of the type specified in Section 22313, credit life insurance, and credit disability insurance are not prohibited by this section.

22313. Insurance on tangible personal or real property offered as security shall not be deemed to be a collateral sale, purchase, or agreement within the terms of Section 22201, 22311, or 22312, when all the following requirements are met:

(a) The insurance is sold at standard rates through licensed insurance brokers or agents.

(b) The policy is written to cover the property that is offered as security for a loan.

(c) The property is reasonably insured against loss for a reasonable term, which may be up to the term of the loan.

(d) The policy relating to personal property is made payable to the borrower or any member of his or her family even though the customary mortgagee clause is attached or the mortgagee is a coassured.

(e) Except in the case of purchase money encumbrances, the amount of title insurance shall not exceed the principal amount of the loan that is secured by a deed of trust, mortgage, or lien on the real property that is the subject of the policy of title insurance.

(f) The policy of title insurance insures the lender or is made payable jointly to the lender and the borrower as their interests may

appear.

(g) Title insurance is placed through a title insurance company, duly authorized to do business in the state in which the real property is located, at rates comparable to rates being used by other title insurance companies duly authorized to do business in that state.

(h) Title insurance is placed in connection with the renewal or extension of a loan only when the additional cash advance is at least one thousand dollars (\$1,000).

This section does not apply to any loan of a bona fide principal amount of ten thousand dollars (\$10,000) or more, or to a duly licensed finance lender in connection with any such loan or loans as determined in accordance with Section 22251.

22314. (a) Credit insurance shall not be deemed to be a collateral sale, purchase, or agreement within the terms of Section 22201, 22311, or 22312 when the insurance is provided in accordance with the provisions of the Insurance Code and this section. As used in this division:

(1) "Credit insurance" means credit life, disability, and loss-of-income insurance, or any combination of these coverages.

(2) "Credit life insurance" and "credit disability insurance" have the same meanings as defined in Section 779.2 of the Insurance Code.

(3) "Credit loss-of-income insurance" means insurance issued to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is involuntarily unemployed, as defined in the policy.

(b) A licensee may provide credit insurance with the borrower's consent, the form to be approved by the Insurance Commissioner, and a copy, together with evidence of its approval by the Insurance Commissioner, to be filed with the commissioner, and in an amount not in excess of the amount of the indebtedness, and, with respect to credit life or disability insurance, may collect from the borrower an amount not in excess of that permitted by subdivision (h).

(c) If the loan is prepaid in full by cash, a new loan, refinancing, or otherwise (except by that insurance) before the final installment date, the borrower shall receive a rebate of that amount computed in accordance with the formula approved by the Insurance Commissioner pursuant to Section 779.14 of the Insurance Code.

(d) When charges for the loan are precomputed in accordance with Section 22400, any permitted deferment charge may be computed on the combined total of the precomputed charge and the credit insurance charge. Only one deferment charge may be collected in connection with any loan contract, irrespective of the number of borrowers, and only one borrower need be insured. The amount of the deferment charge may be deducted from the principal of the loan.

(e) If life or disability insurance is provided, and if the insured borrower dies or becomes disabled during the term of the loan contract, the insurance shall be sufficient to pay the total amount due on the loan, excluding unearned charges, outstanding on the date of

death, or all amounts that become due on the loan during the period of disability, as the case may be, without any exception, reservation, or limitation, subject, however, to the provisions of Section 22315.

(f) Any credit insurance provided shall be in force as soon as the loan is made. A licensee shall not require credit insurance as a condition of making a loan.

(g) If a borrower procures credit insurance by or through a licensee, the statement required by Section 22338 shall disclose the cost of the credit insurance to the borrower, and the licensee shall deliver or cause to be delivered to the borrower a copy of the policy, certificate, or other evidence thereof, within a reasonable time. In the event a licensee provides credit disability or loss-of-income insurance pursuant to this division, the licensee shall also deliver an understandable written statement to the borrower detailing the conditions under which the borrower will be entitled to make a claim under the insurance policy and the procedure to be followed in making the claim. This statement shall be first approved by the Insurance Commissioner.

(h) The amount charged to the borrower for credit life or disability insurance shall not exceed in the case of credit life insurance fifty cents (\$0.50) per year per one hundred dollars (\$100) of indebtedness (and in the same proportion for longer or shorter maturities and larger or smaller amounts) or the amount established by or pursuant to Section 779.36 of the Insurance Code, whichever is less, or, in the case of credit disability insurance, the amount established by or pursuant to Section 779.36 of the Insurance Code.

(i) Nothing in this article shall prevent a licensee from selling insurance as other business if authorized by Section 22154.

This section does not apply to any loan of a bona fide principal amount of ten thousand dollars (\$10,000) or more, or to a duly licensed finance lender in connection with any such loan or loans as determined in accordance with Section 22251.

22315. (a) Credit disability insurance written pursuant to Section 22314 shall not provide indemnity against the risk that the borrower will become disabled for a period of less than 14 days. The insurance may provide indemnity for any single period of continuous disability of 14 days or longer, after which the risk may become compensable. The insurance may be offered with retroactive coverage to an earlier date based upon the disability having continued for a period stated in the policy, but if insurance with retroactive coverage is offered, it shall also be offered without retroactive coverage, and the premium rate for each coverage shall be separately stated in writing to the borrower.

(b) If insurance with retroactive coverage is provided, the coverage shall provide for a prorated payment based upon the fraction of the month during which the insured is disabled, provided that the insured is continuously disabled during the waiting period set forth in the policy. If insurance without retroactive coverage is provided, the coverage shall provide for a prorated payment based

upon the fraction of the month during which the insured is disabled, after first excluding the elimination period set forth in the policy. For the purpose of this subdivision, a month is any period of 30 consecutive days.

(c) Credit disability insurance, if made available by a licensee, shall be available on a monthly or annual premium basis, and the premium by the month shall not exceed a pro rata relationship to the annual premium. Credit disability insurance need not be offered for a period less than the term of the loan to which it is applicable, and no credit disability insurance shall be written for a period in excess of the term of the loan to which it is applicable.

(d) The monthly disability benefit payable with respect to an open-end loan shall not exceed the monthly payment computed pursuant to Section 22453 on the outstanding balance at the time disability is incurred.

This section does not apply to any loan of a bona fide principal amount of ten thousand dollars (\$10,000) or more, as determined in accordance with Section 22251.

22316. A licensee may collect the cost of a lot book report purchased in lieu of the title insurance provided for in Section 22313. The cost is not included in charges as defined in this division or in determining the maximum charges that may be made under this article.

22317. On any loan made that is secured by real property, an appraisal fee not to exceed the actual cost of the appraisal may be charged by the licensee if a written appraisal is provided to the licensee by a qualified appraiser. Only one fee for appraising the same real property may be collected unless the borrower has obtained a new or additional loan and more than one year has elapsed since the prior appraisal. The fee is not included in charges as defined in this division or in determining the maximum charges that may be made under this article.

22318. On any loan made that is secured by real property, an escrow fee of a reasonable amount may be charged. The fee shall be considered reasonable when paid to a company licensed to do business under the Escrow Law (Division 6 (commencing with Section 17000)), or any person exempted by the Escrow Law, provided that the fees are comparable to fees charged by escrow companies authorized to do business in this state. The fee is not included in charges defined in this division in determining the applicable maximum charges that may be made under this article.

22319. On any loan that is secured by real property, the fee to be paid to the trustee for reconveyance of the trust deed may be collected by the licensee for transmittal to the trustee. The fee is not included in charges defined in this division or in determining the applicable maximum charges that may be made under this article.

22320. With respect to a loan under this division, a fee not to exceed fifteen dollars (\$15) for the return by a depository institution of a dishonored check, negotiable order of withdrawal, or share draft

may be charged and collected by the licensee. The fee is not included in charges defined in this division or in determining the applicable maximum charges that may be made under this article.

22321. If credit loss-of-income insurance is provided pursuant to this division, it shall be subject to the following conditions:

(a) The insurance shall provide indemnity in accordance with the terms of the policy after any single period of continuous unemployment of 45 days or less as determined by the policy, after which benefits shall commence. The insurance may be offered with retroactive coverage to an earlier date based upon unemployment having continued for the period stated in the policy.

(b) The statement required by Section 22337 shall include disclosure of the term of the coverage, the conditions of coverage, the benefits to be paid, and the exclusions from coverage.

(c) The borrower shall sign a certificate of voluntary acceptance of any credit loss-of-income insurance purchased. The certificate shall state in boldface type that is larger than the type used in the loan contract that purchase of the insurance is not a necessary condition of receiving the loan, and that the insurance may be canceled by the borrower at any time within 15 days after it goes into effect. If the borrower cancels the insurance within 15 days, a full refund shall be made of the premium paid.

(d) The minimum benefit shall be payment up to the agreed amount on not less than four benefit payments, as stated in the policy, which accrue during a covered period of unemployment, except that during the first 60 days after inception of the policy, the minimum benefit may be payment up to the agreed amount of one-half the number of benefit payments, as stated in the policy, which accrue during a covered period of unemployment. The maximum benefits shall be established in the contract of insurance.

(e) If combination credit disability and credit loss-of-income coverage is offered, credit disability and credit loss-of-income coverage shall also be offered separately.

(f) Benefits may not be denied because the insured cannot establish a valid claim for unemployment compensation benefits under Part 1 (commencing with Section 100) of Division 1 of the Unemployment Insurance Code solely because the former employer was not required to contribute to the State Unemployment Fund.

(g) If insurance with retroactive coverage is provided, the coverage shall provide for a prorated payment based upon the fraction of the month during which the insured is unemployed, provided that the insured is continuously unemployed during the waiting period set forth in the policy. If insurance without retroactive coverage is provided, the coverage shall provide for a prorated payment based upon the fraction of the month during which the insured is unemployed, after first excluding the elimination period set forth in the policy. For the purpose of this subdivision, a month is any period of 30 consecutive days.

(h) When unemployment continues for a number of months

equal to or greater than the maximum number of benefit payments stated in the policy, the final payment shall be equal to the difference between a benefit payment and the initial prorated payment.

(i) As used in this section, "benefit payment" means payment of an amount equal to a loan repayment installment or a maximum amount established in the contract of insurance, whichever is less.

(j) The minimum benefit payment offered may not be less than the amount of a loan repayment installment unless the borrower or borrowers have two or more sources of income. If the maximum benefit payment offered is less than the amount of a loan repayment installment, the borrower shall also be offered coverage in which the maximum benefit payment is equal to the amount of a loan repayment installment.

This section does not apply to any loan of a bona fide principal amount of ten thousand dollars (\$10,000) or more, or to a duly licensed finance lender in connection with any such loan or loans as determined in accordance with Section 22251.

22322. A loan lawfully made outside the state may be enforced in this state as to the unpaid principal balance of the loan together with the interest, consideration, brokerage, and all other charges, to the extent of but not to exceed the unpaid principal balance and the aggregate amount of interest, consideration, brokerage, and all other charges permitted by this division in connection with a loan of the same amount made within this state.

22323. Any person who collects or attempts to collect in this state the unpaid principal balance of a loan made outside the state and a greater aggregate amount of interest, consideration, brokerage, and all other charges in connection with the loan than is permitted by this division in connection with a loan of the same amount made within this state, is subject to the provisions of this division.

22324. Any person who contracts for or negotiates in this state a loan to be made outside the state for the purpose of evading or avoiding the provisions of this division is subject to the provisions of this division.

22325. Every licensee shall display prominently in each licensed place of business a full and accurate schedule of the charges to be made and the method of computing the charges. The schedule is subject to the approval of the commissioner.

22326. No person, except as authorized by this division, shall directly or indirectly charge, contract for, or receive any interest, discount, or consideration greater than the lender would be permitted by law to charge if he or she were not a licensee hereunder, upon the loan, use, or forbearance of money, goods, or things in action, or upon the loan, use, or sale of credit. This section applies to any person, who by any device, subterfuge, or pretense charges, contracts for, or receives greater interest, consideration, or charges than is authorized by this division for any loan, use, or forbearance of money, goods, or things in action or for any loan, use, or sale of credit.

22327. No licensee shall knowingly induce any borrower to split up or divide any loan with any other licensee. No licensee shall induce or permit any borrower to be or to become obligated directly or indirectly, or both, under more than one contract of loan at the same time with the same licensee for the purpose or with the result of obtaining a higher rate of charge than would otherwise be permitted by this article, except as otherwise required by the federal Equal Credit Opportunity Act (15 U.S.C. Sec. 1691 et seq.; P.L. 93-495) and Regulation B promulgated by the Board of Governors of the Federal Reserve System (12 C.F.R. 202 et seq.). For the purpose of this section, "borrower" includes any husband and wife, whether jointly or severally obligated.

22328. (a) This section applies to a loan secured in whole or in part by a lien on a motor vehicle as defined by subdivision (k) of Section 2981 of the Civil Code.

(b) Any provision in any loan contract to the contrary notwithstanding, at least 15 days' written notice of intent to dispose of a repossessed or surrendered motor vehicle must be given to all persons liable on the loan. The notice shall be personally served or shall be sent by certified mail, return receipt requested, or first-class mail, postage prepaid, directed to the last known address of the persons liable on the loan. Except as otherwise provided in Section 2983.8 of the Civil Code, those persons shall be liable for any deficiency after disposition of the repossessed or surrendered motor vehicle only if the notice prescribed by this section is given within 60 days of repossession or surrender and does all of the following:

(1) States that those persons shall have a right to redeem the motor vehicle by paying in full the indebtedness evidenced by the loan note until the expiration of 15 days from the date of giving or mailing the notice, provides an itemization of the loan balance and of any costs and fees authorized by this division, and states the computation or estimate of the amount of any credit for unearned finance charges or canceled insurance as of the date of the notice.

(2) States either that there is a conditional right to reinstate the loan until the expiration of 15 days from the date of giving or mailing the notice and all the conditions precedent thereto or that there is no right of reinstatement and provides a statement of reasons therefor.

(3) States that, upon written request, the licensee shall extend for an additional 10 days the redemption period or, if entitled to the conditional right of reinstatement, both the redemption and reinstatement periods. The licensee shall provide the proper form for applying for these extensions with the substance of the form being limited to the extension request, spaces for the requesting party to sign and date the form, and instructions that it must be personally served or sent by certified or registered mail, return receipt requested, to a person or office and address designated by the licensee and received before the expiration of the initial redemption and reinstatement periods.

(4) Discloses the place at which the motor vehicle will be returned to the persons liable on the loan upon redemption or reinstatement.

(5) Designates the name and address of the person or office to whom payment shall be made.

(6) States the licensee's intent to dispose of the motor vehicle upon the expiration of 15 days from the date of giving or mailing the notice, or if by mail and either the place of deposit in the mail or the place of address is outside of this state, the period shall be 20 days instead of 15 days, and further, that upon written request to extend the redemption period and any applicable reinstatement period for 10 days, the licensee shall, without further notice, extend the period accordingly.

(7) Informs the persons liable on the loan that, upon written request, the licensee shall furnish a written accounting regarding the disposition of the motor vehicle as provided for in subdivision (c). The licensee shall advise them that the request must be personally served or sent by first-class mail, postage prepaid, or certified mail, return receipt requested, to a person or office and address designated by the licensee.

(8) Includes a notice, in at least 10-point bold type if the notice is printed, reading as follows:

“NOTICE: YOU MAY BE SUBJECT TO SUIT AND LIABILITY IF THE AMOUNT OBTAINED UPON DISPOSITION OF THE VEHICLE IS INSUFFICIENT TO PAY THE LOAN BALANCE AND ANY OTHER AMOUNTS DUE.”

(c) Unless automatically provided to the borrower within 45 days after the disposition of the motor vehicle, the licensee shall provide a written accounting regarding the disposition to any person liable on the loan within 45 days after their written request, if the request is made within one year after the disposition. The accounting shall itemize:

(1) The gross proceeds of the disposition.

(2) The reasonable and necessary costs and fees authorized by this division incurred in repossessing the motor vehicle.

(3) The satisfaction of indebtedness secured by any subordinate lien or encumbrance on the motor vehicle if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the licensee, the holder of a subordinate lien or encumbrance shall seasonably furnish reasonable proof of its interest, and unless it does so, the seller or holder need not comply with its demand.

(d) In all sales that result in a surplus, the licensee shall furnish an accounting as provided in subdivision (c) whether or not requested by the borrower. The surplus shall be returned to the borrower within 45 days after the sale is conducted.

22329. (a) This section applies to a loan secured in whole or in

part by a lien on a motor vehicle as defined by subdivision (k) of Section 2981 of the Civil Code.

(b) In the absence of default in the performance of any of the borrower's obligations under the loan, the licensee may not accelerate the maturity of any part or all of the amount due thereunder or repossess the motor vehicle.

(c) If, after default by the borrower, the licensee repossesses or voluntarily accepts surrender of the motor vehicle, any person liable on the loan shall have a right to reinstate the loan and the licensee shall not accelerate the maturity of any part or all of the loan prior to the expiration of the right to reinstate, unless the licensee reasonably and in good faith determines that:

(1) The borrower or any other person liable on the loan by omission or commission intentionally provided false or misleading information of material importance on his or her credit application.

(2) The borrower or any other person liable on the loan has concealed the motor vehicle or removed it from the state in order to avoid repossession.

(3) The borrower or any other person liable on the loan has committed or threatens to commit acts of destruction, or has failed to take care of the motor vehicle in a reasonable manner, so that the motor vehicle has or may become substantially impaired in value.

(d) Exercise of the right to reinstate the loan shall be limited to once in any 12-month period and twice during the term of the loan.

(e) The provisions of this subdivision shall govern the method by which a loan shall be reinstated with respect to curing events of default that were grounds for repossession or that occurred subsequent to repossession.

(1) Where the default is the result of the borrower's failure to make any payment due under the loan, the borrower or any other person liable on the loan shall make the defaulted payments and pay any applicable delinquency charges.

(2) Where the default is the result of the borrower's failure to keep and maintain the motor vehicle free from all encumbrances and liens of every kind, the borrower or any person liable on the loan shall either satisfy all the encumbrances and liens or, in the event the licensee satisfies the encumbrances and liens, the borrower or any other person liable on the loan shall reimburse the licensee for all reasonable costs and expenses incurred therefor.

(3) Where the default is the result of the borrower's failure to keep and maintain insurance on the motor vehicle, the borrower or any other person liable on the loan shall either obtain the insurance or, in the event the licensee has obtained the insurance, the borrower or any other person liable on the loan shall reimburse the licensee for premiums paid and all reasonable costs and expenses incurred therefor.

(4) Where the default is the result of the borrower's failure to perform any other obligation under the loan, unless the licensee has made a good faith determination that the default is so substantial as

to be incurable, the borrower or any other person liable on the loan shall reimburse the licensee for all reasonable costs and expenses incurred therefor.

(5) Additionally, the borrower or any other person liable on the loan shall reimburse the licensee for actual fees in an amount not exceeding the amount specified in subdivision (f) of Section 22202 paid in connection with the repossession of a motor vehicle to a repossession agency licensed pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code, and actual fees in conformity with Sections 26751 and 41612 of the Government Code in an amount not exceeding the amount specified in those sections of the Government Code.

(f) If the licensee denies the right to reinstatement under subdivision (c) or paragraph (4) of subdivision (e), the licensee shall have the burden of proof that the denial was justified in that it was reasonable and made in good faith. If the licensee fails to sustain the burden of proof, the licensee shall not be entitled to a deficiency.

22330. No licensee shall take a deed of trust, mortgage, or lien upon real property as security for any loan of a principal amount of less than five thousand dollars (\$5,000) made under this division, except any lien as is created by law upon the recording of an abstract of judgment.

22331. No licensee shall take any confession of judgment or any power of attorney, except a power of attorney taken to effectuate the transfer of the ownership of any motor vehicle or mobilehome at the time of making the loan.

22332. No licensee shall take any note or promise to pay that does not accurately disclose the actual amount of the loan, the time for which it is made, and the agreed rate of charge or the annual percentage rate pursuant to Regulation Z promulgated by the Board of Governors of the Federal Reserve System.

22333. No licensee shall take any instrument in which blanks are left to be filled in after execution.

22334. No licensee shall enter into any contract for a loan that provides for a scheduled repayment of principal over more than the maximum terms set forth below opposite the respective size of loans.

Principal amount of loan	Maximum term
Less than \$500	24 months and 15 days
\$500 but less than \$1,500	36 months and 15 days
\$1,500 but less than \$3,000	48 months and 15 days
\$3,000 but less than \$5,000	60 months and 15 days

This section does not apply to open-end loans, or to a student loan made by an eligible lender under the Higher Education Act of 1965, as amended (20 U.S.C. Sec. 1070 et seq.), or to a student loan made

pursuant to the Public Health Service Act, as amended (42 U.S.C. Sec. 294 et seq.).

22335. The payment by any person in money, credit, goods, or things in action as consideration for any sale or assignment of, or order for, the payment of wages, salary, commissions, or other compensation for services, whether earned or to be earned, is, for the purposes of regulation under this division, a loan secured by the assignment. The amount by which the assigned compensation exceeds the amount of the consideration actually paid is interest and charges upon or for the loan, calculated from the date of payment to the date the compensation is payable.

This section shall not be construed as modifying or affecting existing statutes governing wage assignments in the state, or as authorizing those assignments.

22336. This article does not prohibit any licensee from contracting for, collecting, or receiving the following:

(a) The statutory fee paid by the licensee to any public officer for acknowledging, filing, recording, or releasing in any public office any instrument securing the loan or executed in connection with the loan.

(b) Premiums paid by the licensee of the kind and to the extent described in paragraph (2) of subsection (e) of Section 226.4 of Regulation Z promulgated by the Board of Governors of the Federal Reserve System (12 C.F.R. 226).

These amounts are not included in determining the maximum charges which may be made under this article.

22337. Each licensed finance lender shall:

(a) Deliver or cause to be delivered to the borrower, or any one thereof, at the time the loan is made, a statement showing in clear and distinct terms the name, address, and license number of the finance lender and the broker, if any. The statement shall show the date, amount, and maturity of the loan contract, how and when repayable, the nature of the security for the loan, if any, and the agreed rate of charge or the annual percentage rate pursuant to Regulation Z promulgated by the Board of Governors of the Federal Reserve System (12 C.F.R. 226).

(b) Obtain from the borrower a signed statement as to whether any person has performed any act as a broker in connection with the making of the loan. If the statement discloses that a broker or other person has participated, then the finance lender shall obtain a full statement of all sums paid or payable to the broker or other person. The finance lender shall keep these statements for a period of two years from and after the date the loan has been paid in full, or has matured according to its terms, or has been charged off.

(c) Permit payment to be made in advance in any amount on any contract of loan at any time. The licensee may apply the payment first to any agreed prepayment penalty, then to all charges due, including charges at the agreed rate or rates up to the date of payment, not to exceed the applicable maximum rate permitted by

this article.

(d) Deliver or cause to be delivered to the person making any cash payment, or to the person who requests a receipt at the time of making any payment, at the time payment is made on account of any loan, a plain and complete receipt showing the total amount received and identifying the loan contract upon which the payment is applied.

(e) Upon repayment of any loan in full, release all security for the loan, endorse and return any certificate of ownership, and cancel or plainly mark "paid" and return to the borrower or person making final payment, any note, mortgage, security agreement, trust deed, assignment, or order signed by the borrower, except those documents that are a part of the court record in any action, or that have been delivered to a third person for the purpose of carrying out their terms, or a security agreement that secures any other indebtedness of a borrower to the licensee. When a trust deed on real property has been taken as security for a loan that has been subsequently paid in full, a duly executed request for reconveyance shall be delivered to the trustor or trustee for the purpose of recording a reconveyance. A termination statement, furnished to the borrower as provided for in Section 9404 of the Commercial Code, shall be deemed a release of the security when a financing statement has been filed pursuant to Section 9401 of the Commercial Code.

(f) Deliver or cause to be delivered to the potential borrower, or any one thereof, at the time the licensee first requires or accepts any signed instrument or the payment of any fee, a statement showing in clear and distinct terms the name, address, and license number of the finance lender and the broker, if any.

22338. Each licensed broker shall:

(a) Deliver to the borrower, or any one thereof, at the time the final negotiation or arrangement is made, a statement showing in clear and distinct terms the name, address, and license number of the broker and the finance lender. The statement shall show the date, amount, and terms of the agreement with the broker, and all amounts paid or to be paid to the broker and to any person other than the finance lender.

(b) Deliver to the finance lender making the loan a copy of the statement referred to and described in subdivision (a).

(c) Deliver to the person making any payment to the broker to be retained by the broker, a plain and complete receipt for each payment made, at the time it is made, showing the total amount received, and identifying the brokerage agreement and the loan contract upon which the payment is applied. If the payment is made by a person other than the finance lender, a copy of the receipt shall be delivered to the finance lender.

(d) When the borrower pays the loan in full, ensure that the finance lender fully complies with subdivision (e) of Section 22337.

(e) Deliver to the potential borrower or borrowers, at the time the licensee first requires or accepts any signed instrument or the payment of any fee, a statement showing in clear and distinct terms

the name, address, and license number of the broker and finance lender.

22339. Nothing contained in this article shall be construed to deny to any licensee hereunder the right of taking and using a security agreement that, in addition to securing an original obligation, may secure the repayment of sums that may be advanced to, or expenditures that may be made at the direction of, the borrower subsequent to the execution of the security agreement and prior to the satisfaction thereof.

22340. (a) A licensee may sell promissory notes evidencing the obligation to repay loans made by the licensee pursuant to this division or evidencing the obligation to repay loans purchased from and made by another licensee pursuant to this division to institutional investors, and may make agreements with institutional investors for the collection of payments or the performance of services with respect to those notes.

(b) For the purpose of this section, "institutional investor" means the following:

(1) The United States or any state, district, territory, or commonwealth thereof, or any city, county, city and county, public district, public authority, public corporation, public entity, or political subdivision of a state, district, territory, or commonwealth of the United States, or any agency or other instrumentality of any one or more of the foregoing.

(2) Any bank, trust company, savings bank or savings and loan association, credit union, industrial bank or industrial loan company, finance lender, or insurance company doing business under the authority of and in accordance with a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States.

(3) Trustees of pension, profit sharing, or welfare funds, if the pension, profit sharing, or welfare fund has a net worth of not less than fifteen million dollars (\$15,000,000), except pension, profit sharing, or welfare funds of a licensee or its affiliate, self-employed individual retirement plans, or individual retirement accounts.

(4) Any corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or any wholly owned subsidiary of that corporation; provided, however, that the purchaser represents that it is purchasing for its own account for investment and not with a view to or for sale in connection with any distribution of the promissory note.

(5) Any syndication or other combination of any of the foregoing that is organized to purchase the promissory note.

(c) In the absence of agreement to the contrary by the licensee and the institutional investor, all payments received from the collection of payments shall be deposited and maintained in a trust account, and shall be disbursed from the trust account only in accordance with the instructions of the owner of the promissory note.

22341. (a) No licensee may make a loan to refinance a retail installment contract subject to Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of the Civil Code, that is held by the licensee, its subsidiaries, or affiliates, unless all of the following conditions are met:

(1) The buyer has been making installment payments required by the retail installment contract for a period of not less than 90 days. The retail installment contract has a term of not less than 180 days and does not provide for any scheduled installment that is more than twice the amount of any other scheduled installment.

(2) The loan provides for additional proceeds other than for insurance in an amount not less than the outstanding principal balance of the retail installment contract and provides for payment in full of the retail installment contract.

(3) The licensee shall not take a security interest in real property that is the principal residence of the borrower unless the loan has a principal amount of five thousand dollars (\$5,000) or more and the following notice written in the same language, for example, Spanish, as used in the loan documents, is incorporated into the statement used to comply with Section 22338:

“WARNING TO BORROWER: IF YOU ACCEPT THIS LOAN YOU WILL BE PUTTING UP YOUR HOME AS SECURITY. THIS MEANS THAT YOUR HOME COULD BE SOLD WITHOUT YOUR PERMISSION AND WITHOUT ANY COURT ACTION IF YOU MISS ANY PAYMENT AS REQUIRED BY THIS LOAN.”

This notice shall be printed in not less than 14-point bold type, shall be set apart from the rest of the statement by a border, and shall appear directly above a signature block which shall be signed by the borrower. A security interest described in this paragraph that is taken without prior notice and the borrower’s signature, as required by this paragraph, shall be void and unenforceable.

(4) The licensee shall not sell, attempt to sell, or agree to sell any goods or services to the borrower, other than credit insurance as defined in Section 22314 and insurance required by the licensee to protect its security interest, until the loan has been in effect for at least 30 days. The amount of insurance required by the licensee to protect its security interest shall not exceed the lesser of the principal amount of the loan or the replacement value of the security as determined by the insurer.

(5) A licensee that is an assignee of the retail installment contract shall continue to be subject under the loan to all equities and defenses of the borrower against the seller arising out of the sale, notwithstanding an agreement to the contrary.

(6) The loan shall not provide for any scheduled installment that is more than twice the amount of any other scheduled installment. This paragraph does not apply to a loan of a bona fide principal amount of ten thousand dollars (\$10,000) or more.

(7) If a loan of a bona fide principal amount of ten thousand dollars (\$10,000) or more provides for any scheduled installment that is more than twice the amount of any other scheduled installment, the loan shall contain the following provision:

“The payment schedule contained in this loan requires that you make a balloon payment of \$_____ (amount of balloon payment) which is a payment of more than double the amount of the regular payments. You have an absolute right to obtain a new payment schedule if you default in the payment of any balloon payment.”

If the borrower defaults in the payment of any balloon payment, the borrower shall be given an absolute right to obtain a new payment schedule. Unless agreed to by the borrower, the installment amounts under the new schedule shall not be substantially greater than the average of the preceding installments.

(b) A loan made pursuant to this section shall be subject to this division and not to Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of the Civil Code.

(c) An action by any licensee or borrower on a loan made pursuant to this section shall be tried in the county in which the loan was signed by the borrower, in the county in which the borrower resided at the time the loan was entered into, or in the county in which the borrower resides at the commencement of the action.

(d) Paragraphs (6) and (7) of subdivision (a) do not apply to open-end loans.

(e) A security interest provided by any retail installment contract in violation of subdivision (b) of Section 1804.3 of the Civil Code shall not serve as consideration in whole or in part for a loan made under this section, notwithstanding any agreement to the contrary.

Article 4. Charges On Scheduled Balances

22400. This article applies only to loan contracts payable in substantially equal and consecutive monthly installments of principal and charges combined, the first of which is due not less than 15 days nor more than one month and 15 days from the date the loan is made. In lieu of computing charges and applying payments as provided in Section 22307, a licensee may precompute charges and apply payments as follows:

(a) The total charges which would be earned if the contract were repaid exactly according to its terms, at the monthly rate stated in the contract, may be precomputed when the loan is made and added to the principal of the loan. For the purpose of computation, a month shall be that period of time from any date in one month to the corresponding date in the next month, and if there is no corresponding date, then to the last day of the next month. The principal amount of the loan shall be its face value as referred to in

Section 22309. Every payment may be applied to the combined total of principal and precomputed charges until the contract is fully paid. The acceptance of payment of charges on loans made under the provisions of this article shall not be deemed to constitute payment deduction or receipt thereof in advance nor compounding under Section 22309. Precomputed charges shall be subject to the following adjustments:

(1) The portion of the precomputed charge applicable to any particular monthly installment period shall bear the same ratio to the total precomputed charge, excluding any adjustment made for a first period of more than one month, as the balance scheduled to be outstanding during that monthly period bears to the sum of all monthly balances scheduled originally by the loan contract.

(2) If the loan contract is paid in full by cash, a new loan, refinancing, or otherwise, the borrower shall receive a rebate of that portion of the precomputed charge that is the difference between the total precomputed charge and the charges at the contract rate computed in accordance with the provisions of Section 22307 or 22308. The tender, by the borrower or at his or her request, of an amount equal to the unpaid balance, less the required rebate, must be accepted by the licensee in full payment of the contract.

(3) If three or more, but not all, installments are prepaid in full at any one time, all of the prior charges for the loan shall be recalculated and all subsequent charges for the remaining term of the loan shall be recalculated by applying each payment first to charges and the remainder to principal in accordance with the provisions of Section 22307 or 22308.

(4) If the payment date of all wholly unpaid installments on which no default charge has been collected is deferred one or more full months and the contract so provides, the licensee may charge and collect a deferment charge. The deferment charge shall not exceed the portion of the precomputed charge applicable prior to deferment, to the first deferred monthly installment period multiplied by the number of months the maturity of the contract is deferred. The number of months shall not exceed the number of full installments that are in default on the date of deferment or that may become due within 15 days of that date. When a deferment charge is made, no portion of the precomputed charge shall apply to the installment periods in which no installment payment is required by reason of the deferment. In computing any default charge or required rebate, the portion of the precomputed charge applicable to each deferred balance and installment period following the deferment period and prior to the deferred maturity shall remain the same as that applicable to the balances and periods under the original loan contract. The charge may be collected at the time of deferment or at any time thereafter. Any payment received at the time of deferment may be applied first to the deferment charge and the remainder, if any, applied to the unpaid balance of the contract. However, if the payment is sufficient to pay, in addition to the

appropriate deferment charge, any installment that is in default and the applicable default charge, it shall be first so applied and any such installment shall not be deferred nor subject to the deferment charge.

(5) In the event of default of more than 10 days in the payment of one-half or more of any scheduled installment, the licensee may charge and collect a default charge not exceeding an amount equal to the portion of the precomputed charge applicable to the final installment period. The charge may not be collected more than once for the same default and may be collected at the time of the default or at any time thereafter. If the default charge is deducted from any payment received after default occurs, and the deduction results in the default of a subsequent installment, no charge may be made for the resulting default.

(6) A borrower and licensee may agree that the first installment due date may be not more than 15 days more than one month and the amount of the installment may be increased by one-thirtieth of the portion of the precomputed charge applicable to a first installment of one month for each extra day.

(b) The statement to be given to the borrower as provided in subdivision (a) of Section 22337 and the contract shall disclose in addition to other required information the principal amount of the loan exclusive of charges and the basis for computing the refund of precomputed charges in case of prepayment in full or acceleration of maturity and for computing default and deferment charges. The delivery of a receipt of each payment showing the total amount of each payment complies with subdivision (d) of Section 22337.

(c) If the maturity of the contract when the charges are precomputed is accelerated for any reason, the licensee shall make the same refund or credit as would be required if the contract was paid in full on the date of acceleration. The unpaid balance shall be treated as the unpaid principal balance, and thereafter the unpaid balance of the contract shall bear charges at the agreed rate of charge if the loan contract so provides.

22401. With respect to precomputed loans, licensees shall be subject only to, comply only with, and derive authority only from Sections 22400 and 22402, notwithstanding any other provision of law that is not within this division.

22402. When charges on a loan of an original bona fide principal amount of five thousand (\$5,000) or more have been precomputed in a manner similar to that provided in Section 22400, and the loan is prepaid in full by cash, a new loan, refinancing, or otherwise, or the maturity of the loan contract is accelerated for any reason, the borrower shall receive a rebate or credit of that portion of the precomputed charge that is the difference between the total precomputed charge and the charges at the contract rate computed in accordance with the provisions of Section 22307 or 22308, or on the basis of 12 equal months of 30 days each, on the assumption that all payments were received by the licensee on their respective due

dates. This section does not apply to charges paid by the borrower to the lender or others, such as charges computed as a percentage of the loan, that are fully earned upon making the loan, or to charges agreed to be paid by the borrower upon prepayment of a loan secured by a lien upon real property.

Article 5. Open-End Loan Programs

22450. As used in this division, "open-end credit program" means a licensee's plan for making open-end loans pursuant to a loan agreement that sets forth the terms and conditions governing the use of the open-end credit program, expressly states that the loan is made pursuant to this article, and provides that:

(a) The borrower may use the open-end credit program to obtain money, goods, labor, or services on credit. The licensee makes open-end loans to the borrower for the purpose of paying money to or at the direction of the borrower or paying obligations that the borrower creates through use of the open-end credit program.

(b) The amount of each advance and the charges and other permitted costs are debited to an account.

(c) The charges are computed from time to time on the unpaid balances of the borrower's account, excluding from the computation any unpaid charges other than permitted fees, costs, and expenses.

(d) The borrower has the privilege of paying the account in full at any time.

22451. If an open-end credit program is not primarily for the purpose of purchasing or leasing goods or services from the licensee, then all credit extended through use of the program, including transactions that involve the purchase or lease of goods or services from the licensee, shall be subject to this division.

22452. Subject to the written approval of the commissioner of the licensee's plan of business for making open-end loans as not being misleading or deceptive and subject to regulations the commissioner may adopt with respect to open-end loans under Section 22150, a licensee may make open-end loans pursuant to this article and may contract for and receive thereon charges as set forth in Sections 22303, 22304, and 22308. These charges may be calculated on an amount not exceeding the greater of:

(a) The actual daily unpaid balances of the open-end account in the billing cycle for which the charge is made, in which case one-thirtieth of the monthly rate may be charged for each day the unpaid balance is outstanding.

(b) The average daily unpaid balance of the open-end account in the billing cycle for which the charge is made, which is the sum of the amount unpaid each day during that cycle divided by the number of days in that cycle. The amount unpaid on a day is determined by adding to any balance unpaid as of the beginning of that day all advances and other debits and deducting all payments and other credits made or received as of that day. The billing cycle

shall be monthly. A billing cycle is monthly if the closing date of the cycle is the same date each month or does not vary by more than four days from the regular date.

This section does not apply to any open-end loan of a bona fide principal amount of five thousand dollars (\$5,000) or more as determined in accordance with Section 22467.

22453. The minimum monthly payment shall be determined by either of the following:

(a) The amount calculated by multiplying the unpaid principal balance, after an advance and including the advance, by a percent agreed upon by the borrower and the licensee, which shall be no less than 2½ percent. The minimum payment shall continue at the amount determined pursuant to this paragraph until a subsequent loan advance is made.

(b) The amount calculated by multiplying the unpaid balance at the end of each billing cycle by a percent agreed upon by the borrower and the licensee, which shall be no less than 5 percent.

This section does not apply to any open-end loan of a bona fide principal amount of five thousand dollars (\$5,000) or more as determined in accordance with Section 22467.

22454. On open-end loans, the licensee may contract for and receive the fees, costs, and expenses permitted on other loans, including those permitted by subdivisions (a), (b), (c), and (d) of Section 22313 and subdivision (d) of Section 22314, except that the charge for credit insurance under Section 22314 shall be on a monthly basis and shall be actuarially consistent with the premium rate for the same coverage.

This section does not apply to any open-end loan of a bona fide principal amount of five thousand dollars (\$5,000) or more as determined in accordance with Section 22467.

22455. (a) In lieu of subdivisions (b), (c), (d), (e), and (f) of Section 22314, with respect to open-end loans, a licensee may provide credit insurance with the borrower's consent, in a form to be approved by the Insurance Commissioner, in an amount not in excess of the amount of the indebtedness. For credit life or disability insurance, the licensee may collect from the borrower an amount established pursuant to Section 779.36 of the Insurance Code.

(b) If life insurance is provided, and if the insured borrower dies during the term of the loan contract, the insurance shall be sufficient to pay the total amount due on the loan outstanding on the date of his or her death, without any exception, reservation, or limitation.

(c) If disability insurance is provided, and if the insured borrower becomes disabled during the term of the loan contract, the insurance shall be sufficient to pay all amounts attributable to the loan balance at the time of commencement of disability that subsequently become due on the loan thereafter during the period of disability, in accordance with subdivision (d) of Section 22315, without any exception, reservation, or limitation.

(d) If loss-of-income insurance is provided, and if the insured

borrower becomes unemployed during the term of the loan contract, the insurance shall be sufficient to pay all amounts attributable to the loan balance at the time of commencement of unemployment in accordance with subdivision (d) of Section 22321 without any exception, reservation, or limitation.

(e) Any credit insurance that is provided shall be in force as soon as the loan is made or coverage is agreed upon, whichever is later. No credit insurance written in connection with an open-end loan shall be canceled by the lender because of delinquency of the borrower in the making of the minimum payments thereon unless one or more of the payments is past due for a period of 90 days or more, and the lender shall advance to the insurer the amounts required to keep the insurance in force during that period, which amounts may be debited to the borrower's account.

This section does not apply to any open-end loan of a bona fide principal amount of ten thousand dollars (\$10,000) or more as determined in accordance with Section 22467.

22456. Section 22309 shall apply to open-end loans with the following variations:

(a) To comply with Section 22309, in the case of open-end loan advances directly to the borrower, the licensee shall deliver to the borrower, at the time of each loan advance, an amount equal to the face value of the advance.

(b) To comply with Section 22309, in the case of an open-end loan advance in the form of a payment by the licensee to a person from whom a borrower obtained money, goods, labor, or services, the licensee shall deliver to that person the amounts necessary to fulfill the borrower's obligation to that person under the transaction.

This section does not apply to any open-end loan of a bona fide principal amount of five thousand dollars (\$5,000) or more as determined in accordance with Section 22467.

22457. In lieu of Section 22332, the open-end loan agreement shall contain the name, address, and license number of the finance lender and shall disclose the nature of the security taken, the method of determining the minimum payments that will be required to repay the initial advance and any subsequent advances on the loan, and the agreed rate of charge.

22458. In lieu of subdivision (a) of Section 22337, with respect to open-end loans, except in the case of an account that the licensee deems to be uncollectible, or for which delinquency collection procedures have been instituted, the licensee shall deliver or cause to be delivered to the borrower, or any one thereof, for each billing cycle at the end of which there is an outstanding balance in the account, or to which a finance charge is imposed, a statement setting forth the outstanding balance in the account at the beginning of the billing cycle, the date and amount of any subsequent loan advance during the period, the amounts and dates of crediting to the account during the billing cycle that payments are credited, the amount of any finance charge debited to the account during the billing cycle,

the annual percentage rate of finance charge determined under Regulation Z promulgated by the Board of Governors of the Federal Reserve System (12 C.F.R. 226), the balance on which the finance charge was computed, the closing date of the billing cycle, the outstanding balance on that date, and the minimum monthly payment required in the absence of any additional advance. If there has been any change in the nature of the security for the loan since the next preceding advance, the statement shall contain or be accompanied by a statement of the nature of the security for the loan after that change.

22459. Subdivision (e) of Section 22337 shall not apply to an open-end loan that has no balance outstanding if the open-end loan agreement continues in effect.

22460. Section 22333 shall not apply to a change in terms of an open-end loan if notice is given to the borrower in accordance with subsection (c) of Section 226.9 of Regulation Z promulgated by the Board of Governors of the Federal Reserve System (12 C.F.R. 226).

22461. Subdivision (a) of Section 22151, Sections 22154 and 22325, and subdivision (b) of Section 22337 shall not apply to a licensee with respect to advances made through an open-end credit program.

22462. The payment of fees for participation in an open-end credit program, the acceptance by a borrower of the form of the licensee's program, and the borrower's agreement to the licensee's program shall not be deemed to be a collateral sale, purchase, or agreement within the terms of Section 22201, 22311, or 22312.

22463. Nothing in this article limits the authority of the commissioner to disapprove advertising with respect to open-end loans pursuant to Section 22165.

This section does not apply to any open-end loan of a bona fide principal amount of five thousand dollars (\$5,000) or more as determined in accordance with Section 22467.

22464. This article does not apply to loans other than open-end loans.

This section does not apply to any open-end loan of a bona fide principal amount of five thousand dollars (\$5,000) or more as determined in accordance with Section 22467.

22465. Section 22400 does not apply to open-end loans.

22466. An open-end loan is in compliance with Section 22330 if it is an open-end loan of a bona fide principal amount of five thousand dollars (\$5,000) or more as determined in accordance with Section 22467.

22467. (a) Any section that refers to this section or that is subject to Section 22251 does not apply to any open-end loan of the bona fide principal amount specified in the regulatory ceiling provision of that section or more, or to a duly licensed finance lender in connection with any such loan if that provision is not used for the purpose of evading this division.

(b) In determining whether an open-end loan is an open-end loan of a bona fide principal amount specified in any section in this

division or more and whether the regulatory ceiling provision of that section is used for the purpose of evading this division, the open-end loan shall be deemed to be for that amount or more if both the following criteria are met:

(1) The line of credit is equal to or more than the specified amount.

(2) The initial advance was equal to or more than the specified amount.

(c) A subsequent advance of money of less than the specified amount pursuant to the open-end loan agreement between a borrower and a licensed finance lender shall be deemed to be a loan of a principal amount of the specified amount if the criteria of paragraphs (1) and (2) of subdivision (b) have been met, even though the actual unpaid balance after the advance or at any other time is less than the specified amount.

CHAPTER 3. COMMERCIAL LOANS

Article 1. Definitions

22500. "Charges" include the aggregate interest, fees, bonuses, commissions, brokerage, discounts, expenses, and other forms of costs charged, contracted for, or received by a licensee or any other person in connection with the investigating, arranging, negotiating, procuring, guaranteeing, making, servicing, collecting, and enforcing of a loan or forbearance of money, credit, goods, or things in action, or any other service rendered.

22501. "Charges" do not include commissions received as a licensed insurance agent or broker.

22502. "Commercial loan" means a loan of a principal amount of five thousand dollars (\$5,000) or more, or any loan under an open-end credit program, whether secured by either real or personal property, or both, or unsecured, the proceeds of which are intended by the borrower for use primarily for other than personal, family, or household purposes.

For purposes of determining whether a loan is a commercial loan, the lender may rely on any written statement of intended purposes signed by the borrower. The statement may be a separate statement signed by the borrower or may be contained in a loan application or other document signed by the borrower. The lender shall not be required to ascertain that the proceeds of the loan are used in accordance with the statement of intended purposes.

Article 2. Exemptions

22550. Sections 22152, 22154, 22155, 22163, and 22164 do not apply to any commercial loan of a bona fide principal amount of five thousand dollars (\$5,000) or more, or to a duly licensed finance lender in connection with any such loan or loans, if the provisions of

this section are not used for the purpose of evading this division.

22551. In determining whether a loan is a loan of a bona fide principal amount of the specified amount or more, the following principles shall apply:

(a) If a borrower applies for a loan in a principal amount of less than the specified amount and a loan to that borrower of a principal amount of the specified amount or more is made by a licensed finance lender, no adequate economic reason for the increase in the size of the loan exists, and by prearrangement or understanding between the borrower and the licensee a substantial payment is to be made upon the loan with the effect of reducing the principal amount of the loan to less than the specified amount within a short time after the making of the loan other than by reason of a requirement that the loan be paid in substantially equal periodical installments, then the loan shall not be deemed to be a loan of the bona fide principal amount of the specified amount or more.

(b) A subsequent advance of money of less than the specified amount pursuant to a revolving or open-end loan agreement or similar agreement between a borrower and a licensed finance lender which gives the borrower the right to draw upon all or any part of the line of credit, or a loan agreement providing for the making of advances to the borrower from time to time up to an aggregate maximum amount which gives the borrower the right to draw all or any part of the total amount, shall be deemed to be a loan of a principal amount of the specified amount or more if the line of credit or the aggregate maximum amount is the specified amount or more and the initial advance was the specified amount or more even though the actual unpaid balance after the advance or at any other time is less than the specified amount.

(c) If a loan made by a licensed finance lender has a principal amount of the specified amount or more, the fact that the transaction is in the form of a sale of accounts, chattel paper, goods, or instruments, or a lease of goods, or in the form of an advance on the purchase price of any of the foregoing, shall not be deemed to affect the bona fides of the amount thereof.

(d) For the purposes of this section, "the specified amount" means five thousand dollars (\$5,000).

Article 3. Loan Regulations

22600. (a) A licensee may sell promissory notes evidencing the obligation to repay loans made by the licensee pursuant to this division or evidencing the obligation to repay loans purchased from and made by another licensee pursuant to this division to institutional investors, and may make agreements with institutional investors for the collection of payments or the performance of services with respect to those notes.

(b) For the purposes of this section, "institutional investor" means the following:

(1) The United States or any state, district, territory, or commonwealth thereof, or any city, county, city and county, public district, public authority, public corporation, public entity, or political subdivision of a state, district, territory, or commonwealth of the United States, or any agency or other instrumentality of any one or more of the foregoing.

(2) Any bank, trust company, savings bank or savings and loan association, credit union, industrial bank or industrial loan company, finance lender, or insurance company doing business under the authority of and in accordance with a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States.

(3) Trustees of pension, profit sharing, or welfare funds, if the pension, profit sharing, or welfare fund has a net worth of not less than fifteen million dollars (\$15,000,000), except pension, profit sharing, or welfare funds of a licensee or its affiliate, self-employed individual retirements plans, or individual retirement accounts.

(4) Any corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or any wholly owned subsidiary of that corporation; provided, however, that the purchaser represents that it is purchasing for its own account for investment and not with a view to or for sale in connection with any distribution of the promissory note.

(5) Any syndication or other combination of any of the foregoing that is organized to purchase the promissory note.

(c) In the absence of agreement to the contrary by the licensee and the institutional investor, all payments received from the collection of payments shall be deposited and maintained in a trust account, and shall be disbursed from the trust account only in accordance with the instructions of the owner of the promissory note.

22601. With respect to a loan under this division, a fee not to exceed fifteen dollars (\$15) for the return by a depository institution of a dishonored check, negotiable order of withdrawal, or share draft may be charged and collected by the licensee. The fee is not included in charges as defined in this division.

Article 4. Open-End Credit Programs

22650. As used in this division, "open-end credit program" means a licensee's plan for making open-end loans pursuant to a loan agreement that sets forth the terms and conditions governing the use of the open-end credit program, expressly states that the loan is made pursuant to this article, and provides that:

(a) The borrower may use the open-end credit program to obtain money, goods, labor, or services or credit, and the licensee makes open-end loans to the borrower for the purpose of paying money to, or at the direction of, the borrower or paying obligations that the borrower creates through use of the open-end credit program.

(b) The amount of each advance and the charges and other permitted costs are debited to an account.

(c) The charges are computed from time to time on the unpaid balances of the borrower's account excluding from the computation any unpaid charges other than permitted fees, costs, and expenses.

(d) The borrower has the privilege of paying the account in full at any time.

CHAPTER 4. REVOCATION AND PENALTIES

Article 1. Revocation and Suspension of License

22700. (a) Licenses issued under this division remain in effect until they are surrendered, revoked, or suspended.

(b) Surrender of a license becomes effective 30 days after receipt of an application to surrender the license or within a shorter period of time that the commissioner may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the surrender is instituted within 30 days after the application is filed. If a proceeding is pending or instituted, surrender of a license becomes effective at the time and upon the conditions that the commissioner determines.

22701. For the purpose of discovering violations of this division or securing information required by him or her in the administration and enforcement of this division, the commissioner may at any time investigate the loans and business, and examine the books, accounts, records, and files used in the business, of every person engaged in the business of a finance lender or broker, whether the person acts or claims to act as principal or agent, or under or without the authority of this division. For the purpose of examination, the commissioner and his or her representatives shall have free access to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of all these persons.

22702. In making any examination or investigation, the commissioner may, for a reasonable time not to exceed 30 days, take possession of the books, records, accounts, and other papers pertaining to the business. The commissioner may place a keeper in exclusive charge and custody of the books, records, accounts, and other papers in the office or place where they are usually kept. During possession, no person shall remove or attempt to remove any of the books, accounts, papers, records, files, safes, and vaults, or any part thereof, except in compliance with a court order or written consent of the commissioner.

22703. The officers, employees, partners, directors, and stockholders may inspect and examine the books, accounts, papers, records, files, safes, and vaults while they are in the custody of the commissioner. Employees may make entries in these documents reflecting current operations or transactions.

22704. The power of investigation and examination by the commissioner is not terminated by the surrender, suspension, or revocation of any license issued by him or her.

22705. Whenever the commissioner deems it necessary for the general welfare of the public, he or she has continuous authority to exercise the powers set forth in this division whether or not an application for a license has been filed with the commissioner, any license has been issued, or if issued, has been suspended or revoked.

22706. The commissioner may require the attendance of witnesses and examine under oath all persons whose testimony he or she requires relative to loans or business regulated by this division or to the subject matter of any examination, investigation, or hearing.

22707. (a) The cost of each examination of a licensee or a person subject to this division shall be paid to the commissioner by the licensee or person examined, and the commissioner may maintain an action for the recovery of the cost in any court of competent jurisdiction. In determining the cost of an examination, the commissioner may use the estimated average hourly cost for all persons performing examinations of licensees or other persons subject to this division for the fiscal year.

(b) For the purpose of this section only, no person other than a licensee shall be deemed to be a person subject to this division until the person is determined to be a person subject to this division by an administrative hearing in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code or by a judicial hearing in any court of competent jurisdiction.

22708. After an examination, investigation, or hearing under this division, if the commissioner deems it of public interest or advantage, he or she may certify a record to the proper prosecuting official of the city, county, or city and county in which the act complained of, examined, or investigated occurred.

22709. The commissioner may require the production for examination in this state of all books, records, and supporting data used by the licensee in the preparation of reports to the commissioner. The books, records, and supporting data shall be made available for examination by the commissioner in this state within 10 days after a written demand.

22710. The commissioner may upon three days' notice and a hearing, suspend any license for a period not exceeding 30 days, pending investigation.

22711. Any licensee may surrender any license by delivering to the commissioner written notice that the licensee surrenders that license. Surrender of the license does not affect the licensee's civil or criminal liability for acts committed prior to surrender of the license.

22712. Whenever, in the opinion of the commissioner, any person is engaged in business as a broker or finance lender, as defined in this division, without a license from the commissioner, or any licensee is violating any provision of this division, the commissioner may order

that person or licensee to desist and to refrain from engaging in the business or further violating this division. If, after the order is made, a written request for a hearing is filed and no hearing is held within 30 days thereafter, the order is rescinded.

22713. (a) Whenever the commissioner believes from evidence satisfactory to the commissioner that any person has violated or is about to violate a provision of this division, or a provision of any order, license, decision, demand, requirement, or any regulation adopted pursuant to this division, the commissioner may, in the commissioner's discretion, bring an action, or the commissioner may request the Attorney General to bring an action in the name of the people of the State of California, against that person to enjoin that person from continuing that violation or doing any act in furtherance of the violation. Upon a proper showing, a permanent or preliminary injunction, restraining order, or writ of mandate shall be granted and other ancillary relief may be granted as appropriate.

(b) If the commissioner determines that it is in the public interest, the commissioner may include in any action authorized by subdivision (a) a claim for ancillary relief, including, but not limited to, a claim for restitution, disgorgement, or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action. The court shall have jurisdiction to award additional relief.

(c) Any person who willfully violates any provisions of this division, or who willfully violates any rule or order adopted pursuant to this division, shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the commissioner in any court of competent jurisdiction.

(d) As applied to the penalties for acts in violation of this division, the remedies provided by this section and by other sections of this division are not exclusive, and may be sought and employed in any combination to enforce the provisions of this division.

22714. (a) The commissioner shall suspend or revoke any license, upon notice and reasonable opportunity to be heard, if the commissioner finds any of the following:

(1) The licensee has failed to comply with any demand, ruling, or requirement of the commissioner made pursuant to and within the authority of this division.

(2) The licensee has violated any provision of this division or any rule or regulation made by the commissioner under and within the authority of this division.

(3) A fact or condition exists that, if it had existed at the time of the original application for the license, reasonably would have warranted the commissioner in refusing to issue the license originally.

(4) There has been repeated failure by the finance lender, when making or negotiating loans, to take into consideration in

determining the size and duration of loans, the financial ability of the borrower to repay the loan in the time and manner provided in the loan contract, or to refinance the loan at maturity.

(b) A master license may not be suspended or revoked pursuant to this section as a result of any action or failure to act by a subsidiary licensee unless grounds exist for the suspension or revocation of the master license pursuant to this section. An order suspending or revoking a license or imposing sanctions against a licensee shall not affect other licensed locations unless expressly stated in the order.

22715. The commissioner may by order summarily suspend or revoke the license of any licensee if that person fails to file the report required by Section 22159 within 10 days after notice by the commissioner that the report is due and not filed. If, after an order is made, a request for hearing is filed in writing within 30 days and the hearing is not held within 60 days thereafter, the order is deemed rescinded as of its effective date.

22716. The revocation, suspension, expiration, or surrender of any license does not impair or affect the obligation of any preexisting lawful contract between the licensee and any borrower.

22717. Except in cases in which the time for setting the hearing is shortened as provided in this division, the proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and in all cases the commissioner has all the powers granted therein.

22718. Every order, decision, license, or other official act of the commissioner is subject to judicial review in accordance with law.

Article 2. Consumer Loan Penalties

22750. (a) If any amount other than, or in excess of, the charges permitted by this division is willfully charged, contracted for, or received, the contract of loan is void, and no person has any right to collect or receive any principal, charges, or recompense in connection with the transaction.

(b) If any provision of this division is willfully violated in the making or collection of a loan, the contract of loan is void, and no person has any right to collect or receive any principal, charges, or recompense in connection with the transaction.

22751. (a) If any amount other than or in excess of the charges permitted by this division is charged or contracted for, or received, for any reason other than a willful act of the licensee, the licensee shall forfeit all interest and charges on the loan and may collect or receive only the principal amount of the loan.

(b) Subdivision (a) shall not apply to an error in computation if (1) the licensee shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error, and (2) within 60 days of discovering the

error the licensee notifies the borrower of the error and makes whatever adjustments in the account are necessary to correct the error.

22752. (a) If any provision of this division is violated in the making or collection of a loan, for any reason other than a willful act of the licensee, the licensee shall forfeit all interest and charges on the loan and may collect or receive only the principal amount of the loan.

(b) Subdivision (a) shall not apply to a violation if (1) the licensee shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error, and (2) within 30 days of discovering the error the licensee notifies the borrower of the error and rectifies the error by making the appropriate changes in the documents or account and by taking other action necessary to correct the error.

22753. Any person who willfully violates any provision of this division or who willfully violates any rule or order adopted pursuant to this division, shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000), by imprisonment in a county jail for not more than one year or in the state prison, or by both that fine and imprisonment. However, no person may be imprisoned for the violation of any rule or order unless he or she had knowledge of the rule or order. Conviction under this section shall not preclude the commissioner from exercising the authority in Section 22713.

22754. No provision imposing liability under this division, including the provisions of subdivision (a) of Section 22751 and subdivision (a) of Section 22752, shall apply to any act done or omitted in good faith in conformity with any written general rule, regulation, or specific ruling of the commissioner, notwithstanding that after the act or omission has occurred, the written general rule, regulation, or specific ruling is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

Article 3. Commercial Loan Penalties

22780. Any person who willfully violates any provision of this division, or who willfully violates any rule or order adopted pursuant to this division, shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000), by imprisonment in a county jail for not more than one year or in the state prison, or by both that fine and imprisonment. However, no person may be imprisoned for the violation of any rule or order unless he or she had knowledge of the rule or order. Conviction under this section shall not preclude the commissioner from exercising the authority provided in Section 22713.

SEC. 3. Division 10 (commencing with Section 24000) of the Financial Code is repealed.

SEC. 4. Division 11 (commencing with Section 26000) of the Financial Code is repealed.

SEC. 5. Except for Sections 22107 and 22159 of the Financial Code, this act shall become operative on July 1, 1995. Sections 22107 and 22159 of the Financial Code shall become operative on January 1, 1995. Persons licensed under Division 9 (commencing with Section 22000), Division 10 (commencing with Section 24000), or Division 11 (commencing with Section 26000) of the Financial Code prior to July 1, 1995, shall pay the assessment pursuant to the provisions of and as set forth in Section 22107 of the Financial Code for the 1995-96 fiscal year based on the annual report for 1994 which shall be filed pursuant to Section 22159 of the Financial Code. The commissioner shall issue a finance lender or broker license to a licensee under Division 9 (commencing with Section 22000), Division 10 (commencing with Section 24000), or Division 11 (commencing with Section 26000) of the Financial Code upon receiving payment of the assessment for the 1995-96 fiscal year and any additional information the commissioner may require to demonstrate compliance with the provisions of this act.

SEC. 6. Notwithstanding any provisions of the Administrative Procedure Act, any adoption, amendment, or repeal of existing regulations under Division 9 (commencing with Section 22000), Division 10 (commencing with Section 24000), or Division 11 (commencing with Section 26000) of the Financial Code for the purpose of conforming the existing regulations to the provisions of this act shall be considered changes without regulatory effect under Section 100 of Title 1 of the California Code of Regulations. The Office of Administrative Law shall, immediately upon receipt of the regulations adopted by the Commissioner of Corporations, file the regulations with the Secretary of State for immediate effectiveness.

SEC. 7. The regulations adopted by the Commissioner of Corporations may contain those classifications, differentiations, and other provisions, and may provide for those adjustments and exceptions for any class of transactions that in the judgment of the commissioner are necessary or proper to effectuate provisions of this act and the intent of the Legislature to create reasonable classifications, including, but not limited to, varying regulation of commercial and consumer loans.

SEC. 8. Any loan made under Division 9 (commencing with Section 22000), Division 10 (commencing with Section 24000), or Division 11 (commencing with Section 26000) of the Financial Code, prior to July 1, 1995, shall be subject to, and enforced to the extent valid, under the applicable division as of the date made, as if that law were not repealed. With respect to loans made under those laws, any reference herein to "finance lender" shall be deemed to refer to the lender or person holding those loans under the provisions and authority of those laws.

SEC. 9. It is the intent of the Legislature in enacting this act that references in any statute of this state, other than in Division 9

(commencing with Section 22000) of the Financial Code, as added by this act, to personal property brokers, whether by that name, by citation of the Personal Property Brokers Law, by citation to Division 9 (commencing with Section 22000), or otherwise, to consumer finance lenders whether by that name, by citation of the Consumer Finance Lenders Law, by citation to Division 10 (commencing with Section 24000), or otherwise, or to commercial finance lenders, whether by that name, by citation of the Commercial Finance Lenders Law, by citation to Division 11 (commencing with Section 26000), or otherwise, shall be deemed to refer to licensees under the California Finance Lenders Law (Division 9 (commencing with Section 22000) of the Financial Code), as added by this act.

SEC. 10. The Legislature finds that the regulation of consumer and commercial loans would be enhanced by consolidating into one licensing law the existing regulation of personal property brokers, consumer finance lenders, and commercial finance lenders. It is the intent of the Legislature that this act shall not affect the validity of any existing loans and this act shall be interpreted as a consolidation of the authority previously granted to each type of lender. The Legislature finds that varying treatment of each type of lender, as provided in this act, is proper and that it is reasonable to allow free-market competition and to provide consumer protections with respect to the terms of the specified transactions. It is the intent of the Legislature that all previous judicial precedents upholding the regulation of these lenders continue to apply as the constitutional basis of this act.

CHAPTER 1116

An act to amend Section 1253 of, and to add Article 2.2 (commencing with Section 1300) to Chapter 5 of Part 1 of Division 1 of, the Unemployment Insurance Code, relating to unemployment insurance, and making an appropriation therefor.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 1253 of the Unemployment Insurance Code is amended to read:

1253. An unemployed individual is eligible to receive unemployment compensation benefits with respect to any week only if the director finds that:

(a) A claim for benefits with respect to that week has been made in accordance with authorized regulations.

(b) He or she has registered for work, and thereafter continued to report, at a public employment office or any other place as the

director may approve. Either or both of the requirements of this subdivision may be waived or altered by authorized regulation as to partially employed individuals attached to regular jobs.

(c) He or she was able to work and available for work for that week.

(d) He has been unemployed for a waiting period of one week as defined in Section 1254, unless this waiting period has been waived pursuant to Section 8571 of the Government Code.

(e) He or she conducted a search for suitable work in accordance with specific and reasonable instructions of a public employment office.

(f) He or she participated as required by the director in reemployment activities, such as orientation and assessment if the individual has been identified pursuant to an automated profiling system as likely to exhaust regular unemployment benefits unless the individual has shown good cause for failure to participate.

SEC. 2. Article 2.2 (commencing with Section 1300) is added to Chapter 5 of Part 1 of Division 1 of the Unemployment Insurance Code, to read:

Article 2.2. Self-Employment Assistance Program

1300. The Legislature finds that the traditional system of unemployment compensation is primarily designed to provide income support for workers who are temporarily laid off or expect to be unemployed for only a short time. However, increasing numbers of workers are losing their jobs permanently due to rapid technological change, elimination of trade barriers, and similar causes. These workers need additional tools besides the basic income maintenance provided by the unemployment compensation system in order to reenter the workforce. For some of those workers, access to a self-employment program would be the best path for them to do so. Accordingly, it is the purpose of this article to authorize the payment of unemployment compensation benefits, and to provide appropriate training and support services, for eligible dislocated workers who wish to become self-employed in their transition back into the workforce.

1301. As used in this article:

(a) "Self-Employment Assistance Program" means a program that enables an unemployed individual approved under this article to engage in self-employment activities on a full-time basis that will lead to establishing a business and becoming self-employed.

(b) "Self-employment assistance activities" means activities approved by the director in which an individual identified through a worker profiling system as likely to exhaust regular benefits participates for the purpose of establishing a business and becoming self-employed. These may include, but are not limited to, entrepreneurial training, business counseling, and technical assistance.

(c) "Self-employment assistance allowance" means an allowance payable in lieu of regular benefits and from the Unemployment Fund established under Section 1521 to an individual participating in self-employment assistance activities who meets the requirements of this article.

(d) "Regular benefits" means benefits payable to an individual under this part, including benefits payable to federal civilian employees and to ex-service members pursuant to Chapter 85 (commencing with Section 8501) of Title 5 of the United States Code, other than additional and extended benefits.

(e) "Full-time basis" shall have the meaning contained in regulations prescribed by the director.

1302. The weekly allowance payable under this article to an individual shall be equal to the weekly benefit amount for regular benefits otherwise payable under Article 2 (commencing with Section 1275). The sum of (a) allowance payable under this section and (b) regular benefits paid under this part with respect to any benefit year shall not exceed the maximum benefit amount as established by Section 1281 with respect to that benefit year.

1303. The allowance described in Section 1302 shall be payable to an individual at the same interval, on the same terms, and subject to the same conditions as regular benefits under this part, except as follows:

(a) The requirements relating to availability for work, active search for work, and refusal to accept work shall not apply to any week that the individual is in training or engaged in self-employment activities as approved by this article.

(b) Income earned by an individual while engaged in self-employment activities as approved under this article shall not be construed to be wages or compensation for personal services under this division, and benefits payable under this division shall not be denied or reduced because of those payments.

(c) An individual who fails to participate in self-employment assistance activities or who fails to actively engage on a full-time basis in activities, which may include training, relating to the establishment of a business and becoming self-employed shall be disqualified for the week the failure occurs.

1304. An individual is eligible to participate in the self-employment assistance program if he or she meets all of the following conditions:

(a) Is eligible to receive regular unemployment insurance under state law.

(b) Has been identified pursuant to an automated profiling system as likely to exhaust regular unemployment compensation.

(c) Has been approved for participation in the Self-Employment Assistance Program by the director.

(d) Participates in entrepreneurial training, business counseling, and technical assistance as required by the director.

(e) Is engaged on a full-time basis in activities related to

establishing a business and becoming self-employed.

1305. The aggregate number of individuals receiving the allowance under this article at any time shall not exceed 5 percent of the number of individuals receiving regular benefits. The director shall, through regulations, prescribe those actions necessary to ensure the requirements of this section are met.

1306. Self-employment assistance program allowances paid under this section shall be charged to employers as provided under provisions of this part relating to the charging of regular benefits. Costs of administering the self-employment assistance allowances are payable from grants received by the department for the administration of California's unemployment insurance law under Title III of the Social Security Act. Costs of providing self-employment assistance program services, such as business training, business counseling, and technical assistance are payable from Job Training Partnership Act funds and other federal grants.

1307. An individual is prohibited from participating in the self-employment assistance program if his or her prior employer is the primary user of the new business services. No employer shall coerce an employee into participating in the self-employment assistance program.

1308. The provisions of this article shall apply to weeks beginning after the effective date of this article or weeks beginning after any plan required by the United States Department of Labor is approved by the United States Department of Labor, whichever date is later. Immediately upon enactment of this article, the director shall develop such a plan and seek approval from the United States Department of Labor.

The authority provided by this section shall terminate as of the week ending December 5, 1998.

CHAPTER 1117

An act to add and repeal Section 106 of the Labor Code, to amend Section 19566 of, to amend and renumber Section 19531 of, and to add Article 6 (commencing with Section 19290) to Chapter 5 of Part 10.2 of Division 2 of, the Revenue and Taxation Code, and to amend Section 1128 of, and to add Section 1126.1 to, and to add and repeal Section 329 of, the Unemployment Insurance Code, relating to the economy.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 106 is added to the Labor Code, to read:

106. (a) The Labor Commissioner may authorize an employee of

any of the agencies that participate in the Joint Enforcement Strike Force on the Underground Economy, as defined in Section 329 of the Unemployment Insurance Code, to issue citations pursuant to Sections 226.4 and 1022 and issue and serve a penalty assessment order pursuant to subdivision (a) of Section 3722.

(b) No employees shall issue citations or penalty assessment orders pursuant to this section unless they have been specifically designated, authorized, and trained by the Labor Commissioner for this purpose. Appeals of all citations or penalty assessment orders shall follow the procedures prescribed in Section 226.5, 1023, or 3725, whichever is applicable.

(c) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

SEC. 2. Article 6 (commencing with Section 19290) is added to Chapter 5 of Part 10.2 of Division 2 of the Revenue and Taxation Code, to read:

Article 6. Collections for the Department of Industrial Relations

19290. (a) The Department of Industrial Relations shall enter into an agreement with the Franchise Tax Board that transfers responsibility from the department to the Franchise Tax Board for the collection of delinquent fees, wages, penalties, and costs, and any interest thereon, effective July 1, 1995. Under the agreement, the Franchise Tax Board shall collect unsatisfied judgments that are issued pursuant to Sections 98.2, 226.5, 1023, 1289, 2681, and 6650 of the Labor Code. The agreement shall also provide for the collection of delinquent debts that result from a final determination by the department after the exhaustion of appeal remedies pursuant to Sections 98.3, 210, 1174.5, 1193.6, 1194, 1194.2, 1197.1, 1197.5, 1771, 1774, 3722, 7314, 7350, 7721, and 7904 of the Labor Code. The agreement shall specify the terms under which fees, wages, penalties, and costs, and any interest thereon, become subject to collection by the Franchise Tax Board.

The agreement may also provide for reimbursement to the Franchise Tax Board on the basis of a percentage of the amount of revenue realized as a result of the Franchise Tax Board's services, provided that the amount of any reimbursement shall not exceed the actual costs of collection, including court costs and reasonable attorney's fees. Wherever possible the collection costs shall be borne by the judgment debtor. Any fee for the recovery of wages shall not be paid by the workers. The department shall adopt rules and regulations to provide for a reasonable fee to cover actual collection costs. The Franchise Tax Board shall be entitled to court costs and reasonable attorney's fees as a judgment creditor under subdivision (i) of Section 98.2 of the Labor Code.

(b) Upon written notice to the obligor from the Franchise Tax Board, any amount referred to the Franchise Tax Board under

subdivision (a) and any interest thereon, including any interest on the amount referred under subdivision (a) that accrued prior to the date of referral and any fee imposed to cover collection costs as provided under subdivision (a), shall be treated as final and due and payable to the State of California, and shall be collected from the obligor by the Franchise Tax Board in any manner authorized under the law for collection of a delinquent personal income tax liability, including, but not limited to, issuance of an order and levy under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure, in the manner provided for earnings withholding orders for taxes.

(c) (1) Part 10 (commencing with Section 17001), this part, Part 10.7 (commencing with Section 21001), and Part 11 (commencing with Section 23001) shall apply to amounts referred under this article in the same manner and with the same force and effect and to the full extent as if the language of those laws had been incorporated in full into this article, except to the extent that any provision is either inconsistent with this article or is not relevant to this article.

(2) Any information, information sources, or enforcement remedies and capabilities available to the agency referring the amount due described in subdivision (a), shall be available to the Franchise Tax Board to be used in conjunction with, or independent of, the information, information sources, or remedies and capabilities available to the Franchise Tax Board for purposes of administering Part 10 (commencing with Section 17001), this part, Part 10.7 (commencing with Section 21001), or Part 11 (commencing with Section 23001).

(d) The activities required to implement and administer this part shall not interfere with the primary mission of the Franchise Tax Board to administer Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001).

(e) For amounts referred for collection under subdivision (a), interest shall accrue at the greater of the rate applicable to the amount due being collected or the rate provided under Section 19521. When notice of the amount due includes interest and is mailed to the obligor, and the amount is paid within 10 days after the date of notice, interest shall not be imposed for the period after the date of notice.

(f) In no event shall a collection under this article be construed as a payment of income taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

SEC. 3. Section 19531 of the Revenue and Taxation Code, as added by Chapter 878 of the Statutes of 1993, is amended and renumbered to read:

19532. In the event a debtor has more than one debt being collected by the Franchise Tax Board and the amount collected by the Franchise Tax Board is insufficient to satisfy the total amount owing, the amount collected shall be applied in the following priority:

(a) Payment of any taxes, additions to tax, penalties, interest, fees, or other amounts due and payable under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

(b) Payment of any debts referred for collection under Article 5 (commencing with Section 19271) of Chapter 5.

(c) Payment of delinquent wages collected pursuant to the Labor Code.

(d) Payment of delinquencies collected under Section 10878.

(e) Payment of delinquent penalties collected for the Department of Industrial Relations pursuant to the Labor Code.

(f) Payment of delinquent fees collected for the Department of Industrial Relations pursuant to the Labor Code.

SEC. 3.5. Section 19531 of the Revenue and Taxation Code, as added by Chapter 878 of the Statutes of 1993, is amended and renumbered to read:

19532. In the event a debtor has more than one debt being collected by the Franchise Tax Board and the amount collected by the Franchise Tax Board is insufficient to satisfy the total amount owing, the amount collected shall be applied in the following priority:

(a) Payment of any taxes, additions to tax, penalties, interest, fees, or other amounts due and payable under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

(b) Payment of any debts referred for collection under Article 5 (commencing with Section 19271) of Chapter 5.

(c) Payment of delinquent wages collected pursuant to the Labor Code.

(d) Payment of delinquencies collected under Section 10878.

(e) Payment of any amounts due which are referred for collection under Article 6 (commencing with Section 19280) of Chapter 5.

(f) Payment of delinquent penalties collected for the Department of Industrial Relations pursuant to the Labor Code.

(g) Payment of delinquent fees collected for the Department of Industrial Relations pursuant to the Labor Code.

SEC. 4. Section 19566 of the Revenue and Taxation Code is amended to read:

19566. Any information provided to or secured by the Franchise Tax Board for purposes of administering Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) may be used by the Franchise Tax Board for purposes of administering Section 10878 or Article 6 (commencing with Section 19290) of Chapter 5.

SEC. 5. Section 329 is added to the Unemployment Insurance Code, to read:

329. (a) The director, or his or her designee, shall serve as Chairperson of the Joint Enforcement Strike Force on the Underground Economy provided for in Executive Order W-66-93.

The strike force shall include, but not be limited to, representatives of the Employment Development Department, the Department of Consumer Affairs, the Department of Industrial Relations, and the Office of Criminal Justice Planning. Other agencies that are not part of the administration, such as the Franchise Tax Board, the State Board of Equalization, and the Department of Justice, are encouraged to participate in the strike force.

(b) The strike force shall have the following duties:

(1) To facilitate and encourage the development and sharing of information by the participating agencies necessary to combat the underground economy.

(2) To improve the coordination of activities among the participating agencies.

(3) To develop methods to pool, focus, and target the enforcement resources of the participating agencies in order to deter tax evasion and maximize recoveries from blatant tax evaders and violators of cash-pay reporting laws.

(4) To reduce enforcement costs wherever possible by eliminating duplicative audits and investigations.

(c) In addition, the strike force shall be empowered to:

(1) Form joint enforcement teams when appropriate to utilize the collective investigative and enforcement capabilities of the participating members.

(2) Establish committees and rules of procedure to carry out the activities of the strike force.

(3) To solicit the cooperation and participation of district attorneys and other state and local agencies in carrying out the objectives of the strike force.

(4) Establish procedures for soliciting referrals from the public, including, but not limited to, an advertised telephone hotline.

(5) Develop procedures for improved information sharing among the participating agencies, such as shared automated information data base systems, the use of a common business identification number, and a centralized debt collection system.

(6) Develop procedures to permit the participating agencies to use more efficient and effective civil sanctions in lieu of criminal actions wherever possible.

(7) Evaluate, based on its activities, the need for any statutory change to do any of the following:

(A) Eliminate barriers to interagency information sharing.

(B) Improve the ability of the participating agencies to audit, investigate, and prosecute tax and cash-pay violations.

(C) Deter violations and improve voluntary compliance.

(D) Eliminate duplication and improve cooperation among the participating agencies.

(E) Establish sharable information data bases.

(F) Establish a common business identification number for use by participating agencies.

(G) Establish centralized, automated debt collection services for

the participating agencies.

(H) Strengthen civil penalty procedures to allow the strike force to emphasize civil rather than criminal penalties wherever possible.

(d) The strike force shall report to the Governor and the Legislature annually during the period of its existence, commencing February 1, 1995, regarding its activities.

The report shall include, but not be limited to, all of the following:

(1) The number of cases of blatant violations and noncompliance with tax and cash-pay laws identified, audited, investigated, or prosecuted through civil action or referred for criminal prosecution.

(2) Actions taken by the strike force to publicize its activities.

(3) Efforts made by the strike force to establish an advertised telephone hotline for receiving referrals from the public.

(4) Procedures for improving information sharing among the agencies represented on the strike force.

(5) Steps taken by the strike force to improve cooperation among participating agencies, reduce duplication of effort, and improve voluntary compliance.

(6) Recommendations for any statutory changes needed to accomplish the goals described in paragraph (7) of subdivision (c).

(e) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

SEC. 6. Section 1126.1 is added to the Unemployment Insurance Code, to read:

1126.1. (a) If any employing unit fails to register with the department as required under Section 1086, and the failure is due to intentional disregard or intent to evade this division or authorized regulations, a penalty of one hundred dollars (\$100) per nonreported employee shall be added to an assessment issued in accordance with Section 1126.

(b) For purposes of this section, the number of nonreported employees shall be defined as the highest number of employees determined by the department to have been engaged by the employer during any single calendar quarter included in the assessment under Section 1126.

SEC. 7. Section 1128 of the Unemployment Insurance Code is amended to read:

1128. (a) If the failure of the employing unit to file a return or report within the time required by this division and authorized regulations or if any part of the deficiency for which an assessment is made is due to fraud or an intent to evade this division or authorized regulations, a penalty of 50 percent of the amount of contributions assessed shall be added to the assessment. This penalty is in addition to the penalties provided pursuant to Sections 1126 and 1127.

(b) An additional penalty of 50 percent of the amount of contributions assessed shall be added to any assessment that includes a penalty under subdivision (a), if the employer paid wages and

failed to provide information returns as required under Section 13050 of this code or Section 18637 or 18638 of the Revenue and Taxation Code. This penalty shall be in addition to any penalties under Section 1126 or 1127.

SEC. 8. The Franchise Tax Board shall report the results of the program authorized by this act to the Legislature on or before January 1, 1997. The report shall include any recommendations for legislation that would be necessary for the Franchise Tax Board to more effectively administer that program.

SEC. 9. Section 3.5 of this bill incorporates amendments to Section 19531 of the Revenue and Taxation Code proposed by both this bill and AB 3343. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1995, (2) each bill amends and renumbers Section 19531 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 3343, in which case Section 3 of this bill shall not become operative.

CHAPTER 1118

An act to amend Section 730 of the Business and Professions Code, and to amend Sections 139.2, 3209.3, 3761, 4600.5, 4643, 5401, 5500, and 5502 of the Labor Code, relating to workers' compensation.

[Approved by Governor September 28, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 730 of the Business and Professions Code is amended to read:

730. Any person licensed under this division or under any initiative act referred to in this division shall not perform any medical evaluation for which the evaluator is required to be certified as a qualified medical evaluator pursuant to Section 139.2 of the Labor Code without having first obtained that certification. No person shall be in violation of this section if the person is certified as a qualified medical evaluator at the time of assignment to a three-member panel under subdivision (h) of Section 139.2 of the Labor Code or, if the injured worker is represented, if the person is certified as a qualified medical evaluator at the time the injured worker is referred for a medical evaluation. A violation of this section constitutes unprofessional conduct and grounds for disciplinary action.

SEC. 2. Section 139.2 of the Labor Code is amended to read:

139.2. (a) The Industrial Medical Council shall appoint qualified medical evaluators in each of the respective specialties as required for the evaluation of medical issues. The appointments shall be for two-year terms.

(b) The council shall appoint as qualified medical evaluators physicians, as defined in Section 3209.3, who are licensed to practice in this state and who demonstrate that they meet each of the following requirements:

(1) Pass an examination written and administered by the Industrial Medical Council for the purpose of demonstrating competence in evaluating medical issues in the workers' compensation system. The council shall administer the first examination on or before July 1, 1994. Physicians qualified immediately before the first examination is administered shall pass an examination by November 1, 1994, to meet this requirement. Any physician applying for appointment after July 1, 1994, shall pass an examination prior to his or her appointment as a qualified medical evaluator. Physicians are not required to pass an additional examination for reappointment. For preparation of the first examination, a panel of not more than 40 experts, appointed by the Industrial Medical Council, representing the physician specialties required to take the qualified medical evaluator examination, shall assist the council in determining the knowledge, skills, and abilities required by the qualified medical evaluator, writing items for the examination, and conducting pretest and posttest reviews of the items. This panel of experts shall be exempt from the requirement of having to pass the examination to be appointed as a qualified medical evaluator. This panel of experts shall include: current or past council members, or both, representatives from the professional associations of those physician specialties required for the evaluation of medical issues, or physicians deemed to be well qualified in the evaluation of medical issues and having a minimum of 10 years in practice, five years of workers' compensation evaluation, and having served as an agreed medical evaluator at least eight times in the previous 12 months.

(2) Devote at least one-third of total practice time to providing direct medical treatment, or has served as an agreed medical evaluator on eight or more occasions in the 12 months prior to applying to be a qualified medical evaluator.

(3) Meet one of the following requirements:

(A) Is board certified or board qualified, within a time period specified by the council, not to exceed seven years from the time the physician is first board qualified, in his or her specialty by an appropriate board recognized by the council. For a physician with an M.D. or D.O. degree, "board certified" refers to specialty boards recognized by the Medical Board of California or the Osteopathic Medical Board of California and "board qualified" means the physician meets at least one of the following requirements:

(i) Is eligible to sit for the certifying examination of a board recognized by the Medical Board of California or the Osteopathic Medical Board of California.

(ii) Has completed postgraduate training in his or her specialty at an institution recognized by the ACGME or the osteopathic

equivalent.

(iii) Declares under penalty of perjury to the council that he or she wrote 100 or more ratable medical-legal evaluation reports and served as an agreed medical evaluator on 25 or more occasions during each calendar year since 1989.

(iv) Has qualifications that the Medical Board of California and the council both deem to be equivalent or superior to board certification in a specialty.

No physician who failed a specialty certifying examination after 1985 may be certified as a qualified medical evaluator in that specialty, until the physician subsequently passes the certifying examination.

(B) If a chiropractor, is certified in California workers' compensation evaluation by an appropriate California professional chiropractic association or accredited California college recognized by the council, or, if a psychologist, meets one of the following requirements:

(i) Is board certified in clinical psychology by a board recognized by the council.

(ii) Holds a doctoral degree in psychology, or a doctoral degree deemed equivalent for licensure by the Board of Psychology pursuant to Section 2914 of the Business and Professions Code, from a university or professional school recognized by the council and has not less than five years' postdoctoral experience in the diagnosis and treatment of emotional and mental disorders.

(iii) Has not less than five years' postdoctoral experience in the diagnosis and treatment of emotional and mental disorders, and has served as an agreed medical evaluator on eight or more occasions prior to January 1, 1990.

(C) Served as an agreed medical evaluator on eight or more occasions prior to January 1, 1970.

(4) Does not have a conflict of interest as determined under the regulations promulgated by the administrative director pursuant to subdivision (o).

(5) Meets any additional medical or professional standards adopted pursuant to paragraph (6) of subdivision (j).

(c) The council shall promulgate standards for appointment of physicians who are retired or who hold teaching positions who are exceptionally well qualified to serve as a qualified medical evaluator even though they do not otherwise qualify under paragraph (1) of subdivision (b). In no event shall a physician whose full-time practice is limited to the forensic evaluation of disability be appointed as a qualified medical evaluator under this subdivision.

(d) The qualified medical evaluator, upon request, shall be reappointed if he or she meets the qualifications for appointment and meets all of the following criteria:

(1) Has completed all medical evaluations within a reasonable time after assignment.

(2) Has not had more than five of his or her evaluations which

were considered by a workers' compensation judge at a contested hearing rejected by the judge or the appeals board pursuant to this section during the most recent two-year period during which the physician served as a qualified medical evaluator. If the judge or the appeals board rejects the qualified medical evaluator's report on the basis that it fails to meet the minimum standards for those reports established by the Industrial Medical Council or the appeals board, the judge or the appeals board, as the case may be, shall make a specific finding to that effect, and shall give notice to the medical evaluator and to the Industrial Medical Council. Any rejection shall not be counted as one of the five qualifying rejections until the specific finding has become final and time for appeal has expired.

(3) Has completed within the previous 24 months at least 12 hours of continuing education in impairment evaluation or workers' compensation-related medical dispute evaluation approved by the Industrial Medical Council.

(4) Has not been terminated, suspended, placed on probation, or otherwise disciplined by the council during his or her most recent term as a qualified medical evaluator.

If the evaluator does not meet any one of these criteria, the Industrial Medical Council may in its discretion reappoint or deny reappointment according to regulations promulgated by the council. In no event may a physician who does not currently meet the requirements for initial appointment or who has been terminated under subdivision (e) be reappointed.

(e) Except as provided in subdivision (k), the evaluator shall not be terminated during his or her term of office unless his or her licensing authority has suspended, revoked, or terminated his or her license to practice in California.

(f) The Industrial Medical Council shall furnish a physician, upon request, a written statement of its reasons for termination of or for denying appointment or reappointment as a qualified medical evaluator. Upon receipt of a specific response to the statement of reasons, the Industrial Medical Council shall review its decision not to appoint or reappoint the physician or to terminate the physician and shall notify the physician of its final decision within 60 days after receipt of the physician's response.

(g) The council shall establish agreements with qualified medical evaluators to assure the expeditious evaluation of cases assigned to them for comprehensive medical evaluations.

(h) When the injured worker is not represented by an attorney, the medical director appointed pursuant to Section 122, shall assign three-member panels of qualified medical evaluators within five working days after receiving a request for a panel. If a panel is not assigned within 15 working days, the employee shall have the right to obtain a medical evaluation from any qualified medical evaluator of his or her choice. The medical director shall use a random selection method for assigning panels of qualified medical evaluators. The medical director shall select evaluators who are specialists of the

type selected by the employee. The medical director shall advise the employee that he or she should consult with his or her treating physician prior to deciding which type of specialist to request. The Industrial Medical Council shall promulgate a form which shall notify the employee of the physicians selected for his or her panel. The form shall include, for each physician on the panel, the physician's name, address, telephone number, specialty, number of years in practice, and a brief description of his or her education and training, and shall advise the employee that he or she is entitled to receive transportation expenses and temporary disability for each day necessary for the examination. The form shall also state in a clear and conspicuous location and type: "You have the right to consult with an information and assistance officer at no cost to you prior to selecting the doctor to prepare your evaluation, or you may consult with an attorney. If your claim eventually goes to court, the judge will consider the evaluation prepared by the doctor you select to decide your claim." When compiling the list of evaluators from which to select randomly, the medical director shall include all qualified medical evaluators who do not have a conflict of interest in the case, as defined by regulations adopted pursuant to subdivision (o) of the appropriate specialty type as recognized by an appropriate, recognized board within the general geographic area of the employee's residence, and shall have no authority to exclude qualified medical evaluators based on any other criteria. When the medical director determines that an employee has requested an evaluation by a type of specialist which is appropriate for the employee's injury, but there are not enough qualified medical evaluators of that type within the general geographic area of the employee's residence to establish a three-member panel, the medical director shall include sufficient qualified medical evaluators from other geographic areas and the employer shall pay all necessary travel costs incurred in the event the employee selects an evaluator from another geographic area.

(i) The medical director appointed pursuant to Section 122, shall continuously review the quality of comprehensive medical evaluations and reports prepared by agreed and qualified medical evaluators and the timeliness with which evaluation reports are prepared and submitted. The review shall include, but not be limited to, a review of a random sample of reports submitted to the division, and a review of all reports alleged to be inaccurate or incomplete by a party to a case for which the evaluation was prepared. The medical director shall submit to the administrative director an annual report summarizing the results of the continuous review of medical evaluations and reports prepared by agreed and qualified medical evaluators and make recommendations for the improvement of the system of medical evaluations and determinations.

(j) After public hearing pursuant to Section 5307.4, the council shall promulgate rules and regulations concerning the following medical issues:

(1) Standards governing the timeframes within which medical evaluations shall be prepared and submitted by agreed and qualified medical evaluators. The timeframe for initial medical evaluations to be prepared and submitted shall be no more than 30 days after the evaluator has seen the employee or otherwise commenced the medical evaluation procedure. The council shall develop a written policy governing the provision of extensions of the 30-day period in cases where the evaluator has not received test results or consulting physician's evaluations in time to meet the 30-day deadline. The council shall develop timeframes governing availability of qualified medical evaluators for unrepresented employees under Section 4061. These timeframes shall give the employee the right to the addition of a new evaluator to his or her panel, selected at random, for each evaluator not available to see the employee within a specified period of time, but shall also permit the employee to waive this right for a specified period of time thereafter.

(2) Procedures to be followed by all physicians in evaluating the existence and extent of permanent impairment and limitations resulting from an injury. In order to produce complete, accurate, uniform, and replicable evaluations, the procedures shall require that an evaluation of anatomical loss, functional loss, and the presence of physical complaints be supported, to the extent feasible, by medical findings based on standardized examinations and testing techniques generally accepted by the medical community.

(3) Procedures governing the determination of any disputed medical issues.

(4) Procedures to be used in determining the compensability of psychiatric injury. The procedures shall be in accordance with Section 3208.3 and shall require that the diagnosis of a mental disorder be expressed using the terminology and criteria of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Third Edition-Revised, or the terminology and diagnostic criteria of other psychiatric diagnostic manuals generally approved and accepted nationally by practitioners in the field of psychiatric medicine.

(5) Guidelines for the range of time normally required to perform the following:

(A) A medical-legal evaluation that has not been defined and valued pursuant to Section 5307.6. However, the council may recommend guidelines for evaluations that have been defined and valued pursuant to Section 5307.6 for the purpose of governing the appointment, reappointment, and discipline of qualified medical evaluators. The guidelines shall establish minimum times for patient contact in the conduct of the evaluations, and shall be consistent with regulations adopted pursuant to Section 5307.6.

(B) Any treatment procedures that have not been defined and valued pursuant to Section 5307.1.

(C) Any other evaluation procedure requested by the administrative director, the Insurance Commissioner, or the council

itself.

If, without good cause, the council fails to adopt the guidelines required by subparagraph (A) or (B) by March 31, 1994, or fails, without good cause, to adopt a guideline pursuant to subparagraph (C) within six months after a request by the administrative director or the Insurance Commissioner, then the administrative director shall have the authority to adopt the guideline.

(6) Any additional medical or professional standards which a medical evaluator shall meet as a condition of appointment, reappointment, or maintenance in the status of a medical evaluator.

(k) The Industrial Medical Council may, in its discretion, suspend or terminate the privilege of a physician to serve as a qualified medical evaluator if the council, after hearing pursuant to subdivision (l), determines, based on substantial evidence, that a qualified medical evaluator:

(1) Has violated any material statutory or administrative duty.

(2) Has failed to follow the medical procedures or qualifications established by the council pursuant to paragraph (2), (3), (4), or (5) of subdivision (j).

(3) Has failed to comply with the timeframe standards established by the council pursuant to subdivision (j).

(4) Has failed to meet the requirements of subdivision (b) or (c).

(5) Has prepared medical-legal evaluations that fail to meet the minimum standards for those reports established by the Industrial Medical Council or the appeals board.

(l) The council shall cite the qualified medical evaluator for a violation listed in subdivision (k) and shall set a hearing on the alleged violation within 30 days of service of the citation on the qualified medical evaluator. In addition to the authority to terminate or suspend the qualified medical evaluator upon finding a violation listed in subdivision (k), the council may, in its discretion, place a qualified medical evaluator on probation subject to appropriate conditions, including ordering continuing education or training. The council shall report to the appropriate licensing board the name of any qualified medical evaluator who is disciplined pursuant to this subdivision.

(m) The council shall terminate from the list of medical evaluators any physician where licensure has been terminated by the relevant licensing board, or who has been convicted of a misdemeanor or felony related to the conduct of his or her medical practice, or of a crime of moral turpitude. The council shall suspend or terminate as a medical evaluator any physician who has been suspended or placed on probation by the relevant licensing board.

(n) Each qualified medical evaluator shall pay a fee, as determined by the Industrial Medical Council, for appointment or reappointment. Any qualified medical evaluator appointed prior to January 1, 1993, shall also pay the same fee as specified herein. These fees shall be based on a sliding scale as established by the council. All revenues from fees paid under this subdivision shall be deposited

into the Industrial Medicine Fund, which is hereby created for the administration of the Industrial Medical Council. Moneys paid into the Industrial Medicine Fund for the activities of the Industrial Medical Council shall not be used by any other department or agency or for any purpose other than administration of the council. The funds provided to the council from the Industrial Medicine Fund shall not supplant any funds appropriated to the council from the Workers' Compensation Administration Revolving Fund, the General Fund, or any other governmental source. Any future annual appropriation to the council from the Workers' Compensation Administration Revolving Fund, the General Fund, or any other governmental source shall not be less than the amount appropriated or provided during the 1991-92 fiscal year.

(o) An evaluator may not request or accept any compensation or other thing of value from any source that does or could create a conflict with his or her duties as an evaluator under this code. The administrative director, after consultation with the council and the Commission on Health and Safety and Workers' Compensation, shall adopt regulations to implement this subdivision on or before July 1, 1994.

SEC. 3. Section 3209.3 of the Labor Code, as amended by Section 1 of Chapter 824 of the Statutes of 1992, is amended to read:

3209.3. (a) "Physician" includes physicians and surgeons holding an M.D. or D.O. degree, psychologists, acupuncturists, optometrists, dentists, podiatrists, and chiropractic practitioners licensed by California state law and within the scope of their practice as defined by California state law.

(b) "Psychologist" means a licensed psychologist with a doctoral degree in psychology, or a doctoral degree deemed equivalent for licensure by the Board of Psychology pursuant to Section 2914 of the Business and Professions Code, and who either has at least two years of clinical experience in a recognized health setting, or has met the standards of the National Register of the Health Service Providers in Psychology.

(c) When treatment or evaluation for an injury is provided by a psychologist, provision shall be made for appropriate medical collaboration when requested by the employer or the insurer.

(d) "Acupuncturist" means a person who holds an acupuncturist's certificate issued pursuant to Chapter 12 (commencing with Section 4925) of Division 2 of the Business and Professions Code.

(e) Nothing in this section shall be construed to authorize acupuncturists to determine disability for the purposes of Article 3 (commencing with Section 4650) of Chapter 2 of Part 2, or under Section 2708 of the Unemployment Insurance Code.

(f) The administrative director shall evaluate the participation of acupuncturists in the medical treatment of workers' compensation cases and shall report his or her findings to the Legislature on or before December 31, 1995.

(g) This section shall remain in effect until January 1, 1997, and as

of that date is repealed.

SEC. 4. Section 3209.3 of the Labor Code, as amended by Section 2 of Chapter 824 of the Statutes of 1992, is amended to read:

3209.3. (a) "Physician" includes physicians and surgeons holding an M.D. or D.O. degree, psychologists, optometrists, dentists, podiatrists, and chiropractic practitioners licensed by California state law and within the scope of their practice as defined by California state law.

(b) "Psychologist" means a licensed psychologist with a doctoral degree in psychology, or a doctoral degree deemed equivalent for licensure by the Board of Psychology pursuant to Section 2914 of the Business and Professions Code, and who either has at least two years of clinical experience in a recognized health setting, or has met the standards of the National Register of the Health Service Providers in Psychology.

(c) When treatment or evaluation for an injury is provided by a psychologist, provision shall be made for appropriate medical collaboration when requested by the employer or the insurer.

(d) This section shall be operative on January 1, 1997.

SEC. 5. Section 3761 of the Labor Code is amended to read:

3761. (a) An insurer securing an employer's liability under this division shall notify the employer, within 15 days, of each claim for indemnity filed against the employer directly with the insurer if the employer has not timely provided to the insurer a report of occupational injury or occupational illness pursuant to Section 6409.1. The insurer shall furnish an employer who has not filed this report with an opportunity to provide to the insurer, prior to the expiration of the 90-day period specified in Section 5402, all relevant information available to the employer concerning the claim.

(b) An employer shall promptly notify its insurer in writing at any time during the pendency of a claim when the employer has actual knowledge of any facts which would tend to disprove any aspect of the employee's claim. When an employer notifies its insurer in writing that, in the employer's opinion, no compensation is payable to an employee, at the employer's written request, to the appeals board, the appeals board may approve a compromise and release agreement, or stipulation, that provides compensation to the employee only where there is proof of service upon the employer by the insurer, to the employer's last known address, not less than 15 days prior to the appeals board action, of notice of the time and place of the hearing at which the compromise and release agreement or stipulation is to be approved. The insurer shall file proof of this service with the appeals board.

Failure by the insurer to provide the required notice shall not prohibit the board from approving a compromise and release agreement, or stipulation; however, the board shall order the insurer to pay reasonable expenses as provided in Section 5813.

(c) In establishing a reserve pursuant to a claim that affects premiums against an employer, an insurer shall provide the

employer, upon request, a written report of the reserve amount established. The written report shall include, at a minimum, the following:

- (1) Estimated medical-legal costs.
- (2) Estimated vocational rehabilitation costs, if any.
- (3) Itemization of all other estimated expenses to be paid from the

reserve.

(d) When an employer properly provides notification to its insurer pursuant to subdivision (b), and the appeals board thereafter determines that no compensation is payable under this division, the insurer shall reimburse the employer for any premium paid solely due to the inclusion of the successfully challenged payments in the calculation of the employer's experience modification. The employee shall not be required to refund the challenged payment.

SEC. 6. Section 4600.5 of the Labor Code is amended to read:

4600.5. (a) Any health care service plan licensed pursuant to the Knox-Keene Health Care Service Plan Act, a disability insurer licensed by the Department of Insurance, or any entity, including, but not limited to, workers' compensation insurers and third-party administrators authorized as a workers' compensation health care provider organization by the Commissioner of Corporations, may make written application to the administrative director to become certified as a health care organization to provide health care to injured employees for injuries and diseases compensable under this article.

(b) Each application for certification shall be accompanied by a reasonable fee prescribed by the administrative director. A certificate is valid for such period as the director may prescribe unless sooner revoked or suspended.

(c) If the health care organization is a health care service plan licensed pursuant to the Knox-Keene Health Care Service Plan Act, the administrative director shall certify the plan to provide health care pursuant to Section 4600.3 if the director finds that the plan is in good standing with the Department of Corporations and meets the following additional requirements:

(1) Proposes to provide all medical and health care services that may be required by this article.

(2) Provides a program involving cooperative efforts by the employees, the employer, and the health plan to promote workplace health and safety, consultative and other services, and early return to work for injured employees.

(3) Proposes a timely and accurate method to meet the requirements set forth by the administrative director for all carriers of workers' compensation coverage to report necessary information regarding medical and health care service cost and utilization, rates of return to work, average time in medical treatment, and other measures as determined by the administrative director to enable the director to determine the effectiveness of the plan.

(4) Agrees to provide the administrative director with

information, reports, and records prepared and submitted to the Department of Corporations in compliance with the Knox-Keene Health Care Service Plan Act, relating to financial solvency, provider accessibility, peer review, utilization review, and quality assurance, upon request, if the administrative director determines the information is necessary to verify that the plan is providing medical treatment to injured employees in compliance with the requirements of this code.

Disclosure of peer review proceedings and records to the administrative director shall not alter the status of the proceedings or records as privileged and confidential communications pursuant to Sections 1370 and 1370.1 of the Health and Safety Code.

(5) Demonstrates the capability to provide occupational medicine and related disciplines.

(6) Complies with any other requirement the administrative director determines is necessary to provide medical services to injured employees consistent with the intent of this article, including, but not limited to, a written patient grievance policy.

(d) If the health care organization is a disability insurer licensed by the Department of Insurance, the administrative director shall certify the plan to provide health care pursuant to Section 4600.3 if the director finds that the plan is in good standing with the Department of Insurance and in compliance with subdivision (d) of Section 10133 and Section 10133.5 of the Insurance Code, and meets the following additional requirements:

(1) Proposes to provide all medical and health care services that may be required by this article.

(2) Provides a program involving cooperative efforts by the employees, the employer, and the health plan to promote workplace health and safety, consultative and other services, and early return to work for injured employees.

(3) Proposes a timely and accurate method to meet the requirements set forth by the administrative director for all carriers of workers' compensation coverage to report necessary information regarding medical and health care service cost and utilization, rates of return to work, average time in medical treatment, and other measures as determined by the administrative director to enable the director to determine the effectiveness of the plan.

(4) Agrees to provide the administrative director with information, reports, and records prepared and submitted to the Department of Insurance in compliance with the Insurance Code relating to financial solvency, provider accessibility, peer review, utilization review, and quality assurance, upon request, if the administrative director determines the information is necessary to verify that the plan is providing medical treatment to injured employees consistent with the intent of this article.

Disclosure of peer review proceedings and records to the administrative director shall not alter the status of the proceedings or records as privileged and confidential communications pursuant

to subdivision (d) of Section 10133 of the Insurance Code.

(5) Demonstrates the capability to provide occupational medicine and related disciplines.

(6) Complies with any other requirement the administrative director determines is necessary to provide medical services to injured employees consistent with the intent of this article, including, but not limited to, a written patient grievance policy.

(e) If the health care organization is a workers' compensation health care provider organization authorized by the Department of Corporations, the administrative director shall certify the plan to provide health care pursuant to Section 4600.3 if the director finds that the plan is in good standing with the Department of Corporations, and it meets the following additional requirements:

(1) Proposes to provide all medical and health care services that may be required by this article.

(2) Provides a program involving cooperative efforts by the employees, the employer, and the health plan to promote workplace health and safety, consultative and other services, and early return to work for injured employees.

(3) Proposes a timely and accurate method to meet the requirements set forth by the administrative director for all carriers of workers' compensation coverage to report necessary information regarding medical and health care service cost and utilization, rates of return to work, average time in medical treatment, and other measures as determined by the administrative director to enable the director to determine the effectiveness of the plan.

(4) Agrees to provide the administrative director with information, reports, and records prepared and submitted to the Department of Corporations in compliance with Section 54 and Part 3.2 (commencing with Section 5150) relating to financial solvency, provider accessibility, peer review, utilization review, and quality assurance, upon request, if the administrative director determines the information is necessary to verify that the plan is providing medical treatment to injured employees consistent with the intent of this article.

Disclosure of peer review proceedings and records to the administrative director shall not alter the status of the proceedings or records as privileged and confidential communications pursuant to subdivision (d) of Section 10133 of the Insurance Code.

(5) Demonstrates the capability to provide occupational medicine and related disciplines.

(6) Complies with any other requirement the administrative director determines is necessary to provide medical services to injured employees consistent with the intent of this article, including, but not limited to, a written patient grievance policy.

(f) The provisions of this section shall not affect the confidentiality or admission in evidence of a claimant's medical treatment records.

(g) Charges for services arranged for or provided by health care

service plans certified by this section and which are paid on a capitated basis shall not be subject to the schedules adopted by the administrative director pursuant to Section 5307.1.

(h) Nothing in this section shall be construed to expand or constrict any requirements imposed by law on a health care service plan or insurer when operating as other than a health care organization pursuant to this section.

(i) In consultation with interested parties, including the Department of Corporations and the Department of Insurance, the administrative director shall adopt rules necessary to carry out this section.

(j) The administrative director shall refuse to certify or may revoke or suspend the certification of any health care organization under this section if the director finds that:

(1) The plan for providing medical treatment fails to meet the requirements of this section.

(2) A health care service plan licensed by the Department of Corporations, a workers' compensation health care provider organization authorized by the Department of Corporations, or a carrier licensed by the Department of Insurance is not in good standing with its licensing agency.

(3) Services under the plan are not being provided in accordance with the terms of a certified plan.

(k) (1) When an injured employee requests chiropractic treatment for work-related injuries, the health care organization shall provide the injured worker with access to the services of a chiropractor pursuant to guidelines for chiropractic care established by paragraph (2). Within five working days of the employee's request to see a chiropractor, the health care organization and any person or entity who directs the kind or manner of health care services for the plan shall refer an injured employee to an affiliated chiropractor for work-related injuries that are within the guidelines for chiropractic care established by paragraph (2). Chiropractic care rendered in accordance with guidelines for chiropractic care established pursuant to paragraph (2) shall be provided by duly licensed chiropractors affiliated with the plan.

(2) The health care organization shall establish guidelines for chiropractic care in consultation with affiliated chiropractors who are participants in the health care organization's utilization review process for chiropractic care, which may include qualified medical evaluators knowledgeable in the treatment of chiropractic conditions. The guidelines for chiropractic care shall, at a minimum, explicitly require the referral of any injured employee who so requests to an affiliated chiropractor for the evaluation or treatment, or both of neuromusculoskeletal conditions.

(3) Whenever a dispute concerning the appropriateness or necessity of chiropractic care for work-related injuries arises, the dispute shall be resolved by the health care organization's utilization review process for chiropractic care in accordance with the health

care organization's guidelines for chiropractic care established by paragraph (2).

Chiropractic utilization review for work-related injuries shall be conducted in accordance with the health care organization's approved quality assurance standards and utilization review process for chiropractic care. Chiropractors affiliated with the plan shall have access to the health care organization's provider appeals process and, in the case of chiropractic care for work-related injuries, the review shall include review by a chiropractor affiliated with the health care organization, as determined by the health care organization.

(4) The health care organization shall inform employees of the procedures for processing and resolving grievances, including those related to chiropractic care, including the location and telephone number where grievances may be submitted.

(5) All guidelines for chiropractic care and utilization review shall be consistent with the standards of this code that require care to cure or relieve the effects of the industrial injury.

(l) Individually identifiable medical information on patients submitted to the division shall not be subject to the Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

SEC. 7. Section 4643 of the Labor Code is amended to read:

4643. If the employee unreasonably fails to cooperate in the provision of vocational rehabilitation services, unreasonably fails to cooperate in the development or implementation of a vocational rehabilitation plan, or unreasonably fails to cooperate in completing an approved vocational rehabilitation plan, the employee shall not be entitled to receive that portion of the maintenance allowance payable under paragraph (1) of subdivision (d) of Section 139.5 for the period of unreasonable failure. The employer shall provide the employee with written notice of the employer's intention to withhold payment, the reasons therefor, and the employee's right to object thereto within 10 days of the date the notice was received or served.

If the employee objects to the employer's stated intention to withhold payment, the administrative director shall conduct an expedited conference to determine if the employee is entitled to receive the payments. A copy of the determination shall be served on the employee and employer within 10 days of the employee's objection. The employer shall continue payment of that portion of the maintenance allowance due under paragraph (1) of subdivision (d) of Section 139.5 until receipt of the determination.

SEC. 8. Section 5401 of the Labor Code is amended to read:

5401. (a) Within one working day of receiving notice or knowledge of injury under Section 5400 or 5402, which injury results in lost time beyond the date of injury or which results in medical treatment beyond first aid, the employer shall provide, personally or by first-class mail, a claim form and a notice of potential eligibility for benefits under this division to the injured employee, or in the case

of death, to his or her dependents. As used in this subdivision, "first aid" means any one-time treatment of minor scratches, cuts, burns, splinters, or other minor industrial injury. "Minor industrial injury" shall not include serious exposure to a hazardous substance as defined in subdivision (i) of Section 6302. The claim form shall request the injured employee's name and address, social security number, the time and address where the injury occurred, and the nature of and part of the body affected by the injury. The notice shall include a description of the procedures and assistance available to the employee on his or her own behalf, the procedure to be used to commence proceedings for the collection of compensation for the purposes of this chapter, the telephone number of the division's information and assistance services, and a statement that the employee has a right to consult an attorney or information and assistance officer, or both, for assistance. Claims forms shall be available at district offices of the Employment Development Department and the division. Claims forms may be made available to the employee from any other source.

(b) The completed claim form shall be filed with the employer by the injured employee, or, in the case of death, by a dependent of the injured employee, or by an agent of the employee or dependent. Except as provided in subdivision (c), a claim form is deemed filed when it is personally delivered to the employer or received by the employer by first-class or certified mail. A dated copy of the completed form shall be provided by the employer to the employer's insurer and to the employee, dependent, or agent who filed the claim form.

(c) The claim form shall be filed with the employer prior to the injured employee's entitlement to late payment supplements under subdivision (d) of Section 4650, or prior to the injured employee's request for a medical evaluation under Section 4060, 4061, or 4062. Filing of the claim form with the employer shall toll, for injuries occurring on or after January 1, 1994, the time limitations set forth in Sections 5405 and 5406 until the claim is denied by the employer or the injury becomes presumptively compensable pursuant to Section 5402. For purposes of this subdivision, a claim form is deemed filed when it is personally delivered to the employer or mailed to the employer by first-class or certified mail.

SEC. 9. Section 5500 of the Labor Code is amended to read:

5500. No pleadings other than the application and answer shall be required. Both shall be in writing and shall conform to forms prescribed by the appeals board in its rules of practice and procedure, simply but clearly and completely delineating all relevant matters of agreement and all issues of disagreement within the jurisdiction of the appeals board, and providing for the furnishing of any additional information as the appeals board may properly determine necessary to expedite its hearing and determination of the claim.

The amendment of this section made during the 1993 portion of

the 1993–94 Regular Session shall apply to all applications filed on or after January 1, 1994.

Notwithstanding Section 5401, except where a claim form has been filed for an injury occurring on or after January 1, 1990, and before January 1, 1994, the filing of an application for adjudication and not the filing of a claim form shall establish the jurisdiction of the appeals board and shall commence proceedings before the appeals board for the collection of benefits.

SEC. 10. Section 5502 of the Labor Code is amended to read:

5502. (a) Except as provided in subdivisions (b) and (d), the hearing shall be held not less than 10 days, and not more than 60 days, after the date a declaration of readiness to proceed, on a form prescribed by the Workers' Compensation Appeals Board, is filed. Where a claim form has been filed for an injury occurring on or after January 1, 1990, and before January 1, 1994, an application for adjudication shall accompany the declaration of readiness to proceed.

(b) The administrative director shall establish a priority calendar for issues requiring an expedited hearing and decision. A hearing shall be held and a determination as to the rights of the parties shall be made and filed within 30 days after the declaration of readiness to proceed is filed if the issues in dispute are any of the following:

(1) The employee's entitlement to medical treatment pursuant to Section 4600.

(2) The employee's entitlement to, or the amount of, temporary disability indemnity payments.

(3) The employee's entitlement to vocational rehabilitation services, or the termination of an employer's liability to provide these services to an employee.

(4) The employee's entitlement to compensation from one or more responsible employers when two or more employers dispute liability as among themselves.

(5) Any other issues requiring an expedited hearing and determination as prescribed in rules and regulations of the administrative director.

(c) The administrative director shall report quarterly to the Governor and to the Legislature concerning the frequency and types of issues which are not heard and decided within the period prescribed in this section and the reasons therefor.

(d) (1) In all cases, a mandatory settlement conference shall be conducted not less than 10 days, and not more than 30 days, after the filing of a declaration of readiness to proceed. If the dispute is not resolved, the regular hearing shall be held within 75 days after the declaration of readiness to proceed is filed.

(2) The settlement conference shall be conducted by a workers' compensation judge or by a referee who is eligible to be a workers' compensation judge or eligible to be an arbitrator under Section 5270.5. At the mandatory settlement conference, the referee or workers' compensation judge shall have the authority to resolve the

dispute, including the authority to approve a compromise and release or issue a stipulated finding and award, and if the dispute cannot be resolved, to frame the issues and stipulations for trial. The appeals board shall adopt any regulations needed to implement this subdivision. The presiding workers' compensation judge shall supervise settlement conference referees in the performance of their judicial functions under this subdivision.

(3) If the claim is not resolved at the mandatory settlement conference, the parties shall file a pretrial conference statement noting the specific issues in dispute, each party's proposed permanent disability rating, and listing the exhibits, and disclosing witnesses. Discovery shall close on the date of the mandatory settlement conference. Evidence not disclosed or obtained thereafter shall not be admissible unless the proponent of the evidence can demonstrate that it was not available or could not have been discovered by the exercise of due diligence prior to the settlement conference.

(e) In cases involving the Director of the Department of Industrial Relations in his or her capacity as administrator of the Uninsured Employers Fund, this section shall not apply unless proof of service, as specified in paragraph (1) of subdivision (d) of Section 3716 has been filed with the appeals board and provided to the Director of Industrial Relations, valid jurisdiction has been established over the employer, and the fund has been joined.

(f) Except as provided in subdivision (a) and in Section 4065, the provisions of this section shall apply irrespective of the date of injury.

CHAPTER 1119

An act to amend Section 2056 of, and to add Article 1.5 (commencing with Section 510) to Chapter 1 of Division 2 of, the Business and Professions Code, relating to healing arts.

[Approved by Governor September 29, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Article 1.5 (commencing with Section 510) is added to Chapter 1 of Division 2 of the Business and Professions Code, to read:

Article 1.5. Advocacy for Appropriate Health Care

510. (a) The purpose of this section is to provide protection against retaliation for health care practitioners who advocate for appropriate health care for their patients pursuant to *Wickline v. State of California* 192 Cal. App. 3d 1630.

(b) It is the public policy of the State of California that a health care practitioner be encouraged to advocate for appropriate health care for his or her patients. For purposes of this section, "to advocate for appropriate health care" means to appeal a payer's decision to deny payment for a service pursuant to the reasonable grievance or appeal procedure established by a medical group, independent practice association, preferred provider organization, foundation, hospital medical staff and governing body, or payer, or to protest a decision, policy, or practice that the health care practitioner, consistent with that degree of learning and skill ordinarily possessed by reputable health care practitioners with the same license or certification and practicing according to the applicable legal standard of care, reasonably believes impairs the health care practitioner's ability to provide appropriate health care to his or her patients.

(c) The application and rendering by any individual, partnership, corporation, or other organization of a decision to terminate an employment or other contractual relationship with or otherwise penalize a health care practitioner principally for advocating for appropriate health care consistent with that degree of learning and skill ordinarily possessed by reputable health care practitioners with the same license or certification and practicing according to the applicable legal standard of care violates the public policy of this state.

(d) This section shall not be construed to prohibit a payer from making a determination not to pay for a particular medical treatment or service, or the services of a type of health care practitioner, or to prohibit a medical group, independent practice association, preferred provider organization, foundation, hospital medical staff, hospital governing body acting pursuant to Section 809.05, or payer from enforcing reasonable peer review or utilization review protocols or determining whether a health care practitioner has complied with those protocols.

(e) (1) Except as provided in paragraph (2), appropriate health care in a hospital licensed pursuant to Section 1250 of the Health and Safety Code shall be defined by the appropriate hospital committee and approved by the hospital medical staff and the governing body, consistent with that degree of learning and skill ordinarily possessed by reputable health care practitioners with the same license or certification and practicing according to the applicable legal standard of care.

(2) To the extent the issue is under the jurisdiction of the medical staff and its committees, appropriate health care in a hospital licensed pursuant to Section 1250 of the Health and Safety Code shall be defined by the hospital medical staff and approved by the governing body, consistent with that degree of learning and skill ordinarily possessed by reputable health care practitioners with the same license or certification and practicing according to the applicable legal standard of care.

(f) Nothing in this section shall be construed to prohibit the governing body of a hospital from taking disciplinary actions against a health care practitioner as authorized by Sections 809.05, 809.4, and 809.5.

(g) Nothing in this section shall be construed to prohibit the appropriate licensing authority from taking disciplinary actions against a health care practitioner.

(h) For purposes of this section, "health care practitioner" means a person who is described in subdivision (f) of Section 900 and who is either (1) a licentiate as defined in Section 805, or (2) a party to a contract with a payer whose decision, policy, or practice is subject to the advocacy described in subdivision (b), or (3) an individual designated in a contract with a payer whose decision, policy, or practice is subject to the advocacy described in subdivision (b), where the individual is granted the right to appeal denials of payment or authorization for treatment under the contract.

(i) Nothing in this section shall be construed to revise or expand the scope of practice of any health care practitioner, or to revise or expand the types of health care practitioners who are authorized to obtain medical staff privileges or to submit claims for reimbursement to payers.

(j) The protections afforded health care practitioners by this section shall be in addition to the protections available under any other law of this state.

SEC. 2. Section 2056 of the Business and Professions Code is amended to read:

2056. (a) The purpose of this section is to provide protection against retaliation for physicians who advocate for medically appropriate health care for their patients pursuant to *Wickline v. State of California* 192 Cal. App. 3d 1630.

(b) It is the public policy of the State of California that a physician and surgeon be encouraged to advocate for medically appropriate health care for his or her patients. For purposes of this section, "to advocate for medically appropriate health care" means to appeal a payor's decision to deny payment for a service pursuant to the reasonable grievance or appeal procedure established by a medical group, independent practice association, preferred provider organization, foundation, hospital medical staff and governing body, or payer, or to protest a decision, policy, or practice that the physician, consistent with that degree of learning and skill ordinarily possessed by reputable physicians practicing according to the applicable legal standard of care, reasonably believes impairs the physician's ability to provide medically appropriate health care to his or her patients.

(c) The application and rendering by any person of a decision to terminate an employment or other contractual relationship with or otherwise penalize a physician and surgeon principally for advocating for medically appropriate health care consistent with that degree of learning and skill ordinarily possessed by reputable

physicians practicing according to the applicable legal standard of care violates the public policy of this state.

(d) This section shall not be construed to prohibit a payer from making a determination not to pay for a particular medical treatment or service, or to prohibit a medical group, independent practice association, preferred provider organization, foundation, hospital medical staff, hospital governing body acting pursuant to Section 809.05, or payer from enforcing reasonable peer review or utilization review protocols or determining whether a physician has complied with those protocols.

(e) Medically appropriate health care in a hospital licensed pursuant to Section 1250 of the Health and Safety Code shall be defined by the hospital medical staff and approved by the governing body, consistent with that degree of learning and skill ordinarily possessed by reputable physicians practicing according to the applicable legal standard of care.

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

(g) Nothing in this section shall be construed to prohibit the Medical Board of California from taking disciplinary actions against a physician and surgeon under Article 12 (commencing with Section 2220).

(h) For purposes of this section, "person" has the same meaning as set forth in Section 2032.

CHAPTER 1120

An act to amend Sections 3924 and 3940 of the Business and Professions Code, relating to nursing home administrators, and making an appropriation therefor.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 3924 of the Business and Professions Code is amended to read:

3924. (a) Every holder of a nursing home administrator's license shall reregister biennially, on dates specified by the board, by making application for reregistration. In the event that the license of an individual is not reregistered within three years from the date of expiration, and all accrued and unpaid renewal fees and penalty fees required by this chapter are not paid, the license shall lapse and that individual shall again apply for licensing and meet all requirements of this chapter as for a new applicant.

(b) A condition of reregistration shall be the presentation of proof by the licensee that he or she has attended the number of classroom hours of approved continuing educational programs, classes, seminars, or proceedings required by the regulations promulgated by the board, at least 25 percent of which shall be in the area of aging and patient care. The board, at its discretion, may except from continuing education requirements, the licensees who for reasons of health, military service, or other good cause cannot meet those requirements. Each such waiver granted shall be for the current reregistration period only.

(c) A licensee may reregister pursuant to this chapter, although he or she may not currently be actively engaged in nursing home administration.

SEC. 2. Section 3940 of the Business and Professions Code is amended to read:

3940. The fees prescribed by this chapter shall be set by the board in accordance with the following schedule:

(a) The application fee for reviewing an applicant's eligibility to take the examination shall be twenty-five dollars (\$25).

(b) The application fee for persons applying for licensure under Section 3925 shall be fifty dollars (\$50).

(c) The application fee for the administrator-in-training program shall be not more than one hundred dollars (\$100).

(d) The examination fee shall be the actual cost to the board for purchasing, grading, and administering the examination, as established by regulation. The examination fees shall be not more than the following:

(1) Two hundred fifty dollars (\$250) for an automated national examination, or one hundred seventy-five dollars (\$175) for a written national examination.

(2) One hundred ninety dollars (\$190) for an automated state examination or one hundred forty dollars (\$140) for a written state examination.

(e) The fee for an initial license shall be not more than one hundred ninety dollars (\$190).

(f) The renewal fee for an active license shall be not more than one hundred ninety dollars (\$190).

(g) The delinquency fee shall be twenty-five dollars (\$25).

(h) The renewal fee for an inactive license shall be not more than one hundred ninety dollars (\$190).

(i) The duplicate license fee shall be twenty-five dollars (\$25).

(j) The fee for endorsement of credentials to another licensing authority of another state shall be twenty-five dollars (\$25).

(k) The preceptor certification fee shall be not more than twenty-five dollars (\$25) for each three-year period.

(l) The biennial fee for approval of a continuing education provider shall be not more than one hundred fifty dollars (\$150).

(m) The biennial fee for approval of a continuing education course shall be not more than fifteen dollars (\$15).

The board shall establish the fees, within the limits prescribed in this section, in the amounts it determines are reasonably necessary to provide sufficient funds to carry out the purpose of this chapter. It is the intent of the board to charge only those fees necessary to implement the board's statutory mandate for licensing and enforcement consistent with Section 128.5. The board shall make every effort to reduce the renewal fee, provided that the reduction shall not impede the board's ability to carry out its statutory duties as set forth in Section 3916.

CHAPTER 1121

An act to amend Sections 1570.2 and 1575.2 of, and to repeal Section 1423.5 of, the Health and Safety Code, relating to care facilities.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 1423.5 of the Health and Safety Code is repealed.

SEC. 2. Section 1570.2 of the Health and Safety Code is amended to read:

1570.2. The Legislature hereby finds and declares that there exists a pattern of overutilization of long-term institutional care for elderly persons, and that there is an urgent need to establish and to continue a community-based system of quality adult day health care which will enable elderly persons to maintain maximum independence. While recognizing that there continues to be a substantial need for facilities providing custodial care, overreliance on this type of care has proven to be a costly panacea in both financial and human terms, often traumatic, and destructive of continuing family relationships and the capacity for independent living.

It is, therefore, the intent of the Legislature in enacting this chapter and related provisions to provide for the development of policies and programs that will accomplish the following:

(a) Assure that elderly persons are not institutionalized inappropriately or prematurely.

(b) Provide a viable alternative to institutionalization for those elderly persons who are capable of living at home with the aid of appropriate health care or rehabilitative and social services.

(c) Establish adult day health centers in the community for this purpose, that will be easily accessible to all participants, including the economically disadvantaged elderly person, and that will provide outpatient health, rehabilitative, and social services necessary to permit the participants to maintain personal independence and lead meaningful lives.

(d) Include the services of adult day health centers as a benefit under the Medi-Cal Act, that shall be an initial and integral part in the development of an overall plan for a coordinated, comprehensive continuum of optional long-term care services based upon appropriate need.

(e) Establish a rural alternative adult day health care program designed to meet the special needs and requirements of rural areas to enable the implementation of subdivisions (a) through (d), inclusive, for all Californians in need of those services.

(f) Ensure that all laws, regulations, and procedures governing adult day health care be enforced equitably regardless of organizational sponsorship and that all program flexibility provisions be administered equitably.

(g) Support the role of the Adult Day Health Care Planning Council in ensuring accountability to the community and approving equitable distribution of adult day health care centers including the definition of service areas.

SEC. 3. Section 1575.2 of the Health and Safety Code is amended to read:

1575.2. An applicant for initial licensure as an adult day health center shall file with the state department, pursuant to its regulations, an application on forms furnished by the department, that shall include, but not be limited to, the following:

(a) Evidence satisfactory to the state department that the applicant, its directors, officers, and the person designated to manage the day-to-day affairs of the proposed adult day health center are of reputable and responsible character.

(b) Evidence satisfactory to the state department of the ability of the applicant to comply with the provisions of this chapter and of rules and regulations adopted pursuant thereto by the state department.

(c) Any other information as may be required by the state department for the proper administration and enforcement of this chapter.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1122

An act to amend Sections 1247.6 and 1300 of, and to add and repeal Sections 1247.63, 1247.64, 1247.66, and 1247.95 of, the Business and Professions Code, relating to hemodialysis.

[Approved by Governor September 29, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 1247.6 of the Business and Professions Code is amended to read:

1247.6. (a) Rather than conduct a training and testing program, a hemodialysis clinic or unit may employ hemodialysis technicians who meet one or more of the following requirements:

(1) Are certified by the department as having been certified by the Board of Nephrology Examination for Nurses and Technicians (BONENT).

(2) Are certified by the department as having completed a department-approved training and testing program in a hemodialysis clinic or unit.

(3) Are certified by the department as being graduates of a local training and testing program operated by an accredited college or accredited university. As used in this article, accredited has the same meaning as defined in subdivision (g) of Section 94302 of the Education Code.

(4) Are certified by the department as hemodialysis technicians on or before the effective date of regulations adopted pursuant to Section 1247.4.

(b) A hemodialysis clinic or unit that conducts a training and testing program pursuant to Section 1247.5 also may employ persons described in subdivision (a).

(c) This article does not apply to home dialysis patients, or patient helpers not employed by the licensed facility, who have undergone a home dialysis training program operated by a licensed clinic or hospital as defined in Sections 1204 and 1250 of the Health and Safety Code and have been certified by the medical director of the facility as being competent to perform home dialysis treatment.

SEC. 2. Section 1247.63 is added to the Business and Professions Code, immediately after Section 1247.6, to read:

1247.63. (a) Certification of a hemodialysis technician issued by the department pursuant to subdivision (a) of Section 1247.6 shall be valid for four years.

(b) Those hemodialysis technicians certified by the department or the Board of Nephrology Examination for Nurses and Technicians (BONENT) before January 1, 1995, shall, before January 1, 1996, apply to renew their certification, or in the case of those technicians certified by the Board of Nephrology Examination for Nurses and

Technicians (BONENT) obtain department certification, by submitting the fee required by subdivision (n) of Section 1300 and proof of previous certification. The department shall automatically renew the certification of those hemodialysis technicians who were certified before January 1, 1995, and who apply for renewal pursuant to this subdivision.

(c) For renewals occurring on or after January 1, 1996, a hemodialysis technician applying for renewal of his or her certification shall submit proof that he or she has obtained 30 hours of in-service training or continuing education in dialysis care or general health care as a requirement for the renewal of his or her certification.

(d) This section shall become inoperative on July 1, 1999, and, as of January 1, 2000, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2000, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 1247.64 is added to the Business and Professions Code, immediately after Section 1247.63, to read:

1247.64. A hemodialysis technician may obtain the in-service training or continuing education required by subdivision (c) of Section 1247.63 from one or more of the following sources:

(a) Health-related courses offered by accredited postsecondary institutions.

(b) Health-related courses offered by continuing education providers approved by the California Board of Registered Nursing.

(c) Health-related courses offered by recognized health associations if the department determines the courses to be acceptable.

(d) Health-related, employer-sponsored in-service training or continuing education programs.

(e) This section shall become inoperative on July 1, 1999, and, as of January 1, 2000, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2000, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 4. Section 1247.66 is added to the Business and Professions Code, immediately after Section 1247.64, to read:

1247.66. (a) The department may deny, suspend, or revoke the certification of a hemodialysis technician if it finds that the hemodialysis technician is not in compliance with this article, or any regulations adopted by the department to administer this article.

(b) The department may deny, suspend, or revoke the certification of a hemodialysis technician for any of the following causes:

(1) Unprofessional conduct, which includes incompetence or gross negligence in carrying out his or her usual functions.

(2) Procuring a certificate by fraud, misrepresentation, or mistake.

(3) Making or giving any false statement or information in conjunction with the application for issuance or renewal of a

certificate.

(4) Conviction of a crime substantially related to the qualifications, functions, and duties of a hemodialysis technician in which event the record of the conviction shall be conclusive evidence thereof.

(c) In addition to other acts constituting unprofessional conduct within the meaning of this article, all of the following constitute unprofessional conduct:

(1) Conviction for, or use of, any narcotic drug, as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug, as defined in Article 7 (commencing with Section 4211) of Chapter 9, or alcoholic beverages, to an extent or in a manner dangerous or injurious to the hemodialysis technician or any other person, or the public, to the extent that this use impairs the ability to conduct, with safety to the public, the practice of a hemodialysis technician.

(2) Abuse, whether verbal, physical, or mental, of a patient in any setting where health care is being rendered.

(d) Proceedings to deny, suspend, or revoke a certification under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(e) This section shall become inoperative on July 1, 1999, and, as of January 1, 2000, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2000, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 4.5. Section 1247.95 is added to the Business and Professions Code, immediately following Section 1247.9, to read:

1247.95. (a) Certification of hemodialysis technicians shall be subject to the review of the Joint Legislative Sunset Review Committee as described in Division 1.2 (commencing with Section 473).

(b) The department shall submit the report required by Section 473.2, in accordance with the time limits set forth in that section, as if this article were scheduled to become inoperative on July 1, 1999, and would be repealed as of January 1, 2000, as described in Section 473.1.

(c) This section shall only become operative if Senate Bill 2036 is enacted during the 1993-94 Regular Session, adds Division 1.2 (commencing with Section 473), and becomes effective on or before January 1, 1995.

(d) This section shall become inoperative on July 1, 1999, and, as of January 1, 2000, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2000, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 5. Section 1300 of the Business and Professions Code is amended to read:

1300. The amount of application and license fees under this chapter shall be as follows:

(a) The application fee for a histocompatibility laboratory director's, clinical laboratory bioanalyst's, clinical chemist's, clinical microbiologist's, or clinical laboratory toxicologist's license is thirty-eight dollars (\$38). This fee shall be sixty-three dollars (\$63) commencing on July 1, 1983.

(b) The annual renewal fee for a histocompatibility laboratory director's, clinical laboratory bioanalyst's, clinical chemist's, clinical microbiologist's, or clinical laboratory toxicologist's license is thirty-eight dollars (\$38). This fee shall be sixty-three dollars (\$63) commencing on July 1, 1983.

(c) The application fee for a clinical laboratory technologist's or limited technologist's license is twenty-three dollars (\$23). This fee shall be thirty-eight dollars (\$38) commencing on July 1, 1983.

(d) The application and annual renewal fee for a cytotechnologist's license shall be fifty dollars (\$50) commencing on January 1, 1991.

(e) The annual renewal fee for a clinical laboratory technologist's or limited technologist's license is fifteen dollars (\$15). This fee shall be twenty-five dollars (\$25) commencing on July 1, 1983.

(f) The application fee for a clinical laboratory license is six hundred dollars (\$600); provided, however, that when the applicant is the state or any agency or official thereof, or a district, city, county, or city and county, or an official thereof, no fee shall be required.

(g) The annual renewal fee for a clinical laboratory license is five hundred fifty-seven dollars (\$557); provided, however, that when the applicant is the state or any agency or official thereof, or a district, city, county, or city and county, or official thereof, no fee shall be required.

(h) In addition, clinical laboratories providing cytology services shall pay an annual fee which shall be set by the department in an amount needed to meet but not exceed the department's costs of proficiency testing and special site surveys for these laboratories, and which shall be based upon the volume of cytologic slides examined by a laboratory. If the amount collected is less than or exceeds the amount needed for these purposes, the amount of fees collected from those laboratories in the following year shall be adjusted accordingly.

(i) The application fee for a trainee's license is eight dollars (\$8). This fee shall be thirteen dollars (\$13) commencing on July 1, 1983.

(j) The annual renewal fee for a trainee's license is five dollars (\$5). This fee shall be eight dollars (\$8) commencing on July 1, 1983.

(k) The application fee for a duplicate license is three dollars (\$3). This fee shall be five dollars (\$5) commencing on July 1, 1983.

(l) The delinquency fee is equal to the annual renewal fee.

(m) The director may establish a fee for examinations required under this chapter. The fee shall not exceed the total cost to the department in conducting the examination.

(n) The certification and renewal fees for hemodialysis technicians certified under subdivision (a) of Section 1247.6 shall be fifty dollars (\$50). This subdivision shall become inoperative on July

1, 1999, and shall have no effect after that date.

CHAPTER 1123

An act to amend Section 17537.2 of, to add Section 17538.8 to, and to add and repeal Article 2.6 (commencing with Section 17550) and Article 2.7 (commencing with Section 17550.35) of Chapter 1 of Part 3 of Division 7 of, the Business and Professions Code, relating to travel.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 17537.2 of the Business and Professions Code is amended to read:

17537.2. The following, when used as part of an advertising plan or program defined in Section 17537.1, are deceptive and constitute unfair trade practices:

(a) When, in order to utilize the incentive, the recipient is requested to pay any money to any person or entity named or referred to in the offer, or to purchase, rent, or otherwise pay that person or entity for any product or service including a deposit, whether returnable or not, whether payment is for an item, a service, shipping, handling, insurance or payment for anything.

Notwithstanding the preceding paragraph, when the offered incentive is a certificate or coupon redeemable for transportation, accommodations, recreation, vacation, entertainment, or like services, the offer may place a condition on the use of the incentive which requires the recipient to pay directly to the transportation company, the accommodation, recreation, vacation or entertainment facility, or similar direct provider of like services, a refundable deposit, not to exceed fifty dollars (\$50), to reserve space availability or admission, only if the deposit shall be returned in United States dollars immediately upon the recipient's arrival at the location of the provider to whom the recipient paid the deposit. If the incentive is such a certificate or coupon, and if government-imposed taxes directly related to the service being provided are not included in the incentive, the offer itself, in close proximity to the description of the incentive which is evidenced by the certificate or coupon, shall disclose those government-imposed taxes which will be the recipient's responsibility and the approximate dollar amount of those taxes. A deposit from the recipient may be collected to cover the cost of those government-imposed taxes.

(b) Stating or implying in the offer that the recipient is one of a selected group to receive a particular incentive or one or more of a group of incentives, without clearly and conspicuously disclosing in

close proximity to the statement or implied statement of selection the total number of persons in that select group or the odds of receiving the incentive or incentives. Statements of selection which require such disclosure include such phrases as "you are a finalist," "we are sending this to a limited number of people," "either you or another named person has won the major prize," "if you do not respond, your incentive will be given to someone else."

(c) Stating or implying in the offer that the recipient is likely to receive one or more of the offered incentives because other named people have already received other named incentives, unless the offer clearly and conspicuously discloses in close proximity to the statement the recipient's odds of receiving the identified incentive.

(d) When the solicitation states or implies that the recipient is likely to receive an incentive which has a normal retail price which is higher than that of another named incentive unless that statement is true. For purposes of this section, a list of incentives implies that the incentives are in descending or ascending order of value unless the solicitation clearly and conspicuously negates the implication in close proximity to the list.

(e) Describing an incentive or incentives in an untrue or misleading manner. Untrue or misleading descriptions include those which imply that the incentive being offered is of greater fair market value or of a different kind or nature than a recipient would be led to believe from a reasonable reading of the offer, or which lists the recipient's name in close proximity to a specific incentive unless the offer clearly and conspicuously discloses immediately next to or immediately under or above the recipient's name the recipient's odds of receiving the specific incentive.

(f) Subdivision (a) shall not apply to an incentive constituting an opportunity to stay at a hotel or other resort accommodations at a discount from the standard rate for the hotel or resort accommodations, if all of the following conditions are met:

(1) The fee to utilize the incentive and the requirement, if any, to attend a sales presentation are clearly and conspicuously disclosed in close proximity to the description of the offered incentive.

(2) A statement appears in close proximity to the description of the offered incentive and in substantially the following form: The recipient is responsible for payment of any government-imposed taxes directly related to the service being provided and any personal expenses incurred when utilizing this offer.

(3) The accommodations to be occupied by the recipient of the incentive are within a 20-mile radius of the property on which the accommodations offered for sale are located or, if not within that radius, the accommodations offered for sale are managed and operated by the same person as, an affiliate (as defined in Section 150 of the Corporations Code) of, or a franchisee (as defined in Section 20002) of, the manager and operator of the accommodations to be occupied, and the manager and operator of the accommodations offered for sale or the manager and operator of the accommodations

to be occupied is an issuer or subsidiary of an issuer that has a security listed on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc. and the exchange or interdealer quotation system has been certified by rule or order of the Commissioner of Corporations under subdivision (o) of Section 25100 of the Corporations Code. A subsidiary of an issuer that qualifies under this paragraph does not itself qualify under this paragraph unless not less than 60 percent of the voting power of its shares is owned by the qualifying issuer or issuers.

(4) If the incentive is offered in conjunction with any additional incentive or incentives or as one or more of a group of incentives, the offer of such additional incentive or incentives shall comply with Section 17537.1 and the following:

(A) The additional incentive or incentives are typically and customarily included in a vacation package and may include, but not be limited to, transportation, dining, entertainment, or recreation.

(B) The fee and additional requirements, if any, to use the additional incentive or incentives are clearly and conspicuously disclosed in close proximity to the description of the offer of them.

SEC. 1.5. Section 17538.8 is added to the Business and Professions Code, to read:

17538.8. Any advertisement that offers free or discounted transportation or certificates to obtain transportation and that requires the consumer to purchase accommodations through or from a particular source, or any advertisement that offers free or discounted accommodations or certificates to obtain accommodations and that requires the consumer to purchase transportation through or from a particular source, shall set forth in close proximity to each reference to free or discounted transportation or accommodations, in a size and prominence no less than the largest print in the reference, the total price that shall be paid by the consumer for the combination of transportation and accommodations. If the advertisement is oral, the total price shall immediately precede or follow each description of the free or discounted transportation or accommodations.

SEC. 2. Article 2.6 (commencing with Section 17550) is added to Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, to read:

Article 2.6. Sellers of Travel

17550. The Legislature finds and declares that certain advertising, sales, and business practices of sellers of travel have worked financial hardship upon the people of this state; that the travel business has a significant impact upon the economy and well-being of this state and its people; that problems have arisen that are peculiar to sellers of travel business; and that the public welfare requires regulation of sellers of travel in order to eliminate unfair

advertising, sales, and business practices; to establish standards that will safeguard the people against financial hardship; to encourage competition, fair dealing, and prosperity in the travel business; and to provide certain and reliable funding for the seller of travel registration program and enforcement by the office of the Attorney General of this article.

It is the intent of the Legislature in enacting this article that the Department of Justice, to the extent that resources are available, work together with representatives of the affected business community to develop sample forms that will, to the maximum extent possible, enable sellers of travel to comply with the requirement to provide to persons making payment the information required by subdivision (c) and subdivisions (e) to (l), inclusive, of Section 17550.13, in a manner that is simplified, efficient, and nonduplicative, and in a manner that recognizes the particular burdens and situations that may exist for small sellers of travel in their efforts to comply with the provisions of that section.

17550.1. "Seller of travel" means a person who sells, provides, furnishes, contracts for, arranges, or advertises that he or she can or may arrange, or has arranged, wholesale or retail air or sea transportation either separately or in conjunction with other travel services. Seller of travel does not include: (a) an air carrier, (b) an ocean carrier, (c) a hotel, motel, or similar lodging establishment where in the course of selling, providing, furnishing, contracting for, or arranging transient lodging accommodations and related services for its registered guests, it (1) also arranges for transportation, and (2) does not directly or indirectly receive any money or other valuable consideration for arranging or providing that transportation, or (d) any person or organization certified under Part 5 (commencing with Section 12140) of Division 2 of the Insurance Code, except such a person or organization shall comply with the registration and fee provisions of Sections 17550.20 and 17550.21 for each location at which air or sea transportation is sold either separately or in conjunction with other travel services.

17550.2. "Advertise" means to make any representation in the solicitation of air or sea transportation, and includes communication with other members of the same partnership, corporation, joint venture, association, organization, group, or other entity.

17550.3. "Passenger" is a person on whose behalf money or other consideration has been given or is to be given to another, including another member of the same partnership, corporation, joint venture, association, organization, group, or other entity, for travel by air or sea.

17550.4. An air carrier is a transporter by air of persons that operates under a certificate of convenience and necessity issued by the United States Department of Transportation.

17550.5. "Ticket or voucher" means a writing that is itself good and sufficient to obtain the entire air or ocean transportation, or travel services, for which the passenger has contracted.

17550.6. "Officially appointed agent" means an agent expressly appointed as such, without reservation, for a specified time period, in a written instrument executed by the principal or an authorized representative of the principal. The written instrument shall identify the current name, address, and telephone numbers of the principal and agent.

17550.7. "Participant in the Travel Consumer Restitution Fund" is a registered seller of travel with its principal place of business in California, who does business with persons located in California, or is a registered seller of travel that does business in California, from one or more locations in California, and that meets the requirements of paragraph (16) of subdivision (e) of Section 17511.1.

17550.8. "Provider" means the person or entity who actually provides any transportation or travel services.

17550.9. "Travel services" includes, but is not limited to, lodging, transfers, tours, car rental, or other travel-related services, however denominated, including, but not limited to, travel certificates, registration fees, and processing fees. "Travel services" does not include travel services rendered by providers of lodging such as a hotel, motel, or similar lodging establishment where the provider of lodging supplies only that service.

17550.10. "Travel certificate" means a writing that represents the holder is entitled to air or sea transportation or lodging, to a discount or reduced price for that transportation or lodging, or to purchase that transportation or lodging from a specified source, whether or not the holder is required to pay additional money or fulfill any requirements in order to utilize the certificate.

17550.11. (a) "Adequate bond" means a bond executed by an admitted surety insurer in an amount at all times no less than at least equal to the amount required to be held in a trust account pursuant to Section 17550.15 by any seller of travel in conjunction with such transportation, for the benefit of every passenger who sustains a monetary loss as a result of any violation of this article by a seller of travel or any failure by a seller of travel or by any official, agent, or employee of the seller of travel acting in the course or scope of his or her employment or agency. A seller of travel filing the bond shall maintain the bond in force in the proper amount as a condition of continuing to engage in business. The admitted surety insurer issuing the bond shall provide 30 days' written notice prior to cancellation or termination of the bond to the seller of travel filing the bond and the office of the Attorney General, Consumer Law Section. Cancellation of the bond shall not limit or exonerate the surety insurer from claims against the bond arising during the period it was in force.

(b) No passenger may recover upon the bond a sum greater than that which the passenger paid to the seller of travel, provided that this limitation shall not restrict a passenger from recovering sums greater than those paid to the seller of travel from sources other than the bond.

17550.12. A seller of travel shall not advertise that air or sea transportation is or may be available unless he or she has, prior to the advertisement, contracted for the transportation advertised with the air carrier or sea carrier.

17550.13. A seller of travel shall not receive any money or other valuable consideration in payment for air or sea transportation or other travel services offered by the seller of travel in conjunction with that transportation unless at the time of the receipt the seller of travel furnishes to the person making that payment written materials conspicuously setting forth the following information:

(a) The name and business address and telephone number of the seller of travel.

(b) The amount paid, the date of the payment, the purpose of the payment made, and an itemized statement of the balance due, if any.

(c) The name of the provider with whom the seller of travel has contracted to provide the transportation, and the date, time, and place of each departure, or the circumstances under which the date, time, and place of departure will be determined.

(d) The conditions, if any, upon which the contract between the seller of travel and the provider of transportation may be canceled, and the rights and obligations of all parties in the event of cancellation. Sellers of travel are not required to disclose air carrier's standard contract of carriage conditions. There is no violation of this subdivision if (1) compliance was rendered impossible as a direct result of an unforeseen condition beyond the control of the seller of travel and (2) if the seller of travel obtains from each passenger written acknowledgment of receiving, prior to taking any payment, a clear and conspicuous disclosure that the provider of transportation has not provided to the seller of travel the conditions, if any, upon which the transportation may be canceled and the rights and obligations of all parties in the event of any cancellation.

(e) The conditions, if any, upon which the contract between the seller of travel and the passenger may be canceled, and the rights and obligations of all parties in the event of cancellation.

(f) A clear and conspicuous statement that upon cancellation of the transportation or travel services, where the passenger is not at fault and has not canceled in violation of the terms and conditions, if any, of the contract for transportation or travel services, all sums paid to the seller of travel for services not performed in accordance with the contract between the seller of travel and the passenger will be, unless the passenger otherwise advises the seller of travel in writing, promptly refunded by the seller of travel to the passenger or the party who contracted for the passenger.

(g) If the seller of travel is required by this article to have a trust account or bond, a clear and conspicuous disclosure of the existence of the trust account or of the issuer and amount of the bond.

(h) If the seller of travel is a participant in the Travel Consumer Restitution Fund, a clear and conspicuous notice of the passenger's right to make a claim on that fund. The notice shall include a

description of the losses covered, the method for making a claim, the time limit within which the claim shall be made, and the amount which may be claimed.

(i) If the seller of travel is a participant in a Consumer Protection Deposit Plan that meets the criteria set forth in subdivision (b) of Section 17550.16, a clear and conspicuous notice of the passenger's right to make a claim on the plan. That notice shall include a description of the losses covered, the method for making a claim, the time limit within which the claim shall be made, and the amount which may be claimed.

(j) If the seller of travel is a participant in a Consumer Protection Escrow Plan that meets the criteria set forth in subdivision (c) of Section 17550.16, a clear and conspicuous notice of the passenger's right to make a claim on the plan. That notice shall include a description of the losses covered, the method for making a claim, the time limit within which the claim shall be made, and the amount that may be claimed.

(k) If the seller of travel is not a participant, a clear and conspicuous disclosure that the seller of travel is not a participant in the Travel Consumer Restitution Fund. That disclosure shall be made both orally and in writing.

(l) If the seller of travel has its principal place of business in California and the passenger is located outside California, a clear and conspicuous disclosure that the transaction is not covered by the Travel Consumer Restitution Fund. That disclosure shall be made both orally and in writing.

17550.14. (a) In the event the transportation or travel services contracted for is not provided by a seller of travel and unless the passenger otherwise advises the seller of travel in writing, the seller of travel shall promptly return to the passenger all moneys paid for services not performed and goods not delivered in accordance with the contract. Where the seller of travel has dispersed the passenger's funds pursuant to paragraphs (1), (2), and (3) of subdivision (c) of Section 17550.15, the seller of travel may instead provide to the passenger a written statement accompanied by bank records establishing that the passenger's funds were dispersed as required by those provisions. A seller of travel who is exempt from the requirements of Section 17550.15 pursuant to subdivision (a) of Section 17550.16 and who has disbursed the passenger's funds pursuant to subdivision (a) of Section 17550.16 may comply with this subdivision by maintaining and providing to the passenger a copy of the current, approved registration of the seller of travel to whom the funds were disbursed, which registration shall note that the registered seller of travel either has a trust account in compliance with Section 17550.15, or is exempt from the requirements of Section 17550.15 pursuant to subdivision (b) or (c) of Section 17550.16.

(b) Any material misrepresentation shall be deemed to be a violation of this article and cancellation necessitating the refund as required by subdivision (a).

17550.15. (a) This section applies to a seller of travel as defined in Section 17550.1.

(b) The seller of travel shall deposit directly into a trust account in a federally insured bank, savings and loan association, or credit union 100 percent of all sums received from any person or entity, including, but not limited to, those payments made in cash, by credit card, or any other method of payment, for air or sea transportation for any person, or for any other travel services offered by the seller of travel in conjunction with that transportation, and any refunds made by carriers or providers of travel services. This subdivision does not require that a seller of travel establish a separate trust account for each transaction.

(c) The seller of travel shall not in any manner encumber the corpus of the trust account and shall not withdraw money therefrom except as follows:

(1) In partial or full payment to the carrier for transportation, or to the provider of travel services, for the services or transportation contracted for by the passenger.

(2) In partial or full payment to the carrier or provider of travel services if payment is made by wire transfer directly to an account of the Airlines Reporting Corporation, or by check or draft paid to the Airlines Reporting Corporation for the transportation or services contracted for by the passenger.

(3) Upon delivery of all tickets or vouchers necessary for the passenger to obtain from the carrier or provider of travel services the transportation or services contracted for by the passenger, at which time the seller of travel may withdraw the portion of the sum paid by the passenger that is due the seller of travel from the transportation provider or provider of travel services that issued the tickets or vouchers, as compensation for sale of the transportation or travel services to that passenger. Tickets or vouchers shall be deemed delivered if personally delivered, turned over to an independent third-party delivery service for regular delivery to the passenger at the address designated by the passenger on the next business day, or deposited in the United States mail with first-class postage prepaid.

(4) Upon full payment to the provider of transportation or travel services, to the trust account identified in the registration of the seller of travel to whom the funds are paid, or to a registered seller of travel whose registration states that the registered seller of travel is exempt pursuant to subdivision (b) or (c) of Section 17550.16 from the requirements of this section, of the total amount that is required by the provider of transportation or travel services or registered seller of travel in order to provide the transportation or services contracted for by the passenger, at which time the seller of travel may withdraw the portion of the sum paid by the passenger which is due the seller of travel from the transportation provider or provider of travel services to which full payment was made, as compensation for sale of the transportation or travel services to that

passenger.

(5) To make refunds to the passenger.

(d) Subdivision (c) shall not prevent payment of the interest earned on the trust account to the seller of travel.

(e) The seller of travel shall serve as trustee of the trust accounts required by this article. If the person is an individual, or managing partner or partners, or the chief executive officer of the corporation, they shall be the trustee. The trustee may designate in writing that an officer or employee may manage the trust account if that officer or employee is under the trustee's supervision and control, and the original of that writing is on file with the Attorney General's office.

(f) (1) Except as otherwise provided in this section, all trust accounts required by this article shall be maintained at a branch of a federally insured bank, savings and loan association, or credit union.

(2) The seller of travel shall file with the Attorney General an irrevocable agreement in writing allowing the Attorney General, a district attorney, or their representatives, upon written request, to examine and obtain copies of all records related to the trust account wherever those records may be, including, but not limited to, those records maintained by the financial institution where the trust account is maintained. The statement shall indicate that the authorization remains in effect as long as the financial institution or other custodian of records retains records concerning the accounts.

(g) Every seller of travel has a fiduciary responsibility with respect to all sums received for transportation or travel services.

(h) The following are deemed to be held in trust for passengers:

(1) All sums received by the seller of travel for transportation or travel services whether or not required to be deposited in an actual trust account and regardless of whether any of these sums were required to be deposited or actually were deposited in a trust account.

(2) All property with which any of the sums described in paragraph (1) has been commingled if any of these sums cannot be identified because of the commingling.

(i) Upon any judicially ordered distribution of any money or property required to be held in trust and after all expenses of distribution approved by the court have been paid, every passenger has a claim on the trust for payments made for transportation and other travel services not provided. Unless a passenger can identify his or her funds in the trust within the time established by the court, each passenger shall receive a proportional share based on the amount paid.

(j) The seller of travel is not required to comply with the direct deposit requirement set forth in subdivision (b) if all of the following apply:

(1) The payment is made by credit card.

(2) The seller of travel does not deposit, negotiate, or factor the credit card charge or otherwise seek or obtain payment of the credit card charge or the crediting of the amount of the credit card charge

to any account over which the seller of travel has any control.

(3) (A) If the charge includes transportation, the carrier that is to provide the transportation processes the credit card charge.

(B) If the charge is only for services, the provider of services processes the credit card charge.

(k) In lieu of the trust account required by this article, an adequate bond as set forth in Section 17550.11 may be maintained by the seller of travel. Prior to the advertisement of transportation or services, or both, by the seller of travel, the seller of travel shall file a copy of that bond with the Attorney General.

17550.16. (a) A seller of travel is exempt from the requirements of Section 17550.15 for all transactions in which the seller of travel is in compliance with paragraphs (1) to (6), inclusive, or with paragraph (7).

(1) The seller of travel sells, provides, furnishes, contracts for, or arranges air or sea transportation in transactions with persons in California, only from locations in California, and the air or sea transportation or travel services are to be furnished by (A) a registered seller of travel that is in compliance with this article and Article 2.7 (commencing with Section 17550.35) or (B) an air or sea carrier.

(2) The seller of travel forwards the passenger's funds, without offsetting or reducing the amount forwarded by any amounts due or claimed in connection with any other transaction, to (A) the provider of the transportation or travel services; (B) the Airlines Reporting Corporation; (C) the trust account identified in the registration of the seller of travel to whom the funds are forwarded; or (D) a registered seller of travel whose registration states that the registered seller is exempt pursuant to subdivision (b) or (c) from the requirements of Section 17550.15; and the seller of travel who forwards funds pursuant to subparagraph (C) or (D) obtains and keeps a copy of the registration referred to in subparagraph (C) or (D).

(3) The seller of travel is an officially appointed agent in good standing of the Airlines Reporting Corporation; and the air transportation, if any, is sold to the passenger pursuant to that agency appointment.

(4) The seller of travel has been in business under the same ownership for a period of three years, unless acquired or formed by a registered seller of travel that has been in business under the same ownership for a period of three years. For the purposes of this paragraph, the following shall not constitute a change in ownership:

(A) Any structural change involving a change in the type of entity, such as from a corporation to a partnership, and not involving the addition of any new, underlying ownership interest.

(B) The deletion of any owner or ownership interest.

(5) The seller of travel sells only at retail directly to the general public and not through any other seller of travel air or sea transportation and travel services to be furnished by other, unrelated

providers.

(6) The seller of travel is in compliance with the requirements of Section 17550.20 and Article 2.7 (commencing with Section 17550.35). Any seller of travel seeking to qualify for this exemption shall provide all information necessary for the Attorney General or his or her delegate to determine that the seller of travel meets the criteria set forth in paragraphs (1) to (6), inclusive.

(7) A seller of travel in a transaction where the air or sea transportation or travel services are furnished by a business entity that (A) is located and providing transportation or travel services outside of the United States and (B) is not in compliance with the provisions of this article, is exempt from the requirements of Section 17550.15 for that transaction if the seller of travel obtains each passenger's written acknowledgment of receiving, prior to making any payment, a clear, conspicuous, and complete written disclosure that the provider of transportation or travel services is not in compliance with the Seller of Travel Law and the transaction is not covered by the Travel Consumer Restitution Fund, and of the attendant risks and consequences thereof.

(8) If the Attorney General or his or her delegate finds pursuant to Section 17550.52 that Travel Consumer Restitution Corporation has failed or ceased to operate, a seller of travel who was a participant in the Travel Consumer Restitution Fund shall no longer be exempt from compliance with the requirements of Section 17550.15 and 17550.17.

If Article 2.7 (commencing with Section 17550.35) should cease to operate for any reason, including, but not limited to, repeal pursuant to Section 17550.59, no seller of travel shall be exempt from compliance with the requirements of Sections 17550.15 and 17550.17 unless in compliance with subdivision (b) or (c).

(b) A seller of travel who is a participant, with respect to all sales of air or sea transportation and travel services, in a Consumer Protection Deposit Plan that meets the criteria of paragraphs (1) to (3), inclusive, and who complies with paragraph (4) need not comply with Section 17550.15.

(1) The plan is operated and administered by an entity who demonstrates to the satisfaction of the Attorney General or his or her delegate that the operating and administering entity is competent and reliable, and that the plan will achieve fully the purposes and objectives of this article. Each approved plan shall include provisions requiring that each participating seller of travel (A) has been engaged in business as a seller of travel in the United States under the same ownership for not less than three years, unless acquired or formed by a seller of travel already participating and in good standing in the plan, and (B) has deposited with the administrator of the plan a minimum of one million dollars (\$1,000,000) in security in the form of a bond, letter of credit, or certificate of deposit, which security shall be (i) in favor solely of the plan; (ii) held by the plan pursuant to the terms of the plan; (iii) used solely to refund

passenger payments or deposits or to complete tours; and (iv) payable solely in the event that (I) the seller of travel fails to refund passenger payments or deposits due as a result of the bankruptcy, insolvency, or cessation of operations of the seller of travel or after the cancellation or material failure by the seller of travel to complete performance of the passenger's transportation or travel services, or (II) the seller of travel fails to replace the security with another meeting the criteria set forth in subparagraph (B) no later than 30 days prior to its expiration.

(2) Claims filed against the Consumer Protection Deposit Plan are decided within 45 days of receipt and paid within 30 days of decision.

(3) The Consumer Protection Deposit Plan has been reviewed and approved in writing by the Attorney General or his or her delegate as meeting the criteria set forth above, including a finding that the plan will effectuate the purposes of this article. Should the approved plan cease to provide the consumer protections set forth in paragraph (1), the Attorney General or his or her delegate shall revoke his or her approval forthwith. Upon that revocation, the seller of travel shall no longer be exempt from compliance with the requirements of Sections 17550.15 and 17550.17.

(4) Any participant in a Consumer Protection Deposit Plan seeking to qualify for this exemption shall provide all information necessary for the Attorney General or his or her delegate to determine (A) that the Consumer Protection Deposit Plan in which the seller of travel is a participant meets the criteria set forth in paragraphs (1), (2), and (3), (B) that the seller of travel is a participant in full compliance with the terms and conditions of an approved consumer protection deposit plan, and (C) provide a written agreement from the authorized representative of the Consumer Protection Deposit Plan in which the plan administrator agrees to give the office of the Attorney General, Consumer Law Section immediate written and telephonic notice in the event of termination of the seller of travel's participation in the plan.

(c) A seller of travel who utilizes for all transactions a Consumer Protection Escrow Plan which meets the criteria of paragraphs (1) to (6), inclusive, and who complies with paragraph (7) is exempt from the requirements of Section 17550.15.

(1) The plan is operated and administered as escrow holder by a federally insured bank that demonstrates to the Attorney General or his or her delegate that the manner in which it will administer the plan will be consistent with the purposes of this article. Each approved escrow plan shall include provisions requiring that all air tickets sold by participants in the plan be issued through the Airlines Reporting Corporation.

(2) All funds delivered to the escrow holder, by cash, check, charge card, or otherwise, are held and disbursed by the escrow holder for the benefit of, and to protect the interests of, the passenger.

(3) All funds are separately accounted for by booking number and passenger name.

(4) Claims filed against the escrow plan are decided within 45 days of receipt and paid within 30 days of decision.

(5) All passenger funds are to be delivered to the escrow holder as required by Section 17550.15.

(6) The Consumer Protection Escrow Plan has been reviewed and approved in writing by the Attorney General or his or her delegate as meeting the criteria set forth herein, including a finding that the plan will effectuate the purposes and objectives of this article. Should the approved plan cease to provide the consumer protections set forth in paragraphs (1) to (5), inclusive, the Attorney General or his or her delegate shall revoke his or her approval of the plan forthwith. Upon that revocation, the seller of travel shall no longer be exempt from compliance with the requirements of Sections 17550.15 and 17550.17.

(7) Any participant in a consumer protection plan seeking to qualify for this exemption shall provide all information necessary for the Attorney General or his or her delegate to determine (A) that the Consumer Protection Escrow Plan in which the seller of travel is a participant meets the criteria set forth in paragraphs (1) to (6), inclusive, (B) that the seller of travel is a participant in full compliance with the terms and conditions of an approved consumer protection escrow plan, and (C) provide a written agreement from the authorized representative of the Consumer Protection Escrow Plan in which the plan administrator agrees to give the office of the Attorney General, Consumer Law Section, immediate written and telephonic notice in the event of termination of the seller of travel's participation in the plan.

17550.17. (a) This section does not apply to sellers of travel who are exempt from the requirements of Section 17550.15 pursuant to Section 17550.16.

(b) Upon payment in full by the passenger for air or sea transportation and any related services with a credit card or with cash, the seller of travel shall issue and deliver the ticket or voucher to the passenger or his or her designated agent within 72 hours.

(c) Upon payment in full by the passenger for air or sea transportation and any related services with a check, the seller of travel shall issue and deliver the ticket or voucher to the passenger or his or her designated agent within 72 hours of the earlier of the following:

(1) The time the passenger's payment is credited to the seller of travel's account.

(2) The expiration of the maximum hold period specified in Section 10.190405 of Title 10 of the California Code of Regulations.

(d) Tickets, vouchers, or receipts shall be deemed to have been delivered if they have been turned over to an independent third-party delivery service or the United States Postal Service for regular delivery.

(e) Where the seller of travel is unable to issue tickets or vouchers upon payment as set forth in subdivisions (b) and (c), the seller of travel may comply with this section by either: (1) forwarding to the air or sea carrier, or provider of travel services the portion of the sum paid by the passenger that is required by the air or sea carrier or provider of travel services from the seller of travel in order to provide the transportation or services purchased by that passenger; the seller of travel may not offset or reduce the amount forwarded by any amounts due or claimed in connection with any other transaction, or (2) complying with Sections 17550.13, 17550.14, and 17550.15.

(f) There is no violation of this section if (1) compliance with this section was rendered impossible as a direct result of an unforeseen condition beyond the control of the seller of travel, and, (2) the seller of travel complied with this section or made restitution to the passenger within 30 days after the transportation or travel services contracted for by the passenger were not provided.

(g) For purposes of this section, "72 hours" means three business days as defined in Section 9 of the Civil Code.

17550.18. (a) If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

(b) In a criminal action, a seller of travel has the burden of producing evidence to establish any exception to the provisions of this chapter; and in a civil action, a seller of travel has the burden of proof to establish any exception to the provisions of this chapter.

(c) Any action or proceeding to attack, review, set aside, void, change, or annul any decision, determination, or finding of the Attorney General or his or her delegate pursuant to Article 2.6 (commencing with Section 17550) or Article 2.7 (commencing with Section 17550.35) shall be in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure.

In such action or proceeding, the inquiry shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion shall be found by the court only if the decision, determination, or finding was not supported by substantial evidence in light of the entire written record before the Attorney General or his or her delegate at the time the decision, determination, or finding was made. The record before the court shall be the same written record upon which the Attorney General or his or her delegate acted.

17550.19. In addition to any civil penalties provided in this division, violation of this article is punishable as follows:

(a) As a misdemeanor by a fine of not more than ten thousand dollars (\$10,000), by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment for each violation.

(b) In addition, any violation of Section 17550.14 where money or

real or personal property received or obtained by a seller of travel for transportation or travel services from any and all persons aggregates one thousand dollars (\$1,000) or more in any consecutive 12-month period, or the payment or payments by or on behalf of any one passenger exceeds in the aggregate four hundred dollars (\$400) in any 12-month period, is punishable either as a misdemeanor or as a felony by imprisonment in the state prison for 16 months, or two or three years, by a fine of not more than twenty-five thousand dollars (\$25,000), or by both that fine and imprisonment for each violation.

(c) In addition, any intentional use for any purpose of a false seller of travel registration number, with intent to defraud, by an unregistered seller of travel is punishable as a misdemeanor or felony as provided in this section.

(d) Any violation of Section 17550.15 shall be a misdemeanor and shall be punished as provided in this section. Every act in violation of Section 17550.15 may be prosecuted as a separate and distinct violation and consecutive sentences may be imposed for each violation.

(e) Sellers of travel shall also comply with Sections 17537, 17537.1, and 17537.2 of the Business and Professions Code and all other applicable laws. This section shall not be construed to preclude the applicability of any other provision of the criminal law of this state that applies or may apply to any transaction.

17550.20. (a) Not less than 10 days prior to doing business in this state, a seller of travel shall register with the office of the Attorney General by filing with the Consumer Law Section the information required by Section 17550.21 and a filing fee of one hundred dollars (\$100) for each location from which the seller of travel conducts business. A late fee of five dollars (\$5) per day, up to a maximum of five hundred dollars (\$500), shall be paid for each day after the time specified by this section until the filing fee and the information required by Section 17550.21 are received. No registration shall be issued or approved until the late fee has been paid. A seller of travel shall be deemed to do business in this state if the seller of travel solicits business from locations in this state or solicits prospective purchasers who are located in this state.

(b) Registration shall be valid for one year from the effective date thereof shown on the registration issued by the office of the Attorney General and may be annually renewed by making the filing required by Section 17550.21 and paying a filing fee of one hundred dollars (\$100) for each location from which the seller of travel conducts business. A late fee of five dollars (\$5) per day, up to a maximum of five hundred dollars (\$500), shall be paid for each day after the time specified by this section until the filing fee and the information required by Section 17550.21 are received. No registration shall be renewed until the late fee has been paid.

(c) Whenever, prior to expiration of a seller of travel's annual registration, there is a material change in the information required

by Section 17550.21, the seller of travel shall, within 10 days, file an addendum updating the information with the Consumer Law Section of the office of the Attorney General.

(d) The office of the Attorney General shall suspend the registration of any seller of travel who (1) fails to make any payment required pursuant to Article 2.7 (commencing with Section 17550.35) or (2) submits a check in payment of a registration fee or late fee required by this section that is not honored by the institution on which it is drawn. The registration of the seller of travel shall be suspended until all such payments due have been collected.

(e) The Attorney General may, at his or her discretion and subject to supervision by the Attorney General or his or her delegate, contract out all or any part of the processing of registrations required by this section.

(f) This section does not apply to an individual, natural person who meets all of the following conditions:

(1) Has a written contract with a registered seller of travel to act on that registered seller of travel's behalf in offering or selling air or sea transportation and other travel goods or services in connection with the transportation.

(2) Acts only on behalf of a registered seller of travel with whom the person has a written contract in the offer or sale to a passenger of air or sea transportation and other goods or services in connection with the transportation and sells no other air or sea transportation or travel services to that passenger.

(3) Provides air or sea transportation or travel services that are offered or sold pursuant to the official agency appointment of the registered seller of travel with whom the person has a written contract.

(4) Does not receive any consideration for air or sea transportation or other travel services from the passenger.

(5) Requires the passenger to pay all consideration for air or sea transportation or other travel services directly to the air carrier or ocean carrier or to the registered seller of travel.

17550.21. Each filing pursuant to Section 17550.20 shall contain the following information:

(a) The name or names of the seller of travel, including the name under which the seller of travel is doing or intends to do business, if different from the name of the seller of travel.

(b) The seller of travel's business form and place of organization and, if operating under a fictitious business name, the location where the fictitious name has been registered.

(c) The complete street address or addresses of all locations from which the seller of travel will be conducting business, including, but not limited to, locations at which telephone calls will be received from, or made to, passengers or other sellers of travel. The statement shall designate which location is the principal place of business.

(d) The complete business and residential address, the business telephone number, the driver's license number and state of issuance

or equivalent personal identification, and the date of birth of each owner and principal of the seller of travel. "Owner" means a person who owns or controls 10 percent or more of the equity of, or otherwise has claim to 10 percent or more of the net income of, a seller of travel. "Principal" means an owner, an officer of a corporation, a general partner of a partnership, or a sole proprietor of a sole proprietorship.

(e) A statement as to whether any owner or principal has had entered against him or her any judgment, including a stipulated judgment, order, made a plea of nolo contendere, or been convicted of any criminal violation. The statement shall identify the person, the court or administrative agency rendering the judgment, order, or conviction, the docket number of the matter, and the date of the judgment, order, or conviction, and where the judgment, order, or record of conviction is filed. This subdivision does not require disclosure of marital dissolution, child support, or child custody proceedings.

(f) A copy of the travel certificates, if any, that are or will be sold, marketed, or distributed to any person or entity by the seller of travel.

(g) The seller of travel shall file with the Attorney General a signed and dated statement indicating (1) the account number of each trust account required by this article, (2) the name and address of each financial institution at which the seller of travel maintains a trust account required by this article, (3) any registration number issued to the seller of travel by the Airline Reporting Corporation or the International Association of Travel Agents Network, and (4) a consent form consenting to the Attorney General, a district attorney, or their representatives obtaining directly from the Airlines Reporting Corporation, International Association of Travel Agents Network, a seller of transportation, provider of transportation, or provider of travel services any information related to an investigation of a seller of travel's compliance with this section. The consent form shall be provided by the Attorney General. If a bond is maintained in lieu of the trust account, a copy of that bond shall be filed with the Attorney General.

(h) A statement signed by each owner and principal granting permission to the office of the Attorney General to obtain from any financial institution or credit union at which any trust account required by Section 17550.15 is maintained, information relating to that trust account, as set forth in paragraph (2) of subdivision (f) of Section 17550.15.

(i) The information required by this section shall be verified by a declaration signed by each owner and principal of the seller of travel, or in the case of a registered seller of travel that does business in California, from one or more locations in California, and that meets the requirements of paragraph (16) of subdivision (e) of Section 17511.1, by a duly authorized officer of the corporation, under penalty of perjury pursuant to the laws of the State of

California. The declaration shall specify the date and location of signing.

17550.22. No registration application shall be accepted for filing if it is incomplete or contains false information.

17550.23. (a) A registration application for a seller of travel with its principal place of business in California, who does business with persons located in California, shall be accompanied by written certification from the Travel Consumer Restitution Corporation indicating that the seller of travel is in compliance with Article 2.7 (commencing with Section 17550.35).

(b) A registration application for a seller of travel who does not or intends not to comply with the requirements of Section 17550.15 because such seller of travel claims to meet the requirements of subdivision (b) of Section 17550.16 shall be accompanied by evidence that the seller of travel is a participant in a Consumer Protection Deposit Plan that meets the criteria set forth in subdivision (b) of Section 17550.16.

(c) A registration application for a seller of travel who does not or intends not to comply with the requirements of Section 17550.15 because such seller of travel claims to meet the requirements of subdivision (c) of Section 17550.16 shall be accompanied by evidence that the seller of travel is a participant in a Consumer Protection Escrow Plan that meets the criteria set forth in subdivision (c) of Section 17550.16.

17550.24. (a) The Attorney General or his or her delegate shall issue a separate registration number to each registrant whose registration is accepted. That registration number shall be valid for the period specified in subdivision (b) of Section 17550.20, unless revoked or suspended by the Attorney General or his or her delegate. Grounds for suspension or revocation include material misrepresentation in a registration application, or a failure to amend a registration as provided in subdivision (c) of Section 17550.20.

(b) Any registration issued to a seller of travel who is required to comply with the provisions of Section 17550.15 shall set forth the number and location of the required trust account.

(c) Any registration issued to a seller of travel who has complied with the requirements of subdivision (b) of Section 17550.23 shall state that the seller of travel claims an exemption from the requirements of Section 17550.15 pursuant to subdivision (b) of Section 17550.16.

(d) Any registration issued to a seller of travel who has complied with the requirements of subdivision (c) of Section 17550.23 shall state that the seller of travel claims an exemption from the requirements of Section 17550.15 pursuant to subdivision (c) of Section 17550.16.

(e) A registered seller of travel shall provide a copy of its current registration upon request to any other registered seller of travel from whom it receives passenger funds in payment for transportation or travel services.

(f) The registration number of the seller of travel shall be clearly and conspicuously displayed on all advertising materials offering for sale or soliciting the purchase of any air or sea transportation or travel services, including, but not limited to, any writings, or promotional materials of any kind which are advertised, displayed, or disseminated in any manner to any persons in California, or from California to any person elsewhere. A registered seller of travel that does business in California from one or more locations in California and that meets the requirements of paragraph (16) of subdivision (e) of Section 17511.1 shall display its registration number only on advertising materials that are produced or placed by its business locations within California or that make reference to specific business locations offering air or sea transportation or travel services. Wherever seller of travel, registered seller of travel, or similar terms are used in any advertising materials, they shall be accompanied by a statement which discloses, at least as prominently, that "registration as a seller of travel does not constitute approval by the State of California."

17550.25. (a) All sellers of travel who are participants shall comply with Article 2.7 (commencing with Section 17550.35) prior to engaging in those sales.

(b) Any seller of travel that is not a participant who is doing business with persons located in California shall make a clear and conspicuous disclosure, both orally and in writing, that the seller of travel is not a participant in the Travel Consumer Restitution Fund. Any seller of travel doing business from any location in California with persons located outside California shall make a clear and conspicuous disclosure, both orally and in writing, that the transaction is not covered by the Travel Consumer Restitution Fund. Any seller of travel required by the provisions of this article to have a trust account or bond shall make a clear and conspicuous disclosure of the existence of the trust account or of the issuer and amount of the bond.

17550.30. (a) The Travel Seller Fund is hereby created in the State Treasury. All fees, including late fees, collected pursuant to this article shall be deposited in the fund, and the money in the fund may be expended only for the purposes specified in this article.

(b) All money paid into the State Treasury and credited to the Travel Seller Fund shall be used by the Department of Justice in carrying out and enforcing the provisions of this article, including, but not limited to, the payment of salaries of Department of Justice personnel, contractors, or consultants.

17550.32. The initial filing of information and payment of fees required by subdivision (a) of Section 17550.20 shall be received by the office of the Attorney General no later than:

(a) June 1, 1995, for all sellers of travel whose principal place of business is located in any of the following counties: Alameda, Marin, Monterey, Orange, San Francisco, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Sonoma, and Ventura.

(b) September 1, 1995, for all sellers of travel whose principal place of business is located in Los Angeles County.

(c) December 1, 1995, for all sellers of travel whose principal place of business is located anywhere other than in the counties set forth in subdivisions (a) and (b).

(d) Compliance with this section shall constitute compliance with Section 17540.15.

17550.33. This article shall become operative January 1, 1996, except that Sections 17550.1, 17550.2, 17550.3, 17550.4, 17550.5, 17550.6, 17550.7, 17550.8, 17550.9, 17550.10, 17550.18, 17550.19, 17550.20, 17550.21, 17550.22, 17550.23, 17550.24, 17550.30, and 17550.32 shall become operative January 1, 1995.

17440.34. This article shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

SEC. 3. Article 2.7 (commencing with Section 17550.35) is added to Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, to read:

Article 2.7. Travel Consumer Restitution Plan

17550.35. "Restitution corporation" means the Travel Consumer Restitution Corporation.

17550.36. "Participant," as used in this article, means a seller of travel, as defined in Section 17550.7, who is registered pursuant to Section 17550.20.

17550.37. "Person aggrieved," as used in this article, means a passenger, as defined in Section 17550.3, located in California at the time of sale, who has sustained a loss as a result of the failure of a seller of travel to refund passenger payments due as a result of the bankruptcy, insolvency, cessation of operations, or material failure to provide the transportation or travel services contracted for by the passenger. "Loss," as used herein, shall be limited to losses that are incurred after December 31, 1995, in a transaction with a seller of travel who, at the time of sale, was a participant in the Travel Consumer Restitution Fund and was registered pursuant to Section 17550.20. "Person aggrieved" shall not mean or include a passenger in a transaction where the air or sea transportation or travel services are furnished by a business entity that (a) is located and providing transportation or travel services outside of the United States and (b) is not in compliance with Article 2.6 (commencing with Section 17550).

17550.38. (a) It shall be the purpose of the Travel Consumer Restitution Corporation to provide restitution to a person aggrieved, subject to the limitations set forth in this article.

(b) The restitution shall be paid from the Travel Consumer Restitution Fund established by the Travel Consumer Restitution Corporation.

(c) The Travel Consumer Restitution Corporation shall be

authorized to request legal counsel and advice from the office of the Attorney General.

17550.39. (a) Participants shall maintain a corporation under the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code) operating under the name "Travel Consumer Restitution Corporation."

(b) The State of California and any of its officers, agents, or employees shall not be liable in any manner for any act or omission of Travel Consumer Restitution Corporation, its directors, officers, agents, or employees.

17550.40. Each participant is required to comply with the provisions of this article and shall abide by the rules and decisions of the Travel Consumer Restitution Corporation adopted in accordance with this article.

17550.41. (a) The Board of Directors of the Travel Consumer Restitution Corporation shall be composed of six directors, as follows:

(1) One public consumer representative member appointed by the Director of the Department of Consumer Affairs.

(2) One employee of the Department of Justice, assigned by the office of the Attorney General, who shall serve as an ex officio, nonvoting member.

(3) Four directors who are participants in the Travel Consumer Restitution Fund.

(b) The director appointed pursuant to paragraph (1) of subdivision (a) shall be appointed within 90 days of the effective date of this section. The initial director shall serve a term of two years expiring 24 months after the effective date of this section. Thereafter, appointments shall be for two-year terms.

(c) (1) The initial directors appointed pursuant to paragraph (3) of subdivision (a) shall be participants, selected by the California Coalition of Travel Organizations. The initial directors shall be appointed by February 1, 1995, and shall be selected to serve terms expiring on May 1, 1996.

(2) Subsequent participant directors shall be elected by a balloting of all participants in the Travel Consumer Restitution Fund and shall be elected to serve two-year terms. The elections shall be conducted by the Travel Consumer Restitution Corporation in February of each year, beginning February 1996. The two directors elected in February 1996 who receive the highest number of votes shall be elected to two-year terms, and the two who receive the next highest number of votes shall be elected to one-year terms. The four directors elected in February 1996 shall take office on May 1, 1996.

(3) The Travel Consumer Restitution Corporation shall, by July 1, 1995, adopt bylaw provisions setting forth procedures for the nomination and election of the four participant directors on and subsequent to February 1, 1996, consistent with this section.

(4) A director who does not qualify to be a participant or who otherwise becomes unable to serve shall not continue to serve as

director. The board of the Travel Consumer Restitution Corporation shall adopt rules setting forth the procedures to determine that a director is no longer able to serve as a director, and for the board to elect a successor to serve as director until the next election.

17550.42. The fiscal year of the Travel Consumer Restitution Corporation shall commence on July 1 of each year.

17550.43. (a) The Travel Consumer Restitution Corporation shall establish an operations fund for the payment of costs of operations and administration. The corporation shall prepare, prior to its fiscal year end, an estimated annual operational budget projecting the costs of operations and administration for the succeeding fiscal year, excluding the amount paid for claims.

(b) All participants registering in 1995 or applying for registration in 1995 shall pay to the Travel Consumer Restitution Corporation an initial, one-time twenty-five dollar (\$25) assessment per location from which the participant does business in the state in order to provide additional funding for the operations of the corporation, as those operations are authorized by the corporation's board of directors.

(c) The Travel Consumer Restitution Corporation shall establish a restitution fund for the payment of claims. All claims shall be paid from the restitution fund.

(1) The restitution fund shall be in the form of a trust account maintained in the State of California with a federally insured bank which shall be selected by the board of directors of the Travel Consumer Restitution Corporation and shall be approved by the office of the Attorney General. The board of directors of the Travel Consumer Restitution Corporation or its delegate shall serve as trustee.

(2) The restitution fund shall meet the following criteria:

(A) The trustee shall deposit all restitution funds received directly into the trust account.

(B) The trustee shall maintain a separate accounting for disbursements and collections on account of claims against each participant. Quarterly reports shall be provided to the office of the Attorney General, Consumer Law Section.

(C) The trustee shall disburse funds from the trust as directed by the Travel Consumer Restitution Corporation pursuant to Section 17550.47, directly to a person aggrieved or as provided in Section 17550.47.

(D) The trustee may only invest the operations fund and trust funds in any of the securities described in subdivision (a) or (b) of Section 16430 of the Government Code.

17550.44. (a) The Travel Consumer Restitution Corporation shall bill and collect from each participant an annual assessment that in the aggregate shall consist of assessments for the operations fund and the restitution fund. For each participant, the annual renewal date of the assessment shall be 30 days prior to the initial and annual renewal date for registration pursuant to Section 17550.20. A late fee

of five dollars (\$5) per day, up to a maximum of five hundred dollars (\$500), shall be paid for each day after the time specified in this section until the assessment is received by the Travel Consumer Restitution Corporation.

(b) The annual assessment for the operations fund and the restitution fund shall be determined no later than January 15 of each year for the next fiscal year. The annual assessment for the operations fund shall not exceed twenty-five dollars (\$25) per year for each location in the state from which a participant does business. The assessment shall include all costs and expenses of operation as budgeted by the board of directors for the next fiscal year. The annual assessment for the restitution fund shall not exceed two hundred dollars (\$200) per year in order to return the level of the restitution fund to an expected balance of one million six hundred thousand dollars (\$1,600,000). Each participant's assessment shall be determined pro rata based upon the ratio of the number of locations in the state from which the participant does business to the total number of locations for all registered participants as of the preceding December 15.

(c) If, on May 1 or October 15 of any year, commencing on January 1, 1996, the balance in the restitution fund is less than one million two hundred thousand dollars (\$1,200,000), the corporation shall make an emergency assessment of participants, not more than twice per year, up to a maximum amount of two hundred dollars (\$200) per year for each location in the state from which the participant does business, for deposit in the trust account to return the level of the restitution fund to an expected balance of one million six hundred thousand dollars (\$1,600,000). The board of directors shall adopt rules for the notification of emergency assessments.

(d) The Travel Consumer Restitution Fund shall report to the office of the Attorney General each levy of assessment within 10 business days after the levy.

17550.45. (a) If any assessment is not paid within 60 days of the due date, then the corporation shall notify the office of the Attorney General, which shall forthwith suspend the registration of the participant who has not paid. The corporation shall provide a copy of this notification to the participant.

(b) The Travel Consumer Restitution Corporation or any entity set forth in Section 17204 may bring an action at law or in equity against a participant to recover any unpaid assessment.

(c) The Travel Consumer Restitution Corporation shall be awarded costs and reasonable attorney's fees if it prevails in any action against a participant pursuant to subdivision (b). Those costs and attorney's fees shall be awarded as an item of costs, as provided for in paragraph (10) of subdivision (a) and paragraph (5) of subdivision (c) of Section 1033.5 of the Code of Civil Procedure.

17550.46. (a) The Attorney General or his or her delegate shall approve any claim form which shall be provided to a person aggrieved by the Travel Consumer Restitution Corporation to be

submitted by a person aggrieved in order to obtain payment from the restitution fund. The claim form shall require the person aggrieved to provide the corporation with information which is sufficient to decide whether payment is to be made to that person. The information must include all of the following:

(1) The name, address, and telephone number of the person aggrieved.

(2) The amount paid by the person aggrieved to the participant.

(3) The date each payment was made and the form of each payment.

(4) All written agreements, correspondence, or other documentation related to the transaction and to the transportation or contracted travel services which were not provided.

(5) Identification of the transportation or contracted travel services which were not provided.

(6) Description of any payment or reimbursement or alternative transportation or travel services received by the person aggrieved for the transportation or contracted travel services which were not provided.

(b) If any required information is unavailable to the person aggrieved, the person must so state in the claim form, explaining why the information is unavailable.

(c) The person aggrieved who submits a claim form shall sign the form stating, under penalty of perjury pursuant to the laws of the State of California, that the information contained in the form is true and correct.

17550.47. (a) (1) Any person aggrieved who suffers a loss may file a claim with the Travel Consumer Restitution Corporation. Except as provided in paragraph (2), the claim must be filed within 60 days of the date upon which the person aggrieved becomes aware, or should have become aware, of the loss.

(2) Any person aggrieved who did not receive the notice required by subdivision (h) of Section 17550.13 shall have until 60 days after receiving a notice setting forth the information required by subdivision (h) of Section 17550.13, or 60 days after the date upon which the person aggrieved becomes aware, or should have become aware, of the loss, whichever is later, within which to file a claim.

(3) In no event shall a person aggrieved have more than one year after the scheduled date of completion of travel within which to file a claim with the Travel Consumer Restitution Fund.

(b) A person aggrieved may recover from the Travel Consumer Restitution Fund an amount of no more than fifteen thousand dollars (\$15,000) per person aggrieved not to exceed the amount paid to the participant for transportation or travel services. The person aggrieved shall not be entitled to receive attorney's fees in connection with a filed claim, except as provided in this section, on appeal.

(c) All claims are to be decided on the written record before the corporation, with no hearing to be held. The record shall consist of

a fully executed and complete claim, any other documentation submitted by the claimant, and any documents or reports submitted by staff or the designated representative of the office of the Attorney General. Claims are to be decided within 45 days of receipt unless the designated representative of the office of the Attorney General requests a continuance to obtain and submit information. A claim not decided timely shall be deemed granted.

(d) Whenever the Travel Consumer Restitution Corporation denies a claim in whole or in part, it shall provide to the claimant a written statement of decision setting forth the factual and legal basis for the denial.

(e) A claimant may request reconsideration of an adverse decision of the Travel Consumer Restitution Corporation by mailing a written request within 20 days of the date a notice of denial and statement of decision was mailed to the claimant.

(f) The Travel Consumer Restitution Corporation shall decide the request for reconsideration within 30 days of receipt of the request, and if the decision is a denial in whole or in part, it shall provide to the claimant a written statement of decision setting forth the factual and legal basis for the decision. No appeal may be taken pursuant to subdivision (g) until reconsideration has been requested and decided. The claimant shall not be entitled to any attorney's fees incurred in connection with presentation of a claim or request for reconsideration.

(g) A claimant may only seek review of the denial of a claim by filing a notice of appeal after having served the notice by mail on the Travel Consumer Restitution Corporation. The notice of appeal shall be filed and served on the Travel Consumer Restitution Corporation not later than 30 days after a written statement of decision on a request for reconsideration has been mailed to the claimant. The notice of appeal from a decision of the Travel Consumer Restitution Corporation shall be filed with the clerk of the superior court either in the county in which the principal place of business of the Travel Consumer Restitution Corporation is located, or in the county in which the claimant was a resident at the time the claimant purchased the transportation or travel services in dispute.

(h) The claimant shall pay the same filing fee as is required for appeals from small claims court. The Travel Consumer Restitution Corporation shall file with the clerk of the superior court the record before the corporation within 30 days of the day the notice of appeal was served on the Travel Consumer Restitution Corporation.

(i) Upon the filing of the record the clerk of the court shall schedule a hearing for the earliest available time and shall mail written notice of the hearing at least 14 days prior to the time set for the hearing.

(j) The hearing on appeal shall be limited to the record before the Travel Consumer Restitution Corporation and any relevant evidence which could not have been with reasonable diligence submitted previously to the corporation. The reviewing court shall

apply a preponderance of the evidence standard of review. The pretrial discovery procedures described in subdivision (a) of Section 2019 of the Code of Civil Procedure are not permitted, there is no right to trial by jury, no tentative decision or statement of decision is required, and the decision of the superior court after a hearing on appeal is final and not appealable. No money may be claimed from or paid by the Travel Consumer Restitution Fund except in accordance with the provisions and procedures set forth in this article. No provision herein shall limit or otherwise affect those remedies as may be available against persons or entities other than the Travel Consumer Restitution Fund.

(k) If the claimant prevails in whole or in part in an appeal, the claimant shall be entitled to attorney's fees and costs actually and reasonably incurred in connection with the appeal, those fees and costs not to exceed the amount awarded by the reviewing court.

(l) Any claim awarded by the corporation shall be paid promptly by the trustee of the restitution fund when the time for appeal has passed or the right to an appeal is waived in writing by the claimant. Any judgment on appeal shall be paid promptly by the trustee of the restitution fund. If there should be insufficient funds to pay a claim when otherwise due, claims shall be paid in the order received. If the Travel Consumer Restitution Corporation ceases to operate pursuant to the terms of Section 17550.52, any remaining trust funds shall be allocated on a pro rata basis to claims accruing prior to the corporation ceasing to operate.

(m) A claim shall require a majority of at least three affirmative votes for denial, otherwise it shall be deemed granted.

17550.48. Any person aggrieved who recovers from the fund shall assign to the Travel Consumer Restitution Corporation all rights of recovery, to a maximum of the amount received from the Travel Consumer Restitution Fund, against any person or organization from which the person aggrieved received any payment as compensation for any loss for which restitution was paid from the Travel Consumer Restitution Fund. The person aggrieved shall execute and deliver to the corporation instruments and papers and perform any other acts necessary to carry out this section. The corporation shall have the authority and discretion to determine whether or not to seek recovery.

17550.49. If the Travel Consumer Restitution Corporation directs that payment be made from the restitution fund in any amount in response to a claim against a participant, the corporation shall inform the office of the Attorney General, which shall revoke the registration of the participant, upon the date the notice is received that payment has been directed to be made from the fund. The seller of travel, including the sole proprietor if the entity is a sole proprietorship, the general partners if the entity is a partnership, or the officers, directors, and stockholders holding more than 10 percent of the stock if the entity is a corporation, shall not be eligible to reregister to do business as a seller of travel until the fund is repaid

in full, plus interest at the rate of 9 percent per year, the amount paid from the fund on the account of the seller of travel, together with all expenses incurred by the trustee in connection with the claim.

17550.50. There shall be no personal liability on the part of and no cause of action of any nature shall arise against the Travel Consumer Restitution Corporation or the directors, officers, employees, or agents of the Travel Consumer Restitution Corporation on any decision to deny a claim for payment from the restitution fund.

17550.51. The Travel Consumer Restitution Corporation shall not be liable for any consequential damages, or for any punitive damages, in connection with the performance of its restitution function.

17550.52. The Attorney General or his or her delegate may determine that the Travel Consumer Restitution Corporation has failed or ceased to operate upon a finding that any one of the following has occurred with respect to the corporation:

- (a) Was not created.
- (b) Has been dissolved.
- (c) Has ceased to operate.
- (d) Is insolvent or bankrupt.
- (e) Has failed to pay its operating costs.
- (f) Has failed to pay any claim or judgment in a timely manner.
- (g) Has violated its articles of incorporation or any law of this state.
- (h) Has invested its funds in violation of this article.
- (i) Has not levied assessments as required by this article.
- (j) Has not diligently decided upon a claim made by a person aggrieved.
- (k) Has violated any section of this article.
- (l) Has neglected or refused to submit its books, papers, and affairs to the inspection of the office of the Attorney General.

17550.53. (a) The Travel Consumer Restitution Corporation shall have independent authority to investigate claims filed by persons aggrieved pursuant to Section 17550.47.

(b) The corporation, upon the request of the office of the Attorney General, may participate in an examination or investigation of the books and records of a participant for the purpose of evaluating a claim related to that seller of travel. There shall be no liability on the part of, and no cause of action of any nature shall arise against, the State of California or any of its employees, agents, or representatives for the release of any information furnished to the Travel Consumer Restitution Corporation pursuant to this subdivision.

(c) With the written consent of a majority of its directors, the corporation, in order to fulfill its obligations under this article, may appoint an independent certified public accountant or public accountant or hire or appoint a specialized committee or employees to conduct an examination or investigation authorized by this

section. Any reports as a result thereof shall be furnished to the office of the Attorney General.

(d) To assist the corporation in evaluating a claim related to a participant, the participant shall provide or make available for inspection by the corporation those books, accounts, bank account records, and files which are necessary for the corporation to evaluate the claim.

(e) The corporation, any participant, an agent of the corporation or any person other than a law enforcement agency who uses information obtained under this section for any purpose not authorized in this article or Article 2.6 (commencing with Section 17550) is guilty of a misdemeanor.

(f) Costs and expenses for any examination under this section shall be paid for by the participant if a claim directly related to that seller of travel has been approved and payment has been made to a person aggrieved. The corporation may maintain an action for recovery of these examination costs and expenses in any court of competent jurisdiction, and shall recover its reasonable costs and attorney's fees as an item of costs, as provided for in paragraph (10) of subdivision (a) and paragraph (5) of subdivision (c) of Section 1033.5 of the Code of Civil Procedure.

17550.54. (a) The Secretary of State shall not file articles for the incorporation of the Travel Consumer Restitution Corporation or an amendment to the articles unless the office of the Attorney General has issued written approval of the articles or amendment.

(b) The Travel Consumer Restitution Corporation shall not adopt any bylaws or amendments thereto without the written consent of the office of the Attorney General. If the office of the Attorney General does not approve or disapprove any bylaws or amendments within 60 days of receipt, such bylaws or amendments shall be deemed to be approved.

17550.55. No provision of the Insurance Code shall apply to the Travel Consumer Restitution Corporation.

17550.56. The operation of the Travel Consumer Restitution Corporation shall at all times be subject to the examination and review of the office of the Attorney General and its duly designated representatives. The office of the Attorney General and its duly designated representatives may at any time investigate the affairs and examine the books, accounts, record, and files used by the corporation. The office of the Attorney General and its duly designated representatives shall have free access to the offices, books, accounts, papers, records, files, safes, and vaults of the corporation.

17550.57. If the Travel Consumer Restitution Corporation is dissolved or if the Attorney General or his or her delegate makes a determination pursuant to Section 17550.52 that the corporation has failed or ceased to operate, the net assets after settling all liabilities shall be distributed pro rata based upon the ratio of the number of locations in the state from which the participant does business to the

total number of locations for all registered participants.

17550.58. All costs and expenses incurred by the Department of Justice in the administration of this article shall be paid to the department by the Travel Consumer Restitution Corporation. The department may institute an action for the recovery of costs and expenses incurred in the administration of this article in any court of competent jurisdiction.

17540.59. This article shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

SEC. 3.5. Article 2.5 (commencing with Section 17540) of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code shall remain in effect until January 1, 1996, and as of that date shall become inoperative, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date. However, Article 2.5 (commencing with Section 17540) of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code shall again become operative on January 1, 1999, unless the repeal date of Article 2.6 (commencing with Section 17550) and Article 2.7 (commencing with Section 17550.35) of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code proposed by this bill has been extended beyond that date, in which case, Article 2.5 (commencing with Section 17540) of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code shall again become operative on the date that both Article 2.6 (commencing with Section 17550) and Article 2.7 (commencing with Section 17550.35) of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code are repealed.

SEC. 4. (a) It is the intent of the Legislature that, during 1995, each section of the Travel Promoters Law (Article 2.5 (commencing with Section 17540) of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code) be in effect except as provided in subdivisions (c) and (d).

(b) It is also the intent of the Legislature that the new registration requirements imposed by the Seller of Travel Law (Article 2.6 (commencing with Section 17550) of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code) be phased in during 1995 by means of the phasein process set forth in this act, and that the penalties, definitions, and funding sections enacted by this act be used for implementation, interpretation, and enforcement during the Seller of Travel Law registration phasein period of January 1, 1995, to January 1, 1996.

(c) During 1995, compliance with the requirements of the registration section of the Travel Promoters Law (Article 2.5 (commencing with Section 17540) of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code) may be achieved by complying with the registration provisions of the Seller of Travel Law (Article 2.6 (commencing with Section 17550) of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code), as set forth in Section 17550.20 of the Business and Professions Code. For those

required to register under the Seller of Travel Law during 1995, registration under the Travel Promoters Law shall not constitute compliance.

(d) Further, it is the intent of the Legislature that, during 1995, any violations of the Seller of Travel Law registration requirements or improper use of a registration number be punished as a violation of Section 17550.19 of the Business and Professions Code. Any violation of the Travel Promoters Law shall, until January 1, 1996, be punished under that law, and, on and after January 1, 1996, any violation of the Seller of Travel law shall be punished as provided in Section 17550.19 of the Business and Professions Code.

SEC. 4.5. The Attorney General shall report to the Legislature on or before January 1, 1998. The report shall contain information and statistics appropriate and relative to protecting the public's welfare through the programs contained in this act, including the sellers of travel registration program, the Travel Consumer Registration Corporation, and the Travel Consumer Restitution Fund. The report shall include statistics as to the number of registrants, disciplinary actions, budget information, claims against the fund, the condition of the fund, and any other information the Attorney General deems necessary in order to make recommendations to the Legislature.

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

CHAPTER 1124

An act to add Sections 18205, 18206, and 18207 to the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 18205 is added to the Welfare and Institutions Code, to read:

18205. (a) Notwithstanding any other provision of law, at the request of a county, after public hearing by the county, the department may extend an experimental project for in-home supportive services established pursuant to Section 18204 for an

additional period of time as long as the total duration of the project does not exceed five years. The extension shall be established by formal order of the director and shall be subject to all other requirements and conditions of the initial order establishing the project pursuant to Section 18204.

(b) In the case of a project subject to subdivision (a) that is conducted pursuant to a contract between a private provider and a county, the contract may be renewed for one or more additional terms provided the combined duration of the initial and extended contract terms does not exceed five years. A new rate of reimbursement may be negotiated consistent with the level of available funding.

SEC. 2. Section 18206 is added to the Welfare and Institutions Code, to read:

18206. (a) The director shall specify performance and quality assurance standards to be included in any experimental project for in-home supportive services undertaken pursuant to Section 18204 or extended pursuant to subdivision (a) of Section 18205.

(b) In the case of a project subject to subdivision (a) of Section 18205 that is conducted pursuant to a contract between a private provider and a county, the standards shall assure delivery of all required services at the time the services are needed, including weekends and nights; establish proper screening, training, and supervision of persons providing direct services; and institute frequent periodic quality control audits and utilization review of all services. These standards shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) Quality control audits and utilization review shall be performed by entities that are independent of the county and the private contractor. The reports of the quality control audits and utilization review, excluding client confidential information, shall be made available to the public. The cost of those quality control audits and utilization review shall be considered as part of the county administrative costs for the managed contract.

(d) (1) One year after the effective date of any project for in-home supportive services established pursuant to Section 18204 or after the date of extension pursuant to subdivision (a) of Section 18205, the Auditor General shall commission a study to review the performance of that project. Any independent reviewer designated in an existing contract may be commissioned to perform the study.

(2) The study shall be submitted to the Legislature and the Governor not later than two years after the effective date of the project or of the extension approved pursuant to this section, as the case may be. The study shall give special attention to both of the following:

(A) The health and welfare of the recipients under the project, including the degree to which all required services have been delivered, out-of-home placement rates, prompt response to

recipient complaints, and any other issue the director deems relevant.

(B) The cost implications of the project, estimating the potential for ongoing savings, if any.

(3) The study may include a fiscal audit of the contract.

(4) The report shall make recommendations to the Legislature and the Governor for any changes to the project that would further assure the well-being of recipients and the most efficient delivery of required services.

(e) Projects subject to Section 18204 relating to in-home supportive services and subject to this section shall, to the greatest extent possible, permit recipients to select their own qualified provider of care and set their own service schedule.

SEC. 3. Section 1827 is added to the Welfare and Institutions Code, to read:

18207. Sections 18205 and 18206 shall apply only to experimental projects for in-home supportive services established pursuant to Section 18204 that were in existence on July 1, 1994.

CHAPTER 1125

An act to add Section 12414.30 to the Insurance Code, relating to insurance.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 12414.30 is added to the Insurance Code, to read:

12414.30. (a) When constituting an offer to issue an owner's policy of title insurance, a preliminary report shall incorporate the following statement, in bold print on front of the preliminary report:

“Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit A of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.”

(b) Upon request, a title insurance company may provide coverage against loss or damage under the terms, conditions, and

stipulations of the title insurance policy for any monetary lien set forth in the preliminary report.

(c) This section does not modify any of the provisions of Section 12340.11.

CHAPTER 1126

An act to amend Sections 56000.5, 56001, and 56345 of, and to add Section 56026.2 to, the Education Code, relating to special education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 56000.5 of the Education Code is amended to read:

56000.5. (a) The Legislature finds and declares that:

(1) Pupils with low-incidence disabilities, as a group, make up less than 1 percent of the total statewide enrollment for kindergarten through grade 12.

(2) Pupils with low-incidence disabilities require highly specialized services, equipment, and materials.

(b) The Legislature further finds and declares that:

(1) Deafness involves the most basic of human needs—the ability to communicate with other human beings. Many hard-of-hearing and deaf children use an appropriate communication mode, sign language, which may be their primary language, while others express and receive language orally and aurally, with or without visual signs or cues. Still others, typically young hard-of-hearing and deaf children, lack any significant language skills. It is essential for the well-being and growth of hard-of-hearing and deaf children that educational programs recognize the unique nature of deafness and ensure that all hard-of-hearing and deaf children have appropriate, ongoing, and fully accessible educational opportunities.

(2) It is essential that hard-of-hearing and deaf children, like all children, have an education in which their unique communication mode is respected, utilized, and developed to an appropriate level of proficiency.

(3) It is essential that hard-of-hearing and deaf children have an education in which special education teachers, psychologists, speech therapists, assessors, administrators, and other special education personnel understand the unique nature of deafness and are specifically trained to work with hard-of-hearing and deaf pupils. It is essential that hard-of-hearing and deaf children have an education in which their special education teachers are proficient in the primary language mode of those children.

(4) It is essential that hard-of-hearing and deaf children, like all children, have an education with a sufficient number of language mode peers with whom they can communicate directly and who are of the same, or approximately the same, age and ability level.

(5) It is essential that hard-of-hearing and deaf children have an education in which their parents and, where appropriate, hard-of-hearing and deaf people are involved in determining the extent, content, and purpose of programs.

(6) Hard-of-hearing and deaf children would benefit from an education in which they are exposed to hard-of-hearing and deaf role models.

(7) It is essential that hard-of-hearing and deaf children, like all children, have programs in which they have direct and appropriate access to all components of the educational process, including, but not limited to, recess, lunch, and extracurricular social and athletic activities.

(8) It is essential that hard-of-hearing and deaf children, like all children, have programs in which their unique vocational needs are provided for, including appropriate research, curricula, programs, staff, and outreach.

(9) Each hard-of-hearing and deaf child should have a determination of the least restrictive educational environment that takes into consideration these legislative findings and declarations.

(10) Given their unique communication needs, hard-of-hearing and deaf children would benefit from the development and implementation of regional programs for children with low-incidence disabilities.

SEC. 2. Section 56001 of the Education Code is amended to read: 56001. It is the intent of the Legislature that special education programs provide all of the following:

(a) Each individual with exceptional needs is assured an education appropriate to his or her needs in publicly supported programs through completion of his or her prescribed course of study or until the time that he or she has met proficiency standards prescribed pursuant to Sections 51215 and 51216.

(b) By June 30, 1991, early educational opportunities shall be available to all children between the ages of three and five years who require special education and services.

(c) Early educational opportunities shall be made available to children younger than three years of age pursuant to Chapter 4.4 (commencing with Section 56425), appropriate sections of this part, and the California Early Intervention Service Act, Title 14 (commencing with Section 95000) of the Government Code.

(d) Any child younger than three years, potentially eligible for special education, shall be afforded the protections provided pursuant to the California Early Intervention Services Act, Title 14 (commencing with Section 95000) of the Government Code and Section 1480 of Title 20 of the United States Code and implementing regulations.

(e) Each individual with exceptional needs shall have his or her educational goals, objectives, and special education and related services specified in a written individualized education program.

(f) Education programs are provided under an approved local plan for special education that sets forth the elements of the programs in accordance with this part. This plan for special education shall be developed cooperatively with input from the community advisory committee and appropriate representation from special and regular teachers and administrators selected by the groups they represent to ensure effective participation and communication.

(g) Individuals with exceptional needs are offered special assistance programs that promote maximum interaction with the general school population in a manner that is appropriate to the needs of both, taking into consideration, for hard-of-hearing or deaf children, the individual's needs for a sufficient number of age and language mode peers and for special education teachers who are proficient in the individual's primary language mode.

(h) Pupils be transferred out of special education programs when special education services are no longer needed.

(i) The unnecessary use of labels is avoided in providing special education and related services for individuals with exceptional needs.

(j) Procedures and materials for assessment and placement of individuals with exceptional needs shall be selected and administered so as not to be racially, culturally, or sexually discriminatory. No single assessment instrument shall be the sole criterion for determining placement of a pupil. The procedures and materials for assessment and placement shall be in the individual's mode of communication. Procedures and materials for use with pupils of limited English proficiency, as defined in subdivision (m) of Section 52163, shall be in the individual's primary language. All assessment materials and procedures shall be selected and administered pursuant to Section 56320.

(k) Educational programs are coordinated with other public and private agencies, including preschools, child development programs, nonpublic nonsectarian schools, regional occupational centers and programs, and postsecondary and adult programs for individuals with exceptional needs.

(l) Psychological and health services for individuals with exceptional needs shall be available to each schoolsite.

(m) Continuous evaluation of the effectiveness of these special education programs by the school district, special education local plan area, or county office shall be made to ensure the highest quality educational offerings.

(n) Appropriate qualified staff are employed, consistent with credentialing requirements, to fulfill the responsibilities of the local plan and positive efforts are made to employ qualified handicapped individuals.

(o) Regular and special education personnel are adequately prepared to provide educational instruction and services to individuals with exceptional needs.

(p) This section shall remain in effect only until California terminates its participation in special education programs for individuals with exceptional needs between the ages of three and five years, pursuant to Section 56448, and as of that date is repealed.

SEC. 2.5. Section 56001 of the Education Code is amended to read:

56001. It is the intent of the Legislature that special education programs provide all of the following:

(a) Each individual with exceptional needs is assured an education appropriate to his or her needs in publicly supported programs through completion of his or her prescribed course of study or until the time that he or she has met proficiency standards prescribed pursuant to Sections 51215 and 51216.

(b) Early educational opportunities are available to all children between the ages of three and four years and nine months who require intensive special education and services.

(c) Early educational opportunities shall be made available to children younger than three years of age pursuant to Chapter 4.4 (commencing with Section 56425), appropriate sections of this part, and the California Early Intervention Service Act, Title 14 (commencing with Section 95000) of the Government Code.

(d) Any child younger than three years, potentially eligible for special education shall be afforded the protections provided pursuant to the California Early Intervention Services Act, Title 14 (commencing with Section 95000) of the Government Code and Section 1480 of Title 20 of the United States Code and implementing regulations.

(e) Each individual with exceptional needs shall have his or her educational goals, objectives, and special education and related services specified in a written individualized education program.

(f) Education programs are provided under an approved local plan for special education that sets forth the elements of the programs in accordance with the provisions of this part. This plan for special education shall be developed cooperatively with input from the community advisory committee and appropriate representation from special and regular teachers and administrators selected by the groups they represent to ensure effective participation and communication.

(g) Individuals with exceptional needs are offered special assistance programs that promote maximum interaction with the general school population in a manner which is appropriate to the needs of both, taking into consideration, for hard-of-hearing or deaf children, the individual's needs for a sufficient number of age and language mode peers and for special education teachers who are proficient in the individual's primary language mode.

(h) Pupils be transferred out of special education programs when

special education services are no longer needed.

(i) The unnecessary use of labels is avoided in providing special education and related services for individuals with exceptional needs.

(j) Procedures and materials for assessment and placement of individuals with exceptional needs shall be selected and administered so as not to be racially, culturally, or sexually discriminatory. No single assessment instrument shall be the sole criterion for determining placement of a pupil. The procedures and materials for assessment and placement shall be in the individual's mode of communication. Procedures and materials for use with pupils of limited-English proficiency as defined in subdivision (m) of Section 52163, shall be in the individual's primary language. All assessment materials and procedures shall be selected and administered pursuant to Section 56320.

(k) Educational programs are coordinated with other public and private agencies, including preschools, child development programs, nonpublic, nonsectarian schools, regional occupational centers and programs, and postsecondary and adult programs for individuals with exceptional needs.

(l) Psychological and health services for individuals with exceptional needs shall be available to each schoolsite.

(m) Continuous evaluation of the effectiveness of these special education programs by the school district, special education local plan area, or county office shall be made to ensure the highest quality educational offerings.

(n) Appropriate qualified staff are employed, consistent with credentialing requirements, to fulfill the responsibilities of the local plan and positive efforts are made to employ qualified handicapped individuals.

(o) Regular and special education personnel are adequately prepared to provide educational instruction and services to individuals with exceptional needs.

(p) This section shall become operative on the date that California terminates its participation in special education programs for individuals with exceptional needs between the ages of three and five years, pursuant to Section 56448.

SEC. 3. Section 56026.2 is added to the Education Code, to read:
56026.2. "Language mode" means the method of communication used by hard-of-hearing and deaf children that may include the use of sign language to send or receive messages or the use of spoken language, with or without visual signs or cues.

SEC. 4. Section 56345 of the Education Code is amended to read:
56345. (a) The individualized education program is a written statement determined in a meeting of the individualized education program team and shall include, but not be limited to, all of the following:

- (1) The present levels of the pupil's educational performance.
- (2) The annual goals, including short-term instructional

objectives.

(3) The specific special educational instruction and related services required by the pupil.

(4) The extent to which the pupil will be able to participate in regular educational programs.

(5) The projected date for initiation and the anticipated duration of the programs and services included in the individualized education program.

(6) Appropriate objective criteria, evaluation procedures, and schedules for determining, on at least an annual basis, whether the short-term instructional objectives are being achieved.

(b) When appropriate, the individualized education program shall also include, but not be limited to, all of the following:

(1) Prevocational career education for pupils in kindergarten and grades 1 to 6, inclusive, or pupils of comparable chronological age.

(2) Vocational education, career education or work experience education, or any combination thereof, in preparation for remunerative employment, including independent living skill training for pupils in grades 7 to 12, inclusive, or comparable chronological age, who require differential proficiency standards pursuant to Section 51215.

(3) For pupils in grades 7 to 12, inclusive, any alternative means and modes necessary for the pupil to complete the district's prescribed course of study and to meet or exceed proficiency standards for graduation in accordance with Section 51215.

(4) For individuals whose primary language is other than English, linguistically appropriate goals, objectives, programs and services.

(5) Extended school year services when needed, as determined by the individualized education program team.

(6) Provision for the transition into the regular class program if the pupil is to be transferred from a special class or center, or nonpublic, nonsectarian school into a regular class in a public school for any part of the schoolday, including the following:

(A) A description of activities provided to integrate the pupil into the regular education program. The description shall indicate the nature of each activity, and the time spent on the activity each day or week.

(B) A description of the activities provided to support the transition of pupils from the special education program into the regular education program.

(7) For pupils with low-incidence disabilities, specialized services, materials, and equipment, consistent with guidelines established pursuant to Section 56136.

(c) It is the intent of the Legislature in requiring individualized education programs that the district, special education local plan area, or county office is responsible for providing the services delineated in the individualized education program. However, the Legislature recognizes that some pupils may not meet or exceed the growth projected in the annual goals and objectives of the pupil's

individualized education program.

(d) Pursuant to subdivision (d) of Section 51215, a pupil's individualized education program shall also include the determination of the individualized education program team as to whether differential proficiency standards shall be developed for the pupil. If differential proficiency standards are to be developed, the individualized education program shall include these standards.

(e) Consistent with Section 56000.5, it is the intent of the Legislature that, in making a determination of what constitutes an appropriate education to meet the unique needs of a deaf or hard-of-hearing pupil in the least restrictive environment, the individualized education program team shall consider the related services and program options that provide the pupil with an equal opportunity for communication access. The individualized education program team shall specifically discuss the communication needs of the pupil, consistent with the guidelines adopted pursuant to Section 56136 and Page 49274 of Volume 57 of the Federal Register, including all of the following:

(1) The pupil's primary language mode and language, which may include the use of spoken language with or without visual cues, or the use of sign language, or a combination of both.

(2) The availability of a sufficient number of age, cognitive, and language peers of similar abilities which may be met by consolidating services into a local plan areawide program or providing placement pursuant to Section 56361.

(3) Appropriate, direct, and ongoing language access to special education teachers and other specialists who are proficient in the pupil's primary language mode and language consistent with existing law regarding teacher training requirements.

(4) Services necessary to ensure communication-accessible academic instructions, school services, and extracurricular activities consistent with the Vocational Rehabilitation Act of 1973 as set forth in Section 794 of Title 29 of the United States Code and the Americans with Disabilities Act of 1990 as set forth in Section 12000 and following of Title 42 of the United States Code.

(f) No General Fund money made available to school districts or local agencies may be used for any additional responsibilities and services associated with paragraphs (1) and (2) of subdivision (e), including the training of special education teachers and other specialists, even if those additional responsibilities or services are required pursuant to a judicial or state agency determination. Those responsibilities and services shall only be funded by a local educational agency as follows:

(1) The costs of those activities shall be funded from existing programs and funding sources.

(2) Those activities shall be supported by the resources otherwise made available to those programs.

(3) Those activities shall be consistent with the provisions of Sections 56240 to 56243, inclusive.

(g) It is the intent of the Legislature that the communication skills of teachers who work with hard-of-hearing and deaf children be improved, however, nothing in this section shall be construed to remove the local educational agency's discretionary authority in regard to in-service activities.

SEC. 5. By amending Sections 56000.5, 56001, and 56345 of the Education Code by Sections 1, 2, 2.5, and 4 of this act, and by adding Section 56026.2 to the Education Code by Section 3, it is the intent of the Legislature to ensure that state law complies with the requirements of federal law under the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.).

SEC. 6. The changes made to Section 56000.5, 56001, and 56345 of the Education Code by Sections 1, 2, 2.5, and 4 and the provisions of Section 56026.2, as added to the Education Code by Section 3, shall be implemented only to the extent that funds are specifically appropriated for that purpose in the annual Budget Act. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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

In order to ensure that all pupils have an education that they can understand provided to them in a setting in which they communicate, which is an essential aspect of education in this state, it is necessary that this act take effect immediately.

CHAPTER 1127

An act to add Section 15364.6.1 to the Government Code, relating to economic development.

[Approved by Governor September 29, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 15364.6.1 is added to the Government Code, to read:

15364.6.1. The California World Trade Commission, in consultation with the California Offices of Trade and Investment in Tokyo, Taipei, and Hong Kong, shall at least biennially conduct a California Pacific Rim Conference beginning in 1995, for the purpose of advancing California's awareness and knowledge of, and commitment and relationship with, and success in engaging in, economic development partnerships in the Pacific Rim.

The location of the conference shall alternate between northern and southern California and may on occasion be located in another Pacific Rim nation, as selected by the World Trade Commission, provided that sufficient funds are available for that purpose. The conference shall include business, political, and academic leaders of each of the Pacific Rim nations, and bring them together with business, political, academic, and labor leaders in California.

The agenda of the California Pacific Rim Conference shall be designed to enable the participants to engage in dialogue, in order to educate each other about how the state and each of the Pacific Rim nations can more effectively and successfully collaborate in Pacific Rim economic development, including investment and trade and commerce.

The California Pacific Rim Conference shall be funded in part through private contributions to the California World Trade Commission, made specifically for the purpose of supporting the California Pacific Rim Conference. In order to recoup all necessary costs of conducting the conference, the World Trade Commission may charge conference participants or members of the general public who attend the conference a reasonable and appropriate fee for participation in, or attendance at, the conference.

Upon the completion of the first California Pacific Rim Conference, the California World Trade Commission shall submit a brief report to the Legislature assessing the effectiveness and success of the conference and making recommendations to improve future conferences.

CHAPTER 1128

An act to add Section 7572.55 to the Government Code, and to amend Section 727.1 of, and to add Section 362.2 to, the Welfare and Institutions Code, relating to foster care.

[Approved by Governor September 29, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 7572.55 is added to the Government Code, to read:

7572.55. (a) Residential placements for a child with a disability who is seriously emotionally disturbed may be made out-of-state only after in-state alternatives have been considered and are found not to meet the child's needs and only when the requirements of Section 7572.5, and subdivision (e) of Section 56365 of the Education Code have been met. The local education agency shall document the alternatives to out-of-state residential placement that were considered and the reasons why they were rejected.

(b) Out-of-state placements shall be made only in a privately operated school certified by the California Department of Education.

(c) A plan shall be developed for using less restrictive alternatives and in-state alternatives as soon as they become available, unless it is in the best educational interest of the child to remain in the out-of-state school. If the child is a ward or dependent of the court, this plan shall be documented in the record.

SEC. 2. Section 362.2 is added to the Welfare and Institutions Code, to read:

362.2. It is the intent of the Legislature that if a placement out-of-home is necessary pursuant to an individualized education program, that this placement be as near the child's home as possible, unless it is not in the best interest of the child. When the court determines that it is the best interest of the child to be placed out-of-state, the court shall read into the record that in-state alternatives have been explored and that they cannot meet the needs of the child, and the court shall state on the record the reasons for the out-of-state placement.

SEC. 3. Section 727.1 of the Welfare and Institutions Code is amended to read:

727.1. (a) Unless otherwise authorized by law, the court may not order the placement of a minor who is adjudged a ward of the court on the basis that he or she is a person described by either Section 601 or 602 in a private residential facility or program that provides 24-hour supervision, outside of the state, unless the court finds, in its order of placement, that both of the following conditions are met:

(1) In-state facilities or programs have been determined to be

unavailable or inadequate to meet the needs of the minor.

(2) The out-of-state residential facility or program is licensed for the placement of minors by an agency of the state or states in which the minor will be placed or operates under and is inspected pursuant to standards comparable to those developed by the Youth Authority for similar facilities or programs.

(b) The court shall review each of these placements for compliance with the requirements of subdivision (a) at least once a year.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1129

An act to amend Section 84200 of the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 84200 of the Government Code is amended to read:

84200. (a) Except as provided in paragraphs (1), (2), and (3), elected officers, candidates, and committees pursuant to subdivision (a) of Section 82013 shall file semiannual statements each year no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31.

(1) A candidate who, during the past six months has filed a declaration pursuant to Section 84206 shall not be required to file a semiannual statement for that six-month period.

(2) Elected officers whose salaries are less than one hundred dollars (\$100) a month, judges, judicial candidates, and their controlled committees shall not file semiannual statements pursuant to this subdivision for any six-month period in which they have not made or received any contributions or made any expenditures.

(3) A judge who is not listed on the ballot for reelection to, or

recall from, any elective office during a calendar year shall not file semiannual statements pursuant to this subdivision for any six-month period in that year if both of the following apply:

(A) The judge has not received any contributions.

(B) The only expenditures made by the judge during the calendar year are contributions from the judge's personal funds to other candidates or committees totaling less than one thousand dollars (\$1,000).

(b) All committees pursuant to subdivision (b) or (c) of Section 82013 shall file campaign statements each year no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31, if they have made contributions or independent expenditures, including payments to a slate mailer organization, during the six-month period before the closing date of the statements.

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

SEC. 3. The Legislature finds and declares that the provisions of this act further the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

CHAPTER 1130

An act relating to banking.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. The Legislature finds and declares that the nation has suffered a shortage of credit, termed a credit crunch, from banks and savings and loans and that the credit crunch has had a significant deleterious impact on the national economy in general and the California economy in particular. The Legislature further finds and declares that, among borrowers, small businesses seem to be having the most difficulty gaining credit and their problems are particularly severe because of their reliance on banks. The problems of small businesses are especially important because of their important role

in providing employment.

SEC. 2. The California Research Bureau of the California State Library shall conduct a study of factors affecting credit for small businesses. The bureau shall make a report to the Legislature on or before July 1, 1995. The report shall contain, at least, the following:

(a) A description of the problem in California. The bureau shall seek input from affected small businesses in reporting on the description of the problem in California.

(b) The effect of financial institution laws and regulations, including those of the state and federal government, on small business loans.

(c) The status and impact of changes to the Community Reinvestment Act (12 U.S.C. Sec. 2901 et seq.) regulations.

(d) The status and impact of the federal community banking proposal.

(e) Possible options for addressing the problem at both the state and federal level. This section shall include options that have been considered and adopted by other states.

(f) The study shall consider a review of other relevant studies including those of the General Accounting Office, Small Business Administration, and the Federal Financial Institutions Advisory Council.

The bureau shall consult with small businesses, financial institutions regulating agencies, and other research organizations.

CHAPTER 1131

An act to amend Sections 11735 and 11750.3 of, and to add Section 11736.5 to, the Insurance Code, relating to workers' compensation insurance.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 11735 of the Insurance Code is amended to read:

11735. (a) Every insurer shall file with the commissioner all rates, rating plans, and supplementary rate information which are to be used in this state. The rates and supplementary information shall be filed not later than 30 days prior to the effective date. If the commissioner finds, after a hearing, that an insurer's rates require closer supervision because of the insurer's financial condition, as determined pursuant to Section 11733, the insurer shall file with the commissioner at least 30 days before the effective date, all of those rates and the supplementary rate information and supporting information as prescribed by the commissioner. Upon application by

the filer, the commissioner may authorize an earlier effective date.

(b) Rates filed pursuant to this section shall be filed in the form and manner prescribed by the commissioner. All rates, supplementary information and any supporting information for rates filed under this article shall, as soon as filed, be open to public inspection at any reasonable time. Copies may be obtained by any person on request and upon payment of a reasonable charge.

(c) Upon the written application of the insurer and insured, stating its reasons therefor, filed with the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

(d) Notwithstanding Section 679.70, no rating organization may issue nor may any insurer use any classification system or rate, as applied or used, that violates Section 679.71 or 679.72 or that violates the Unruh Civil Rights Act which shall also include any arbitrary economic discrimination by an insurer as a prohibited basis of discrimination.

(e) Notwithstanding Sections 11657 to 11660, inclusive, a rating plan or supplementary rate information filed with the commissioner for purposes of offering deductibles to policyholders for all or part of benefits payable under the policy shall be deemed complete if the filing contains the following:

(1) A copy of the deductible endorsement that is to be attached to the policy to effectuate deductible coverage.

(2) Endorsement language that protects the rights of injured workers and ensures that benefits are paid by the insurer without regard to any deductible. The endorsement shall specify that the nonpayment of deductible amounts by the policyholder shall not relieve the insurer from payment of compensation for injuries sustained by the employee during the period of time the endorsed policy was in effect. The endorsement shall provide that deductible policies for workers' compensation insurance coverage shall not be terminated retroactively for nonpayment of deductible amounts.

(3) The endorsement shall provide that notwithstanding the deductible, the insurer shall pay all the obligations of the employer for workers' compensation benefits for injuries occurring during the policy period. Payment by the insurer of any amounts within the deductible shall be treated as an advancement of funds by the insurer to the employer and shall create a legal obligation for reimbursements, and may be secured by appropriate security.

(4) The endorsement shall specify whether loss adjustment expenses are to be treated as advancements within the deductible to be reimbursed by the employer.

(5) An explanation of premium reductions reflecting the type and level of the deductible will be clearly set forth for the policyholder.

(6) The filing shall provide that premium reductions for deductibles are determined before application of any experience modification, premium surcharge, or premium discount, and the premium reductions reflect the type and level of deductible

consistent with accepted actuarial standards.

(7) The filing shall provide that nonpayment of deductible amounts by the insured employer to its insurer, or failure to comply with any security-related terms of the policy, shall be treated under the policy in the same manner as payment or nonpayment of premium pursuant to paragraph (1) of subdivision (b) of Section 676.8.

(f) The insurer shall report and record losses subject to the deductible as losses for purposes of ratemaking and application of the experience rating plan on the same bases as losses under policies providing first dollar coverage.

SEC. 1.5. Section 11735 of the Insurance Code is amended to read:

11735. (a) Every insurer shall file with the commissioner all rates, rating plans, and supplementary rate information which are to be used in this state. The rates and supplementary information shall be filed not later than 30 days prior to the effective date. If the commissioner finds, after a hearing, that an insurer's rates require closer supervision because of the insurer's financial condition, as determined pursuant to Section 11733, the insurer shall file with the commissioner at least 30 days before the effective date, all of those rates and the supplementary rate information and supporting information as prescribed by the commissioner. Upon application by the filer, the commissioner may authorize an earlier effective date.

(b) Rates filed pursuant to this section shall be filed in the form and manner prescribed by the commissioner. All rates, supplementary information and any supporting information for rates filed under this article shall, as soon as filed, be open to public inspection at any reasonable time. Copies may be obtained by any person on request and upon payment of a reasonable charge.

(c) Upon the written application of the insurer and insured, stating its reasons therefor, filed with the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

(d) Notwithstanding Section 679.70, no rating organization may issue nor may any insurer use any classification system or rate, as applied or used, that violates Section 679.71 or 679.72 or that violates the Unruh Civil Rights Act.

(e) Notwithstanding Sections 11657 to 11660, inclusive, a rating plan or supplementary rate information filed with the commissioner for purposes of offering deductibles to policyholders for all or part of benefits payable under the policy shall be deemed complete if the filing contains the following:

(1) A copy of the deductible endorsement that is to be attached to the policy to effectuate deductible coverage.

(2) Endorsement language that protects the rights of injured workers and ensures that benefits are paid by the insurer without regard to any deductible. The endorsement shall specify that the nonpayment of deductible amounts by the policyholder shall not

relieve the insurer from payment of compensation for injuries sustained by the employee during the period of time the endorsed policy was in effect. The endorsement shall provide that deductible policies for workers' compensation insurance coverage shall not be terminated retroactively for nonpayment of deductible amounts.

(3) The endorsement shall provide that notwithstanding the deductible, the insurer shall pay all the obligations of the employer for workers' compensation benefits for injuries occurring during the policy period. Payment by the insurer of any amounts within the deductible shall be treated as an advancement of funds by the insurer to the employer and shall create a legal obligation for reimbursements, and may be secured by appropriate security.

(4) The endorsement shall specify whether loss adjustment expenses are to be treated as advancements within the deductible to be reimbursed by the employer.

(5) An explanation of premium reductions reflecting the type and level of the deductible will be clearly set forth for the policyholder.

(6) The filing shall provide that premium reductions for deductibles are determined before application of any experience modification, premium surcharge, or premium discount, and the premium reductions reflect the type and level of deductible consistent with accepted actuarial standards.

(7) The filing shall provide that nonpayment of deductible amounts by the insured employer to its insurer, or failure to comply with any security-related terms of the policy, shall be treated under the policy in the same manner as payment or nonpayment of premium pursuant to paragraph (1) of subdivision (b) of Section 676.8.

(f) The insurer shall report and record losses subject to the deductible as losses for purposes of ratemaking and application of the experience rating plan on the same bases as losses under policies providing first dollar coverage.

SEC. 2. Section 11736.5 is added to the Insurance Code, to read:

11736.5. (a) The commissioner shall establish, by regulation, those forms of collateral or security that an insurer may designate to secure the deductible amount of any policy of workers' compensation insurance and the establishment of reserves and recognition of receivables for insurers writing workers' compensation deductible policies.

The commissioner, by order, exempt from the requirements of the Administrative Procedure Act, shall establish those forms of security or collateral that the insurer may designate to secure the deductible amount of any policy of workers' compensation insurance that provides for a deductible and the establishment of reserves and recognition of receivables for insurers writing workers' compensation deductible policies. This authority shall expire if regulations required by subdivision (a) are not drafted and filed with the Office of Administrative Law by December 31, 1995; if the regulations are filed with the Office of Administrative Law by

December 31, 1995, this authority shall expire December 31, 1996, or upon filing of the regulations with the Secretary of State, whichever is earlier.

SEC. 3. Section 11750.3 of the Insurance Code is amended to read:

11750.3. A rating organization may be organized pursuant to this article and maintained in this state for the following purposes:

(a) To provide reliable statistics and rating information with respect to workers' compensation insurance and employer's liability insurance incidental thereto and written in connection therewith.

(b) To collect and tabulate information and statistics for the purpose of developing pure premium rates to be submitted to the commissioner for issuance or approval.

(c) To formulate rules and regulations in connection with pure premium rates and the administration of classifications and rating systems.

(d) To inspect risks for classification or rate purposes and to furnish to the insurer and upon request of the employer and after notice to the insurer, to furnish to the employer full information concerning the rates applicable to the employer's insurance.

(e) To examine policies, daily reports, endorsements or other evidences of insurance for the purpose of ascertaining whether they comply with the provisions of law and to make reasonable rules governing their submission. A rating organization may develop loss data on behalf of its members to assist members in developing plans pursuant to subdivision (e) of Section 11735 and other loss sensitive plans.

(f) Within one year after expiration of any workers' compensation insurance policy, to initiate test audits of insured employer's payrolls and insurer's audits of those payrolls to check the accuracy and reliability thereof, and to examine all records relative thereto and premises of insured employers.

(g) To exchange information and experience data with rating organizations, advisory organizations, and insurers in this and other states, with respect to ratemaking.

(h) To become a member or subscriber of any lawfully authorized ratemaking or advisory organization whenever membership in the organization is necessary or helpful to the rating organization.

(i) To perform all acts necessary, incidental, or convenient to carry out the foregoing purposes or the provisions of this chapter relating to rating organizations.

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 11735 of the Insurance Code proposed by both this bill and AB 3682. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1995, (2) each bill amends Section 11735 of the Insurance Code, and (3) this bill is enacted after AB 3682, in which case Section 1 of this bill shall not become operative.

CHAPTER 1132

An act to amend Section 22500 of, and to add Sections 22502.1, 22502.2, and 22502.3 to, the Business and Professions Code, relating to ticket sellers, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 22500 of the Business and Professions Code is amended to read:

22500. (a) A ticket seller shall have a permanent business address from which tickets may only be sold and that address shall be included in any advertisement or solicitation, and shall be duly licensed as may be required by any local jurisdiction.

(b) A violation of this section shall constitute a misdemeanor punishable by imprisonment in a county jail not exceeding six months, or by fine not exceeding two thousand five hundred dollars (\$2,500), or by both.

(c) Any person who engages, has engaged, or proposes to engage in a violation of this section shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, which may be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General, or a district attorney, or a city attorney of a city having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city, county, or city and county having a full-time prosecutor in any court of competent jurisdiction. Payment of the civil penalty shall be made pursuant to the provisions of subdivision (b) of Section 17206. For the purposes of this section, each ticket sold or offered for sale in violation of this section shall constitute a separate violation. The remedies provided by this section are cumulative to each other and to the remedies or penalties available under all other laws of this state.

SEC. 2. Section 22502.1 is added to the Business and Professions Code, to read:

22502.1. It shall be unlawful for a ticket seller to contract for the sale of tickets or accept consideration for payment in full or for a deposit for the sale of tickets unless the ticket seller meets one or more of the following requirements:

(a) The ticket seller has the ticket in his or her possession.

(b) The ticket seller has a written contract to obtain the offered ticket at a certain price from a person in possession of the ticket or from a person who has a contractual right to obtain the ticket from the primary contractor.

(c) The ticket seller informs the purchaser orally at the time of

the contract or receipt of consideration, whichever is earlier, and in writing within two business days, that the seller does not have possession of the tickets, has no contract to obtain the offered ticket at a certain price from a person in possession of the ticket or from a person who has a contractual right to obtain the ticket from the primary contractor, and may not be able to supply the ticket at the contracted price or range of prices.

Nothing in this section shall prohibit a ticket seller from accepting a deposit from a prospective purchaser as part of an agreement that the ticket seller will make best efforts to obtain a ticket at a specified price or price range and within a specified time, provided that the ticket seller informs the purchaser orally at the time of the contract or receipt of consideration, whichever is earlier, and in writing within two days, of the terms of the deposit agreement, and includes in the oral and written notice the disclosures otherwise required by this section.

SEC. 3. Section 22502.2 is added to the Business and Professions Code, to read:

22502.2. It shall be unlawful for a ticket seller to represent that he or she can deliver or cause to be delivered a ticket at a specific price or within a specific price range and to fail to deliver within a reasonable time or by a contracted time the tickets at or below the price stated or within the range of prices stated.

SEC. 4. Section 22502.3 is added to the Business and Professions Code, to read:

22502.3. In addition to other remedies, a ticket seller who violates Section 22502.1 or 22502.2 and fails to supply a ticket at or below a contracted price or within a contracted price range shall be civilly liable to the ticket purchaser for two times the contracted price of the ticket, in addition to any sum expended by the purchaser in nonrefundable expenses for attending or attempting to attend the event in good faith reliance on seat or space availability, and reasonable attorney's fees and court costs.

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

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

The travel and tourism industry is an integral component of the California economy. Sporting and entertainment events help draw

travelers to the state. As host to several 1994 World Cup games, including the finals to be played at the Rose Bowl, it is necessary that the consumer protections found in this act be in force prior to commencement of the games.

CHAPTER 1133

An act to amend Sections 14601, 14601.1, 14601.2, and 14601.3 of, and to add Sections 1664, 1806.1, 9255.3, 13106, 13551.1, 14607.4, 14607.6, 14607.8, and 14908 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. This act shall be known as the Safe Streets Act of 1994.

SEC. 2. Section 1664 is added to the Vehicle Code, to read:

1664. The department shall publicize the Safe Streets Act of 1994 when mailing vehicle registrations, driver's licenses, and driver's license suspension and revocation notices, and in other educational materials made available by the department.

SEC. 3. Section 1806.1 is added to the Vehicle Code, to read:

1806.1. If a person has entered into a stipulated vehicle release agreement pursuant to paragraph (2) of subdivision (d) of Section 14607.6, the department shall maintain a record of that fact for seven years from the date the person signed the agreement.

SEC. 4. Section 9255.3 is added to the Vehicle Code, to read:

9255.3. Notwithstanding Section 9255, any vehicle transferred pursuant to Section 14607.6 shall be subject to a title transfer fee equal to the department's actual cost of processing that transfer.

SEC. 5. Section 13106 is added to the Vehicle Code, to read:

13106. (a) When the privilege of a person to operate a motor vehicle is suspended or revoked, the department shall notify the person by certified mail, return receipt requested, of the action taken and of the effective date thereof, except for those persons personally given notice by the department or a court, by a peace officer pursuant to Section 23137 or 23158.5, or otherwise pursuant to this code. It shall be conclusively presumed that a person has knowledge of the suspension or revocation if notice has been sent by certified mail by the department pursuant to this section to the most recent address reported by the person to the department pursuant to Section 14600, and the return receipt has been signed and returned to the department. It is the responsibility of every licenseholder to report changes of address to the department pursuant to Section 14600.

(b) (1) In the event the certified mail is not delivered, the

department shall attempt to provide personal service by using a process server for service of any person whose driving privilege was suspended or revoked for a conviction of a violation of Section 23103, 23104, 23152, or 23153, or for any reason listed in subdivision (a) or (c) of Section 12806, or for negligent or incompetent operation of a vehicle pursuant to subdivision (e) of Section 12809 or Section 12810.

(2) The only purpose of this subdivision is to provide an additional deterrent to unlawful driving.

(c) At the time of license reinstatement, the department shall recover, through fees authorized pursuant to Section 14906, an amount equal to its total costs of providing notices pursuant to this section.

SEC. 6. Section 13551.1 is added to the Vehicle Code, to read:

13551.1. (a) Every notice of suspension or revocation given pursuant to Section 13106 shall include a demand for surrender to the department within 15 days of the effective date of the suspension or revocation, as specified in the notice, of all driver's licenses held by that person. The notice shall also state the reinstatement penalty fee required pursuant to Section 14908 in the event the person is eligible for future reinstatement.

(b) A person described in subdivision (a) shall surrender all driver's licenses to the department within the 15-day period.

(c) Notwithstanding Section 40000.1, failure to comply with this section is not an infraction.

SEC. 7. Section 14601 of the Vehicle Code is amended to read:

14601. (a) No person shall drive a motor vehicle at any time when that person's driving privilege is suspended or revoked for reckless driving in violation of Section 23103 or 23104, any reason listed in subdivision (a) or (c) of Section 12806 authorizing the department to refuse to issue a license, negligent or incompetent operation of a motor vehicle as prescribed in subdivision (e) of Section 12809, or negligent operation as prescribed in Section 12810, if the person so driving has knowledge of the suspension or revocation. Knowledge shall be conclusively presumed if mailed notice has been given by the department to the person pursuant to Section 13106. The presumption established by this subdivision is a presumption affecting the burden of proof.

(b) Any person convicted under this section shall be punished as follows:

(1) Upon a first conviction, by imprisonment in the county jail for not less than five days or more than six months and by fine of not less than three hundred dollars (\$300) or more than one thousand dollars (\$1,000).

(2) If the offense occurred within five years of a prior offense which resulted in a conviction of a violation of this section or Section 14601.1, 14601.2, or 14601.5, by imprisonment in the county jail for not less than 10 days or more than one year and by fine of not less than five hundred dollars (\$500) or more than two thousand dollars (\$2,000).

(c) If the offense occurred within five years of a prior offense which resulted in a conviction of a violation of this section or Section 14601.1, 14601.2, or 14601.5, and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for at least 10 days.

(d) Nothing in this section prohibits a person from driving a motor vehicle, which is owned or utilized by the person's employer, during the course of employment on private property which is owned or utilized by the employer, except an off street parking facility as defined in subdivision (c) of Section 12500.

SEC. 8. Section 14601.1 of the Vehicle Code is amended to read:

14601.1. (a) No person shall drive a motor vehicle when his or her driving privilege is suspended or revoked for any reason other than those listed in Section 14601, 14601.2, or 14601.5, if the person so driving has knowledge of the suspension or revocation. Knowledge shall be conclusively presumed if mailed notice has been given by the department to the person pursuant to Section 13106. The presumption established by this subdivision is a presumption affecting the burden of proof.

(b) Any person convicted under this section shall be punished as follows:

(1) Upon a first conviction, by imprisonment in the county jail for not more than six months or by a fine of not less than three hundred dollars (\$300) or more than one thousand dollars (\$1,000), or by both that fine and imprisonment.

(2) If the offense occurred within five years of a prior offense which resulted in a conviction of a violation of this section or Section 14601, 14601.2, or 14601.5, by imprisonment in the county jail for not less than five days or more than one year and by a fine of not less than five hundred dollars (\$500) or more than two thousand dollars (\$2,000).

(c) Nothing in this section prohibits a person from driving a motor vehicle, which is owned or utilized by the person's employer, during the course of employment on private property which is owned or utilized by the employer, except an offstreet parking facility as defined in subdivision (c) of Section 12500.

SEC. 9. Section 14601.2 of the Vehicle Code is amended to read:

14601.2. (a) No person shall drive a motor vehicle at any time when that person's driving privilege is suspended or revoked for a conviction of a violation of Section 23152 or 23153, if the person so driving has knowledge of the suspension or revocation.

(b) Except in full compliance with the restriction, no person shall drive a motor vehicle at any time when that person's driving privilege is restricted pursuant to Article 2 (commencing with Section 23152) of Chapter 12 of Division 11, if the person so driving has knowledge of the restriction.

(c) Knowledge of suspension or revocation of the driving privilege shall be conclusively presumed if mailed notice has been given by the department to the person pursuant to Section 13106.

Knowledge of restriction of the driving privilege shall be presumed if notice has been given by the court to the person. The presumption established by this subdivision is a presumption affecting the burden of proof.

(d) Any person convicted of a violation of this section shall be punished as follows:

(1) Upon a first conviction, by imprisonment in the county jail for not less than 10 days or more than six months and by a fine of not less than three hundred dollars (\$300) or more than one thousand dollars (\$1,000), unless the person has been designated an habitual traffic offender under subdivision (b) of Section 23170 or subdivision (b) of Section 23175, in which case the person shall, in addition, be sentenced as provided in paragraph (3) of subdivision (e) of Section 14601.3.

(2) If the offense occurred within five years of a prior offense which resulted in a conviction of a violation of this section or Section 14601, 14601.1, or 14601.5, by imprisonment in the county jail for not less than 30 days or more than one year and by a fine of not less than five hundred dollars (\$500) or more than two thousand dollars (\$2,000), unless the person has been designated an habitual traffic offender under subdivision (b) of Section 23170 or subdivision (b) of Section 23175, in which case the person shall, in addition, be sentenced as provided in paragraph (3) of subdivision (e) of Section 14601.3.

(e) If any person is convicted of a first offense under this section and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for at least 10 days.

(f) If the offense occurred within five years of a prior offense which resulted in a conviction of a violation of this section or Section 14601, 14601.1, or 14601.5 and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for at least 30 days.

(g) If any person is convicted of a second or subsequent offense which results in a conviction of this section within seven years, but over five years, of a prior offense which resulted in a conviction of a violation of this section or Section 14601, 14601.1, or 14601.5 and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for at least 10 days.

(h) Nothing in this section prohibits a person who is participating in, or has completed, an alcohol or drug rehabilitation program from driving a motor vehicle, which is owned or utilized by the person's employer, during the course of employment on private property which is owned or utilized by the employer, except an offstreet parking facility as defined in subdivision (c) of Section 12500.

SEC. 10. Section 14601.3 of the Vehicle Code is amended to read:

14601.3. (a) It is unlawful for a person whose driving privilege has been suspended or revoked to accumulate a driving record history which results from driving during the period of suspension or

revocation. A person who violates this subdivision is designated an habitual traffic offender.

For purposes of this section, a driving record history means any of the following, if the driving occurred during any period of suspension or revocation:

(1) Two or more convictions within a 12-month period of an offense given a violation point count of two pursuant to Section 12810.

(2) Three or more convictions within a 12-month period of an offense given a violation point count of one pursuant to Section 12810.

(3) Three or more accidents within a 12-month period that are subject to the reporting requirements of Section 16000.

(4) Any combination of convictions or accidents, as specified in paragraphs (1) to (3), inclusive, which results during any 12-month period in a violation point count of three or more pursuant to Section 12810.

(b) Knowledge of suspension or revocation of the driving privilege shall be conclusively presumed if mailed notice has been given by the department to the person pursuant to Section 13106. The presumption established by this subdivision is a presumption affecting the burden of proof.

(c) The department, within 30 days of receipt of a duly certified abstract of the record of any court or accident report which results in a person being designated an habitual traffic offender, may execute and transmit by mail a notice of that designation to the office of the district attorney having jurisdiction over the location of the person's last known address as contained in the department's records.

(d) (1) The district attorney, within 30 days of receiving the notice required in subdivision (c), shall inform the department of whether or not the person will be prosecuted for being an habitual traffic offender.

(2) Notwithstanding any other provision of this section, any habitual traffic offender designated under subdivision (b) of Section 23170 or subdivision (b) of Section 23175 who is convicted of violating Section 14601.2 shall be sentenced as provided in paragraph (3) of subdivision (e).

(e) Any person convicted under this section of being an habitual traffic offender shall be punished as follows:

(1) Upon a first conviction, by imprisonment in the county jail for 30 days and by a fine of one thousand dollars (\$1,000).

(2) Upon a second or any subsequent offense within seven years of a prior conviction under this section, by imprisonment in the county jail for 180 days and by a fine of two thousand dollars (\$2,000).

(3) Any habitual traffic offender designated under Section 193.7 of the Penal Code or under subdivision (b) of Section 23170, subdivision (b) of Section 23175, or subdivision (b) of Section 23190 who is convicted of a violation of Section 14601.2 shall be punished

by imprisonment in the county jail for 180 days and by a fine of two thousand dollars (\$2,000). The penalty in this paragraph shall be consecutive to that imposed for the violation of any other law.

SEC. 11. Section 14607.4 is added to the Vehicle Code, to read: 14607.4. The Legislature finds and declares all of the following:

(a) Driving a motor vehicle on the public streets and highways is a privilege, not a right.

(b) Of all drivers involved in fatal accidents, more than 20 percent are not licensed to drive. A driver with a suspended license is four times as likely to be involved in a fatal accident as a properly licensed driver.

(c) At any given time, it is estimated by the Department of Motor Vehicles that of some 20 million driver's licenses issued to Californians, 720,000 are suspended or revoked. Furthermore, 1,000,000 persons are estimated to be driving without ever having been licensed at all.

(d) Over 4,000 persons are killed in traffic accidents in California annually, and another 330,000 persons suffer injuries.

(e) Californians who comply with the law are frequently victims of traffic accidents caused by unlicensed drivers. These innocent victims suffer considerable pain and property loss at the hands of people who flaunt the law. The Department of Motor Vehicles estimates that 75 percent of all drivers whose driving privilege has been withdrawn continue to drive regardless of the law.

(f) It is necessary and appropriate to take additional steps to prevent unlicensed drivers from driving, including the civil forfeiture of vehicles used by unlicensed drivers. The state has a critical interest in enforcing its traffic laws and in keeping unlicensed drivers from illegally driving. Seizing the vehicles used by unlicensed drivers serves a significant governmental and public interest, namely the protection of the health, safety, and welfare of Californians from the harm of unlicensed drivers, who are involved in a disproportionate number of traffic incidents, and the avoidance of the associated destruction and damage to lives and property.

(g) The Safe Streets Act of 1994 is consistent with the due process requirements of the United States Constitution and the holding of the Supreme Court of the United States in *Calero-Toledo v. Pearson Yacht Leasing Co.*, 40 L. Ed. 2d 452.

SEC. 12. Section 14607.6 is added to the Vehicle Code, to read:

14607.6. (a) Notwithstanding any other provision of law, and except as provided in this section, a motor vehicle is subject to forfeiture as a nuisance if it is driven on a highway in this state by a driver with a suspended or revoked license, or by an unlicensed driver, who is a registered owner of the vehicle at the time of impoundment and has a previous misdemeanor conviction for a violation of subdivision (a) of Section 12500 or Section 14601, 14601.1, 14601.2, 14601.3, 14601.4, or 14601.5.

(b) A peace officer shall not stop a vehicle for the sole reason of determining whether the driver is properly licensed.

(c) (1) If a driver is unable to produce a valid driver's license on the demand of a peace officer enforcing the provisions of this code, as required by subdivision (b) of Section 12951, the vehicle shall be impounded regardless of ownership, unless the peace officer is reasonably able, by other means, to verify that the driver is properly licensed. Prior to impounding a vehicle, a peace officer shall attempt to verify the license status of a driver who claims to be properly licensed but is unable to produce the license on demand of the peace officer.

(2) A peace officer shall not impound a vehicle pursuant to this subdivision if the license of the driver expired within the preceding 30 days and the driver would otherwise have been properly licensed.

(3) A peace officer may exercise discretion in a situation where the driver without a valid license is an employee driving a vehicle registered to the employer in the course of employment. A peace officer may also exercise discretion in a situation where the driver without a valid license is the employee of a bona fide business establishment or is a person otherwise controlled by such an establishment and it reasonably appears that an owner of the vehicle, or an agent of the owner, relinquished possession of the vehicle to the business establishment solely for servicing or parking of the vehicle or other reasonably similar situations, and where the vehicle was not to be driven except as directly necessary to accomplish that business purpose. In this event, if the vehicle can be returned to or be retrieved by the business establishment or registered owner, the peace officer may release and not impound the vehicle.

(4) A registered or legal owner of record at the time of impoundment may request a hearing to determine the validity of the impoundment pursuant to subdivision (n).

(5) If the driver of a vehicle impounded pursuant to this subdivision was not a registered owner of the vehicle at the time of impoundment, or if the driver of the vehicle was a registered owner of the vehicle at the time of impoundment but the driver does not have a previous conviction for a violation of subdivision (a) of Section 12500 or Section 14601, 14601.1, 14601.2, 14601.3, 14601.4, or 14601.5, the vehicle shall be released pursuant to this code and is not subject to forfeiture.

(d) (1) This subdivision applies only if the driver of the vehicle is a registered owner of the vehicle at the time of impoundment. Except as provided in paragraph (5) of subdivision (c), if the driver of a vehicle impounded pursuant to subdivision (c) was a registered owner of the vehicle at the time of impoundment, the impounding agency shall authorize release of the vehicle if, within three days of impoundment, the driver of the vehicle at the time of impoundment presents his or her valid driver's license, including a valid temporary California driver's license or permit, to the impounding agency. The vehicle shall then be released to a registered owner of record at the time of impoundment, or an agent of that owner authorized in writing, upon payment of towing and storage charges related to the

impoundment, and any administrative charges authorized by Section 22850.5, providing that the person claiming the vehicle is properly licensed and the vehicle is properly registered. A vehicle impounded pursuant to the circumstances described in paragraph (3) of subdivision (c) shall be released to a registered owner whether or not the driver of the vehicle at the time of impoundment presents a valid driver's license.

(2) If there is a community property interest in the vehicle impounded pursuant to subdivision (c), owned at the time of impoundment by a person other than the driver, and the vehicle is the only vehicle available to the driver's immediate family that may be operated with a class C driver's license, the vehicle shall be released to a registered owner or to the community property interest owner upon compliance with all of the following requirements:

(A) The registered owner or the community property interest owner requests release of the vehicle and the owner of the community property interest submits proof of that interest.

(B) The registered owner or the community property interest owner submits proof that he or she, or an authorized driver, is properly licensed and that the impounded vehicle is properly registered pursuant to this code.

(C) All towing and storage charges related to the impoundment and any administrative charges authorized pursuant to Section 22850.5 are paid.

(D) The registered owner or the community property interest owner signs a stipulated vehicle release agreement, as described in paragraph (3), in consideration for the nonforfeiture of the vehicle. This requirement applies only if the driver requests release of the vehicle.

(3) A stipulated vehicle release agreement shall provide for the consent of the signator to the automatic future forfeiture and transfer of title to the state of any vehicle registered to that person, if the vehicle is driven by a driver with a suspended or revoked license, or by an unlicensed driver. The agreement shall be in effect for only as long as it is noted on a driving record maintained by the department pursuant to Section 1806.1.

(4) The stipulated vehicle release agreement described in paragraph (3) shall be reported by the impounding agency to the department not later than 10 days after the day the agreement is signed.

(5) No vehicle shall be released pursuant to paragraph (2) if the driving record of a registered owner indicates that a prior stipulated vehicle release agreement was signed by that person.

(e) (1) The impounding agency, in the case of a vehicle that has not been redeemed pursuant to subdivision (d), or that has not been otherwise released, shall promptly ascertain from the department the names and addresses of all legal and registered owners of the vehicle.

(2) The impounding agency, within two days of impoundment,

shall send a notice by certified mail, return receipt requested, to all legal and registered owners of the vehicle, at the addresses obtained from the department, informing them that the vehicle is subject to forfeiture and will be sold or otherwise disposed of pursuant to this section. The notice shall also include instructions for filing a claim with the district attorney, and the time limits for filing a claim. The notice shall also inform any legal owner of its right to conduct the sale pursuant to subdivision (g). If a registered owner was personally served at the time of impoundment with a notice containing all the information required to be provided by this paragraph, no further notice is required to be sent to a registered owner. However, a notice shall still be sent to the legal owners of the vehicle, if any.

(3) If no claims are filed and served within 15 days after the mailing of the notice in paragraph (2), or if no claims are filed and served within five days of personal service of the notice specified in paragraph (2), when no other mailed notice is required pursuant to paragraph (2), the district attorney shall prepare a written declaration of forfeiture of the vehicle to the state. A written declaration of forfeiture signed by the district attorney under this subdivision shall be deemed to provide good and sufficient title to the forfeited vehicle. A copy of the declaration shall be provided on request to any person informed of the pending forfeiture pursuant to paragraph (2). A claim that is filed and is later withdrawn by the claimant shall be deemed not to have been filed.

(4) If a claim is timely filed and served, then the district attorney shall file a petition of forfeiture with the appropriate justice, juvenile, or municipal court within 10 days of the receipt of the claim. The district attorney shall establish an expedited hearing date in accordance with instructions from the court, and the court shall hear the matter without delay. The court filing fee, not to exceed fifty dollars (\$50), shall be paid by the claimant, but shall be reimbursed by the impounding agency if the claimant prevails. To the extent practicable, the civil and criminal cases shall be heard at the same time in an expedited, consolidated proceeding.

(5) The burden of proof in the civil case shall be on the prosecuting agency, by a preponderance of the evidence. All questions that may arise shall be decided and all other proceedings shall be conducted as in an ordinary civil action. A judgment of forfeiture does not require as a condition precedent the conviction of a defendant of an offense which made the vehicle subject to forfeiture. The filing of a claim within the time limits specified in paragraph (3) is considered a jurisdictional prerequisite for the availing of the action authorized by that paragraph.

(6) All right, title, and interest in the vehicle shall vest in the state upon commission of the act giving rise to the forfeiture.

(f) Any vehicle impounded that is not redeemed pursuant to subdivision (d) and is subsequently forfeited pursuant to this section shall be sold once an order of forfeiture is issued by the district attorney of the county of the impounding agency or a court, as the

case may be, pursuant to subdivision (e).

(g) Any legal owner who in the regular course of business conducts sales of repossessed or surrendered motor vehicles may take possession and conduct the sale of the forfeited vehicle if it notifies the agency impounding the vehicle of its intent to conduct the sale within 15 days of the mailing of the notice pursuant to subdivision (e). Sale of the vehicle after forfeiture pursuant to this subdivision may be conducted at the time, in the manner, and on the notice usually given by the legal owner for the sale of repossessed or surrendered vehicles. The proceeds of any sale conducted by the legal owner shall be disposed of as provided in subdivision (i).

(h) If the legal owner does not notify the agency impounding the vehicle of its intent to conduct the sale as provided in subdivision (g), the agency shall offer the forfeited vehicle for sale at public auction within 60 days of receiving title to the vehicle. Low value vehicles shall be disposed of pursuant to subdivision (k).

(i) The proceeds of a sale of a forfeited vehicle shall be disposed of in the following priority:

(1) To satisfy the towing and storage costs following impoundment, the costs of providing notice pursuant to subdivision (e), the costs of sale, and the unfunded costs of judicial proceedings, if any.

(2) To the legal owner in an amount to satisfy the indebtedness owed to the legal owner remaining as of the date of sale, including accrued interest or finance charges and delinquency charges, providing that the principal indebtedness was incurred prior to the date of impoundment.

(3) To the holder of any subordinate lien or encumbrance on the vehicle, other than a registered or legal owner, to satisfy any indebtedness so secured if written notification of demand is received before distribution of the proceeds is completed. The holder of a subordinate lien or encumbrance, if requested, shall furnish reasonable proof of its interest and, unless it does so upon request, is not entitled to distribution pursuant to this paragraph.

(4) To any other person, other than a registered or legal owner, who can reasonably establish an interest in the vehicle, including a community property interest, to the extent of his or her provable interest, if written notification is received before distribution of the proceeds is completed.

(5) Of the remaining proceeds, funds shall be made available to pay any local agency and court costs, that are reasonably related to the implementation of this section, that remain unsatisfied.

(6) Of the remaining proceeds, half shall be transferred to the Controller for deposit in the Vehicle Inspection and Repair Fund for the high-polluter repair assistance and removal program created by Article 9 (commencing with Section 44090) of Chapter 5 of Part 5 of Division 26 of the Health and Safety Code, and half shall be transferred to the general fund of the city or county of the impounding agency, or the city or county where the impoundment

occurred. A portion of the local funds may be used to establish a reward fund for persons coming forward with information leading to the arrest and conviction of hit and run drivers and to publicize the availability of the reward fund.

(j) The person conducting the sale shall disburse the proceeds of the sale as provided in subdivision (i) and shall provide a written accounting regarding the disposition to the impounding agency and, on request, to any person entitled to or claiming a share of the proceeds, within 15 days after the sale is conducted.

(k) If the vehicle to be sold pursuant to this section is not of the type that can readily be sold to the public generally, the vehicle shall be conveyed to a licensed dismantler or donated to an eleemosynary institution. License plates shall be removed from any vehicle conveyed to a dismantler pursuant to this subdivision.

(l) No vehicle shall be sold pursuant to this section if the impounding agency determines the vehicle to have been stolen. In this event, the vehicle may be claimed by the registered owner at any time after impoundment, providing the vehicle registration is current and the registered owner has no outstanding traffic violations or parking penalties on his or her driving record or on the registration record of any vehicle registered to the person. If the identity of the legal and registered owners of the vehicle cannot be reasonably ascertained, the vehicle may be sold.

(m) Any owner of a vehicle who suffers any loss due to the impoundment or forfeiture of any vehicle pursuant to this section may recover the amount of the loss from the unlicensed, suspended, or revoked driver. If possession of a vehicle has been tendered to a business establishment in good faith, and an unlicensed driver employed or otherwise directed by the business establishment is the cause of the impoundment of the vehicle, a registered owner of the impounded vehicle may recover damages for the loss of use of the vehicle from the business establishment.

(n) (1) The impounding agency, if requested to do so not later than 10 days after the date the vehicle was impounded, shall provide the opportunity for a poststorage hearing to determine the validity of the storage to the persons who were the registered and legal owners of the vehicle at the time of impoundment, except that the hearing shall be requested within three days after the date the vehicle was impounded if personal service was provided to a registered owner pursuant to paragraph (2) of subdivision (e) and no mailed notice is required.

(2) The poststorage hearing shall be conducted not later than two days after the date it was requested. The impounding agency may authorize its own officer or employee to conduct the hearing if the hearing officer is not the same person who directed the storage of the vehicle. Failure of either the registered or legal owner to request a hearing as provided in paragraph (1) or to attend a scheduled hearing shall satisfy the poststorage hearing requirement.

(3) The agency employing the person who directed the storage is

responsible for the costs incurred for towing and storage if it is determined that the driver at the time of impoundment had a valid driver's license.

(o) As used in this section, "days" means workdays not including weekends and holidays.

(p) Charges for towing and storage for any vehicle impounded pursuant to this section shall not exceed the normal towing and storage rates for other vehicle towing and storage conducted by the impounding agency in the normal course of business.

(q) The Judicial Council and the Department of Justice may prescribe standard forms and procedures for implementation of this section to be used by all jurisdictions throughout the state.

(r) The impounding agency may act as the agent of the state in carrying out this section.

(s) No vehicle shall be impounded pursuant to this section if the driver has a valid license but the license is for a class of vehicle other than the vehicle operated by the driver.

(t) This section does not apply to vehicles subject to Sections 14608 and 14609, if there has been compliance with the procedures in those sections.

SEC. 13. Section 14607.8 is added to the Vehicle Code, to read:

14607.8. Upon a first misdemeanor conviction of a violation of subdivision (a) of Section 12500 or Section 14601, 14601.1, 14601.2, 14601.3, 14601.4, or 14601.5, the court shall inform the defendant that, pursuant to Section 14607.6, a motor vehicle is subject to forfeiture as a nuisance if it is driven on a highway in this state by a driver with a suspended or revoked license, or by an unlicensed driver, who is a registered owner of the vehicle and has a previous misdemeanor conviction for a violation of subdivision (a) of Section 12500 or Section 14601, 14601.1, 14601.2, 14601.3, 14601.4, or 14601.5.

SEC. 14. Section 14908 is added to the Vehicle Code, to read:

14908. If a person fails to surrender his or her license to the department as required by Section 13351.1, the department shall set and charge a license reinstatement penalty fee, as determined by the department, in addition to any fees that may be required by Section 14904, 14905, or 14906, as the case may be. The fee shall be waived if the person returns to the department an acknowledgment of the license suspension or revocation along with a statement that the license has been previously surrendered to a court or peace officer, or that provides any other reasonable explanation.

SEC. 15. Nothing in this act shall be deemed either to authorize a city, county, or city and county to enact an ordinance or resolution, or to preempt or preclude a city, county, or city and county from enacting an ordinance or resolution, that provides for administrative sanctions involving impoundment of vehicles used in the commission of the offense of driving with a suspended or revoked license or without a license.

SEC. 16. Sections 5 to 10, inclusive, of this act shall become operative on June 30, 1995.

SEC. 17. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

Moreover, no reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for other costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law for those other costs. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1134

An act to add Sections 21100.5, 21100.6, and 21562.5 to the Water Code, relating to water.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 21100.5 is added to the Water Code, to read:
21100.5. (a) This section applies to the Stratford Irrigation District.

(b) Notwithstanding Section 21100, the board of directors of the district may adopt a resolution that authorizes a person who meets the landownership requirement of Section 21100 and resides in Kings County to be a director of the district.

(c) Notwithstanding the adoption of a resolution pursuant to subdivision (b), the registered voters in the district may request, in writing, that all of the directors who are appointed or elected subsequent to the receipt of the request be required to meet all of the requirements of Section 21100. The request shall be submitted to the directors.

(d) If the directors determine that at least 25 percent of the registered voters in the district have signed the request submitted pursuant to subdivision (c), all of the directors who are appointed or elected subsequent to the receipt of the request shall meet all of the requirements of Section 21100.

SEC. 2. Section 21100.6 is added to the Water Code, to read:

21100.6. (a) This section applies to the Byron-Bethany Irrigation

District.

(b) (1) Notwithstanding Section 21100, the board of directors of the district may adopt a resolution that authorizes a person who meets the landownership requirement of Section 21100 and resides in the County of Alameda, Contra Costa, or San Joaquin to be a director of the district.

(2) Notwithstanding the adoption of a resolution pursuant to paragraph (1), the registered voters in the district may request, in writing, that all of the directors who are elected subsequent to the receipt of the request be required to meet all of the requirements of Section 21100. The request shall be submitted to the directors.

(3) If the directors determine that at least 25 percent of the registered voters in the district have signed the request submitted pursuant to paragraph (2), all of the directors who are elected subsequent to the receipt of the request shall meet all of the requirements of Section 21100.

(c) Notwithstanding Sections 21552, 21553, and 21554, the board of directors of the district may adopt a resolution that requires the election of directors by division. The proposed division boundaries shall be made available upon request and at the public hearing described in subdivision (d). Division boundaries shall be established pursuant to Article 3 (commencing with Section 21605) of Chapter 1 of Part 4.

(d) (1) Before considering the adoption of a resolution pursuant to subdivision (b) or (c), the board of directors shall provide at least 45 days' notice of the public hearing at which the board proposes to act on the resolution. The notice of the public hearing shall be given by placing a display advertisement of at least one-eighth page in a newspaper of general circulation for three weeks pursuant to Section 6063 of the Government Code and by first-class mailing to each voter, postage prepaid, in the United States mail and shall be deemed given when so deposited. The public hearing shall be held at least 45 days after the mailing pursuant to this subdivision. The envelope or the cover of the mailing shall include the name of the local agency and the return address of the sender. This mailed notice shall be in at least 10-point type and be given to all registered voters in the district.

(2) The notice required by paragraph (1) shall include, but not be limited to, all of the following:

(A) A statement that the board of directors will consider a resolution authorizing a person who only meets the landownership requirement of Section 21100 to be a director of the district, or a statement that the board of directors will consider a resolution that requires the election of directors by division.

(B) The address to which registered voters may mail a protest against the adoption of a resolution pursuant to subdivision (b) or (c).

(C) The phone number and address of an individual that interested persons may contact to receive additional information about the resolution.

(D) A statement that a protest by 10 percent of the registered voters will prevent the adoption of the resolution by the board of directors and that the board of directors are prohibited from considering the adoption of such a resolution for at least four years.

(E) The date, time, and location of the public hearing.

(e) (1) Prior to the public hearing, any voter may submit to the board of directors a written protest against the adoption of a proposed resolution pursuant to subdivision (b) or (c). The protest shall be in writing and shall identify the registered voter.

(2) If the board of directors finds that the protest made by the registered voters in the district represents more than 10 percent of the total number of registered voters in the district, and the protests are not withdrawn so as to reduce the percentage to less than 10 percent, the board of directors shall not adopt the resolution and shall not consider the adoption of such a resolution for at least four years.

(f) A resolution shall not be adopted pursuant to subdivision (b) or (c) less than 180 days before a general district election.

SEC. 3. Section 21562.5 is added to the Water Code, to read:

21562.5. (a) This section applies to the Alta Irrigation District.

(b) Notwithstanding Section 21550, the board of directors of the district may adopt a resolution that increases the number of directors and the divisions from which they are elected from five to seven in accordance with this section.

(c) Notwithstanding Section 21383, if the number of district directors is increased from five to seven pursuant to this section, the number of directors required to constitute a quorum of the board and to concur on all questions, except a motion to adjourn or a motion to adjourn to a stated time, is four.

(d) The board of directors shall, by resolution, adjust the boundaries of any divisions pursuant to Chapter 3 (commencing with Section 35200) of Division 19 of the Elections Code.

(e) (1) Before considering the adoption of a resolution pursuant to subdivision (b), the board of directors shall provide at least 45 days notice of the public hearing at which the board proposes to act on the resolution. The notice of the public hearing shall be provided by placing a display advertisement of at least one-eighth page in a newspaper of general circulation in each county and incorporated city in which territory of the district is located for three weeks pursuant to Section 6063 of the Government Code. The public hearing shall be held at least 45 days after the first publication of the notice.

(2) The notice required by paragraph (1) shall include, but not be limited to, all of the following:

(A) A statement that the board of directors will consider a resolution to change from five to seven the number of directors of the district and the divisions from which they are elected.

(B) The phone number and address of an individual that interested persons may contact to receive additional information

about the resolution.

(C) The date, time, and location of the public hearing.

(D) Notice that the resolution will be effective for the district elections occurring at least 180 days after adoption of the resolution unless a petition protesting the resolution containing the signatures of not less than 10 percent of the qualified registered voters of the district is filed with the secretary of the district within 30 days from the date of the adoption of the resolution in the same manner and subject to the same requirements as are set forth in Sections 3754, 3755, and 3755.5 of the Elections Code, except that all elections referred to in those sections and officers of the county mentioned in those sections shall be construed to refer to general or special district elections and to comparable officers of the district; and the heading of the proposed referendum shall be in substantially the following form: "Referendum Against a Resolution Passed by the Board of Directors of the Alta Irrigation District Changing From Five to Seven the Number of Directors of the District and the Divisions From Which They Are Elected."

(f) This section shall become operative only if Assembly Bill 2536 of the 1993-94 Regular Session is enacted and becomes operative.

SEC. 4. Section 21562.5 is added to the Water Code, to read:

21562.5. (a) This section applies to the Alta Irrigation District.

(b) Notwithstanding Section 21550, the board of directors of the district may adopt a resolution that increases the number of directors and the divisions from which they are elected from five to seven in accordance with this section.

(c) Notwithstanding Section 21383, if the number of district directors is increased from five to seven pursuant to this section, the number of directors required to constitute a quorum of the board and to concur on all questions, except a motion to adjourn or a motion to adjourn to a stated time, is four.

(d) (1) The board of directors shall, by resolution, adjust the boundaries of any divisions so that the divisions are, as far as practicable, equal in population and comply with the applicable provisions of Section 1973 of Title 42 of the United States Code, as amended. In establishing the boundaries of the district, the board may give consideration to all of the following factors:

(A) Topography.
 (B) Geography.
 (C) Cohesiveness, contiguity, integrity, and compactness of territory.

(D) Community of interest of the district.

(2) The resolution requires the vote of not less than a majority of the directors for adoption.

(3) At the time of, or after, any annexation of territory to the district, the board of directors shall designate, by resolution, the division of which the annexed territory shall be a part.

(4) No change in division boundaries may be made within 180 days preceding the election of any director.

(5) (A) A change in division boundaries shall not affect the term of office of any director.

(B) If division boundaries are adjusted, the director of the division whose boundaries have been adjusted, shall continue to be the director of the division bearing the number of his or her division as formerly comprised until the office becomes vacant by means of term expiration or otherwise, whether or not the director is a resident within the boundaries of the division as adjusted.

(6) The successor to the office in a division whose boundaries have been adjusted shall be a resident and voter of that division.

(7) Nothing in this section shall be construed to prohibit or restrict the district from adjusting the boundaries of any divisions whenever the governing body of the district determines that a sufficient change in population has occurred that makes it desirable in the opinion of the governing body to adjust the boundaries of any divisions, or whenever any territory is added to or excluded from the district.

(e) (1) Before considering the adoption of a resolution pursuant to subdivision (b), the board of directors shall provide at least 45 days notice of the public hearing at which the board proposes to act on the resolution. The notice of the public hearing shall be provided by placing a display advertisement of at least one-eighth page in a newspaper of general circulation in each county and incorporated city in which territory of the district is located for three weeks pursuant to Section 6063 of the Government Code. The public hearing shall be held at least 45 days after the first publication of the notice.

(2) The notice required by paragraph (1) shall include, but not be limited to, all of the following:

(A) A statement that the board of directors will consider a resolution to change from five to seven the number of directors of the district and the divisions from which they are elected.

(B) The phone number and address of an individual that interested persons may contact to receive additional information about the resolution.

(C) The date, time, and location of the public hearing.

(D) Notice that the resolution will be effective for the next district elections occurring at least 180 days after adoption of the resolution unless a petition protesting the resolution containing the signatures of not less than 10 percent of the registered qualified voters of the district is filed with the secretary of the district within 30 days from the date of the adoption of the resolution in the same manner and subject to the same requirements as are set forth in Sections 3754, 3755, and 3755.5 of the Elections Code, except that all elections referred to in those sections and officers of the county mentioned in those sections shall be construed to refer to general or special district elections and to comparable officers of the district; and the heading of the proposed referendum shall be in substantially the following form: "Referendum Against a Resolution Passed by the

Board of Directors of the Alta Irrigation District Changing From Five to Seven the Number of Directors of the District and the Divisions From Which They Are Elected.”

(f) This section shall become operative only if Assembly Bill 2536 of the 1993–94 Regular Session is not enacted or does not become operative.

SEC. 5. The Legislature finds and declares that Section 1 of this act, which is applicable only to the Stratford Irrigation District, is necessary because a substantial portion of the land included within the district is owned by persons residing in Kings County, but not necessarily within the district, who are concerned with the affairs and support of the district. It is, therefore, hereby declared that a general law cannot be made applicable to the district in accordance with Section 16 of Article IV of the California Constitution, and that the enactment of this special law is necessary for the solution of problems existing within the district.

SEC. 6. The Legislature finds and declares that Section 2 of this act, which is applicable only to the Byron-Bethany Irrigation District, is necessary because a substantial portion of the land included within the district is owned by persons residing in prescribed counties, but not necessarily within the district, who are concerned with the affairs and support of the district. It is, therefore, hereby declared that a general law cannot be made applicable to the district in accordance with Section 16 of Article IV of the California Constitution, and that the enactment of this special law is necessary for the solution of problems existing within the district.

SEC. 7. The Legislature finds and declares that Sections 3 and 4 of this act which are applicable only to the Alta Irrigation District are necessary to ensure compliance with the preclearance provisions of the federal Voting Rights Act and to provide for more effective representation for its urban residents. It is, therefore, hereby declared that a general law cannot be made applicable to the district in accordance with Section 16 of Article IV of the California Constitution, and that the enactment of this special law is necessary for the solution of problems existing within the district.

CHAPTER 1135

An act to amend Sections 30 and 7091 of, to add Sections 7103 and 7104 to, and to add Article 12 (commencing with Section 7190) to Chapter 9 of Division 3 of, the Business and Professions Code, relating to licensees.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 30 of the Business and Professions Code is amended to read:

30. (a) Notwithstanding any other provision of law, any board, as defined in Section 22, and the State Bar and the Department of Real Estate shall at the time of issuance or renewal of the license require that any licensee provide its federal employer identification number if the licensee is a partnership or his or her social security number for all others.

(b) Any licensee failing to provide the federal identification number or social security number shall be reported by the licensing board to the Franchise Tax Board and, if failing to provide after notification pursuant to paragraph (1) of subdivision (b) of Section 19276 of the Revenue and Taxation Code, shall be subject to the penalty provided in paragraph (2) of subdivision (b) of Section 19276 of the Revenue and Taxation Code.

(c) In addition to the penalty specified in subdivision (b), a licensing board may not process any application for an original license or for renewal of a license unless the applicant or licensee provides its federal employer identification number or social security number where requested on the application.

(d) A licensing board shall, upon request of the Franchise Tax Board, furnish to the Franchise Tax Board the following information with respect to every licensee:

- (1) Name.
- (2) Address or addresses of record.
- (3) Federal employer identification number if the entity is a partnership or social security number for all others.
- (4) Type of license.
- (5) Effective date of license or renewal.
- (6) Expiration date of license.
- (7) Whether license is active or inactive, if known.
- (8) Whether license is new or renewal.

(e) For the purposes of this section:

(1) "Licensee" means any entity, other than a corporation, authorized by a license, certificate, registration, or other means to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

(2) "License" includes a certificate, registration, or any other authorization needed to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

(3) "Licensing board" means any board, as defined in Section 22, the State Bar, and the Department of Real Estate.

(f) The reports required under this section shall be filed on magnetic media or in other machine-readable form, according to

standards furnished by the Franchise Tax Board.

(g) Licensing boards shall provide to the Franchise Tax Board the information required by this section at a time that the Franchise Tax Board may require.

(h) Notwithstanding Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, the social security number and federal employer identification number furnished pursuant to this section shall not be deemed to be a public record and shall not be open to the public for inspection.

(i) Any deputy, agent, clerk, officer, or employee of any licensing board described in subdivision (a), or any former officer or employee or other individual who in the course of his or her employment or duty has or has had access to the information required to be furnished under this section, may not disclose or make known in any manner that information, except as provided in this section to the Franchise Tax Board or as provided in subdivision (k).

(j) It is the intent of the Legislature in enacting this section to utilize the social security account number or federal employer identification number for the purpose of establishing the identification of persons affected by state tax laws and for purposes of compliance with Section 11350.6 of the Welfare and Institutions Code and, to that end, the information furnished pursuant to this section shall be used exclusively for those purposes.

(k) If the board utilizes a national examination to issue a license, and if a reciprocity agreement or comity exists between the State of California and the state requesting release of the social security number, any deputy, agent, clerk, officer, or employee of any licensing board described in subdivision (a) may release a social security number to an examination or licensing entity, only for the purpose of verification of licensure or examination status.

SEC. 2. Section 7091 of the Business and Professions Code is amended to read:

7091. (a) A complaint against a licensee alleging commission of any patent acts or omissions that may be grounds for legal action shall be filed in writing with the registrar within four years after the act or omission alleged as the ground for the disciplinary action. An accusation or citation against a licensee shall be filed within four years after the patent act or omission alleged as the ground for disciplinary action or within 18 months from the date of the filing of the complaint with the registrar, whichever is later, except that with respect to an accusation alleging a violation of Section 7112, the accusation may be filed within two years after the discovery by the registrar or by the board of the alleged facts constituting the fraud or misrepresentation prohibited by the section.

(b) A complaint against a licensee alleging commission of any latent acts or omissions that may be grounds for legal action pursuant to subdivision (a) of Section 7109 regarding structural defects, as defined by regulation, shall be filed in writing with the registrar within 10 years after the act or omission alleged as the ground for the

disciplinary action. An accusation and citation against a licensee shall be filed within 10 years after the latent act or omission alleged as the ground for disciplinary action or within 18 months from the date of the filing of the complaint with the registrar, whichever is later, except that with respect to an accusation alleging a violation of Section 7112, the accusation may be filed within two years after the discovery by the registrar or by the board of the alleged facts constituting the fraud or misrepresentation prohibited by Section 7112. As used in this section "latent act or omission" means an act or omission that is not apparent by reasonable inspection.

(c) An accusation regarding an alleged breach of an express, written warranty for a period in excess of the time periods specified in subdivisions (a) and (b) issued by the contractor shall be filed within the duration of that warranty.

(d) The proceedings under this article shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the registrar shall have all the powers granted therein.

(e) Nothing in this section shall be construed to affect the liability of a surety or the period of limitations prescribed by law for the commencement of actions against a surety or cash deposit.

(f) The board shall adopt regulations to define the term "structural defect" for purposes of this section by December 31, 1995.

SEC. 3. Section 7103 is added to the Business and Professions Code, to read:

7103. The revocation, suspension, or other disciplinary action of a license to act as a contractor by another state shall constitute grounds for disciplinary action in this state if the individual is a licensee, or applies for a license, in this state. A certified copy of the revocation, suspension, or other disciplinary action by the other state is conclusive evidence of that action.

SEC. 4. Section 7104 is added to the Business and Professions Code, to read:

7104. When the board resolves a complaint, the board shall notify the complainant in writing of its action and the reasons for taking that action. The board shall provide the same notice in writing to the contractor provided that the contractor is licensed and the notification would not jeopardize an action or investigation that involves the contractor.

SEC. 5. Article 12 (commencing with Section 7190) is added to Chapter 9 of Division 3 of the Business and Professions Code, to read:

Article 12. Prohibitions

7190. (a) The name or position of a public official may not be used in an advertisement or any promotional material by a person licensed under this chapter, without the written authorization of the public official. A printed advertisement or promotional material that uses the name or position of a public official with that public official's

written authorization, shall also include a disclaimer in at least 10-point roman boldface type, that shall be in a color or print which contrasts with the background so as to be easily legible, and set apart from any other printed matter. The disclaimer shall consist of a statement that reads "The name of (specify name of public official) does not imply that (specify name of public official) endorses this product or service in (his or her) official capacity and does not imply an endorsement by any governmental entity." If the advertisement is broadcast, this statement shall be read in a clearly audible tone of voice.

(b) For purposes of this section, "public official" means a member, officer, employee, or consultant of a local government agency, as defined in Section 82041 of the Government Code, or state agency, as defined in Section 82049 of the Government Code.

7191. (a) If a contract for work on residential property with four or fewer units contains a provision for arbitration of a dispute between the principals in the transaction, the provision shall be clearly titled "ARBITRATION OF DISPUTES."

If a provision for arbitration is included in a printed contract, it shall be set out in at least 10-point roman boldface type or in contrasting red print in at least 8-point roman boldface type, and if the provision is included in a typed contract, it shall be set out in capital letters.

(b) Immediately before the line or space provided for the parties to indicate their assent or nonassent to the arbitration provision described in subdivision (a), and immediately following that arbitration provision, the following shall appear:

"NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE BUSINESS AND PROFESSIONS CODE OR OTHER APPLICABLE LAWS. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY." "WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."

If the above provision is included in a printed contract, it shall be set out either in at least 10-point roman boldface type or in contrasting red print in at least 8-point roman boldface type, and if the provision is included in a typed contract, it shall be set out in capital letters.

(c) A provision for arbitration of a dispute between a principal in a contract for work on a residential property with four or fewer units that does not comply with this section may not be enforceable against any person other than the licensee.

(d) This section does not limit the board's authority to investigate complaints or to discipline a licensee for violations of this code.

CHAPTER 1136

An act relating to the Political Reform Act of 1974.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. (a) It is the intent of the Legislature that a system be developed to permit persons required to file reports under the Political Reform Act of 1974 to file all reports electronically or by computer diskette and that this information be made available to the public by on-line public access computer networks.

(b) With respect to all reports required to be filed with the Secretary of State under the Political Reform Act of 1974, the Secretary of State shall study the options for a computerized system through which these reports would be filed, maintained, and made available to the public.

(c) In conducting the study required by this section, the Secretary of State shall do both of the following:

(1) Consider the potential costs of the computerized system under consideration to the office of the Secretary of State, to local officials, and to persons required to file the reports under study.

(2) Create, and be assisted by, an advisory committee composed of technical experts, persons required to file the reports under study, and local officials.

(3) Determine whether similar information required by local agencies may be centralized into a single electronic filing system within the office of the Secretary of State.

(d) The Secretary of State shall report in writing to the Legislature no later than January 1, 1996, on the results of the study required by this section.

CHAPTER 1137

An act to add Section 12173 to the Government Code, relating to elections.

[Approved by Governor September 29, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. The Legislature finds and declares that:

The informed exercise of the voting right is the citizen's best assurance of a responsive government.

Advances in communications and information processing technology dramatically improve the accessibility of information. Those advances should be utilized to better inform voters by making better information about candidates and issues more easily and conveniently available.

The Secretary of State has a responsibility to provide citizens with useful information on statewide candidates and ballot initiatives. Currently that information is provided only in printed form.

SEC. 2. Section 12173 is added to the Government Code, to read: 12173. The Secretary of State's office shall develop a program to utilize modern communications and information processing technology to enhance the availability and accessibility of information on statewide candidates and ballot initiatives. This includes making information available on line as well as through other information processing technology.

The Secretary of State shall report to the Legislature on the scope and cost of the program by June 30, 1995.

CHAPTER 1138

An act relating to health services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. (a) Notwithstanding Section 16990 and paragraph (2) of subdivision (b) of Section 16990.5 of the Welfare and Institutions Code, for the 1994-95 fiscal year, the State Department of Health Services and a county with a population over seven million, in computing the level of net county cost for the 1994-95 fiscal year to determine compliance with the financial maintenance of effort provisions of Section 16990 of the Welfare and Institutions Code, shall

exclude from allowable revenues an amount determined by the county, but no more than one hundred ten million dollars (\$110,000,000) in allowable revenues the county actually receives through disproportionate share hospital payment adjustments for the 1994-95 fiscal year made pursuant to Section 14105.98 of the Welfare and Institutions Code to the extent permitted by federal law, provided the county complies with the following provisions:

(1) The county complies with Sections 17608.10 and 17608.15 of the Welfare and Institutions Code pertaining to deposits of funds in the health account of its local health and welfare trust fund.

(2) The county shall take no action to reduce or curtail health or mental health care services and shall take no action to reduce health and mental health care services within the county's department of health services in the 1994-95 fiscal year below the levels that existed in the 1992-93 fiscal year.

(b) (1) For purposes of paragraph (2) of subdivision (a), curtailments and reductions shall include the following:

(A) A closure or reduction in the numbers or capacity of county clinics, hospitals, or other health care facilities or mental health facilities maintained by the county's department of health services.

(B) A significant reduction in total staffing of all county health and mental health facilities within the county's department of health services.

(C) A change in the eligibility standards for health care services that results in a reduction in the number of eligible beneficiaries. A reduction described in this subparagraph does not prevent changes in verification methods otherwise permitted by law.

(D) A reduction in the level or scope of benefits provided.

(2) Curtailments and reductions specified in paragraph (1) shall not include reductions brought about by strike, natural disaster, a reduction in patient demand, or other factor beyond the control of the county, so long as staffing and service levels are restored to their 1992-93 levels as soon as possible.

(c) (1) The county shall provide on a monthly basis, during the 1994-95 fiscal year, to the State Department of Health Services all of the following data relating to each facility operated by the county department of health services:

(A) Total number of employees, to the extent available.

(B) The number of full-time equivalent employees, to the extent available.

(C) The number of inpatient days.

(D) The number of outpatient visits by emergency room at each hospital, outpatient clinic at each hospital, comprehensive health center, and public health center.

(E) The number of budgeted beds.

(F) The number of emergency room visits.

(G) Patient workload reports, providing inpatient, outpatient, and birth statistics.

(H) Inpatient/outpatient workload summary, including the

source documents used to prepare said summary.

(I) The Chief Administrative Office Position Status Summary Report.

(J) Enhanced Chief Administrative Office Position Status Summary Report, providing information in addition to that set forth in the Chief Administrative Office Position Status Summary Report beginning in January 1, 1995.

(2) The county shall continue to collect or maintain on a monthly basis for services provided during the 1994-95 fiscal year all of the following data, to the extent the data is collected or maintained as of July 1, 1994, relating to each emergency room at each hospital, outpatient clinic at each hospital, comprehensive health center, and public health center operated by the county department of health services:

(A) Waiting time to obtain a scheduled appointment.

(B) Routine waiting times for patients to be treated by a provider.

(C) Routine waiting time for patients in the emergency room to be treated by a provider.

(D) Routine waiting time for patients in the emergency room who require hospitalization to be admitted to the hospital.

(3) Data required pursuant to paragraph (1) shall be provided to the State Department of Health Services as soon as it becomes available. The county shall also provide to the State Department of Health Services comparable baseline data and such other information as the department may require to verify compliance with this section.

(4) Where possible, the county shall utilize existing reporting formats to provide the data required pursuant to paragraph (1).

(5) The data submitted pursuant to this subdivision shall be used only for the purposes of this section, and shall not affect any current or future reporting requirements pertaining to the distribution of funds from the Cigarette and Tobacco Products Surtax Fund, revenues distributed to counties under the realignment of state and local programs pursuant to Chapters 89 and 97 of the Statutes of 1991, or any other revenue distributed to counties for county health services.

(6) The State Department of Health Services shall make the data submitted pursuant to paragraph (1) available to any interested party upon request, and it shall become a public record.

(d) (1) The State Department of Health Services shall, in the course of its routine monitoring activities, review the county's compliance with this section, on a quarterly basis, as soon as the data is provided for each quarter of the 1994-95 fiscal year.

(2) (A) If the State Department of Health Services determines that there has been a reduction in overall service levels in violation of this section, the county shall, within 15 days of receipt of the department's determination, submit a plan of correction to the department. The department shall immediately review the county's plan of correction and approve or disapprove the plan within 15 days

of receipt.

(B) If the State Department of Health Services is unable to negotiate an acceptable plan of correction with the county, or the county does not immediately and fully implement the plan, the State Department of Health Services may withhold further payment of funds to the county under Chapter 5 (commencing with Section 16940) of Part 4.7 of Division 9 of the Welfare and Institutions Code until such time as the county complies with paragraph (2) of subdivision (a).

(e) This section shall not limit the right of the county to forego funding from the Cigarette and Tobacco Products Surtax Fund for the California Health Care for the Indigent Program, provided for pursuant to Chapter 5 (commencing with Section 16940) of Part 4.7 of Division 9 of the Welfare and Institutions Code, to withdraw from the California Health Care for the Indigent Program pursuant to the provisions of its program contract with the State Department of Health Services.

(f) This section is not intended to alter the requirements of Sections 10000, 17000, and 17001 of the Welfare and Institutions Code or to affect efforts to implement mental health managed care.

(g) If the county fails to comply with paragraphs (1) and (2) of subdivision (a), the State Department of Health Services shall include the revenues in the computation of net county costs in determining financial maintenance of effort that would otherwise have been excluded pursuant to subdivision (a) and shall recover funds pursuant to subdivision (d) of Section 16990 of the Welfare and Institutions Code.

(h) For the 1994-95 fiscal year, notwithstanding any other provision of law, if the county meets the requirements of subdivisions (a), (b), (c), and (d) of this section and the requirements of Section 17608.5 of the Welfare and Institutions Code, and if the county receives more than six hundred million dollars (\$600,000,000) in revenues generated by the county's department of health services for Medi-Cal administrative services under Sections 14132.44 and 14132.47 of the Welfare and Institutions Code or any similar, predecessor, or derivative authority relating to Medi-Cal reimbursement for local agency administrative costs for services provided from July 1, 1992, through June 30, 1995, or an amount determined in accordance with subdivision (i) of this section, up to one hundred twenty-eight million dollars (\$128,000,000) of the amount over six hundred million dollars (\$600,000,000) as adjusted by subdivision (i), but not more than the amount of revenue received by the county for Medi-Cal administrative services as set forth in this subdivision, shall be deemed county general purpose revenues for all purposes, and shall not be considered revenue for any calculation of net county cost.

(i) To the extent that the county actually realizes increased funding or realizes cost savings for the support of its department of health services beyond the levels reflected in the budget for the

1994-95 fiscal year adopted by the county board of supervisors on or about July 14, 1994, the six hundred million dollar (\$600,000,000) threshold in subdivision (h) may be decreased by up to an equivalent amount as determined by the county board of supervisors.

(j) To the extent that the county's 1994-95 contribution to the retirement system on behalf of its department of health services decreases below the amount of 1993-94 contribution and to the extent that the savings are not utilized to reduce the threshold pursuant to subdivision (i), an amount of disproportionate share hospital revenues equivalent to that savings shall be set aside pursuant to Section 16990.5 of the Welfare and Institutions Code to mitigate any county department of health services budget shortfalls in the 1995-96 fiscal year.

(k) To the extent that the county realizes federal revenues from emergency assistance funds pursuant to Title IV-A of the Social Security Act to reimburse costs incurred by its department of health services and to the extent that the increase in funding is not utilized to reduce the threshold pursuant to subdivision (i), an amount of disproportionate share hospital revenues equivalent to the amount of the emergency assistance revenues actually realized shall be set aside pursuant to Section 16990.5 of the Welfare and Institutions Code to mitigate any county department of health services budget shortfalls in the 1995-96 fiscal year.

(l) Beginning in the 1995-96 fiscal year, contingent upon and to the extent that general purpose revenues become available as a result of (1) a county-enacted tax increase based on authority granted subsequent to the enactment of this measure, (2) state or locally-imposed taxes or fees enacted after July 1, 1994, (3) a state- or locally-legislated expansion in the base or increase in the rate of taxation and fee assessment above those in effect July 1, 1994, (exclusive of the property tax base), and (4) new sources of revenue not allocated in the county budget for the 1994-95 fiscal year, the county shall appropriate a portion of these additional revenues to the county department of health services in an amount which, over successive fiscal years, and in conjunction with funds identified pursuant to subdivision (j), equals the amount of funding deemed to be county general purpose revenues by the county pursuant to subdivision (h).

(m) As a condition of the authority to designate county general purpose revenues pursuant to subdivision (h), the county shall make no health and mental health care curtailments within the county's department of health services and shall take no action to reduce health and mental health care services as defined in subdivision (b) within the county's department of health services in the 1994-95 fiscal year below the levels that existed in the 1992-93 fiscal year, and the county shall provide and maintain data in accordance with subdivision (c) for services provided during the 1994-95 fiscal year.

(n) Except as otherwise provided, this section shall be operative only until July 1, 1996.

SEC. 2. No reimbursement is required by this section pursuant to Section 6 of Article XII B of the California Constitution because the provisions are voluntary on the part of the county.

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

In order to permit the allocation of, and avoid the recoupment of Cigarette and Tobacco Products Surtax revenues and other revenues intended for the provision of needed health and mental health services by local agencies in the 1994-95 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 1139

An act to amend Sections 86117, 90001, and 90002 of the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 86117 of the Government Code is amended to read:

86117. (a) Reports required by Sections 86114 and 86116 shall be filed during the month following each calendar quarter. The period covered shall be from the first day of January of each new biennial legislative session through the last day of the calendar quarter prior to the month during which the report is filed, except as specified in subdivision (b), and except that the period covered shall not include any information reported in previous reports filed by the same person. When total amounts are required to be reported, totals shall be stated both for the period covered by the statement and for the entire legislative session to date.

(b) The period covered by the first report a person is required to file pursuant to Sections 86114 and 86116 shall begin with the first day of the calendar quarter in which the filer first registered or qualified. On the first report a person is required to file, the total amount shall be stated for the entire calendar quarter covered by the first report.

SEC. 2. Section 90001 of the Government Code is amended to read:

90001. Audits and investigations shall be made pursuant to Section 90000 with respect to the reports and statements of:

(a) Each lobbying firm and each lobbyist employer who employs one or more lobbyists shall be subject to an audit on a random basis with these lobbying firms or lobbyist employers having a 25-percent chance of being audited. When a lobbying firm or lobbyist employer

is audited, the individual lobbyists who are employed by the lobbying firm or the lobbyist employer shall also be audited.

(b) Each statewide, Supreme Court, court of appeal, or Board of Equalization candidate in a direct primary or general election for whom it is determined that twenty-five thousand dollars (\$25,000) or more in contributions have been raised or twenty-five thousand dollars (\$25,000) or more in expenditures have been made, whether by the candidate or by a committee or committees controlled by the candidate or whose participation in the direct primary or general election is primarily in support of his or her candidacy. Each statewide candidate whose contributions and expenditures are less than twenty-five thousand dollars (\$25,000) shall be subject to an audit on a random basis of 10 percent of the number of such candidates.

(c) Each candidate for the Legislature or superior court judge in a direct primary or general election shall be subject to audit by random selection if it is determined that fifteen thousand dollars (\$15,000) or more in contributions have been received or fifteen thousand dollars (\$15,000) or more in expenditures have been made, whether by the candidate or by a committee or committees controlled by the candidate or primarily supporting his or her candidacy. Random selection shall be made of 25 percent of the Senate districts, 25 percent of the Assembly districts and 25 percent of the judicial offices contested in an election year.

(d) Each candidate for the Legislature in a special primary or special runoff election for whom it is determined that fifteen thousand dollars (\$15,000) or more in contributions have been raised or fifteen thousand dollars (\$15,000) or more in expenditures have been made, whether by the candidate or by a committee or committees controlled by the candidate or primarily supporting his or her candidacy.

(e) Each controlled committee of any candidate who is being audited pursuant to subdivision (b), (c), or (d).

(f) Each committee, other than a committee specified in subdivision (c) of Section 82013, primarily supporting or opposing a candidate who is being audited pursuant to subdivision (b), (c), or (d) if it is determined that the committee has expended more than ten thousand dollars (\$10,000).

(g) Each committee, other than a committee specified in subdivision (c) of Section 82013, whose participation is primarily in support of or in opposition to a state measure or state measures if it is determined that the committee has expended more than ten thousand dollars (\$10,000) on such measure or measures.

(h) Each committee, other than a committee defined in subdivision (c) of Section 82013, a controlled committee or a committee primarily supporting or opposing a state candidate or measure, if it is determined that the committee has raised or expended more than ten thousand dollars (\$10,000) supporting or opposing state candidates or state measures during any calendar

year, except that if the commission determines from an audit report that a committee is in substantial compliance with the provisions of the act, the committee thereafter shall be subject to an audit on a random basis with each such committee having a 25-percent chance of being audited.

(i) With respect to local candidates and their controlled committees, the commission shall promulgate regulations which provide a method of selection for these audits.

(j) In accordance with subdivisions (a), (b), (c), and (h), the Fair Political Practices Commission shall select by lot the persons or districts to be audited on a random basis. For campaign audits the selection shall be made in public after the last date for filing the first report or statement following the general or special election for which the candidate ran, or following the election at which the measure was adopted or defeated. For lobbying firm and lobbyist employer audits, the selection shall be made in public in February of odd-numbered years.

SEC. 3. Section 90002 of the Government Code is amended to read:

90002. (a) Audits and investigations of lobbying firms and lobbyist employers shall be performed on a biennial basis and shall cover reports filed during a period of two years.

(b) If a lobbying firm or lobbyist employer keeps a separate account for all receipts and payments for which reporting is required by this chapter, the requirement of an audit under subdivision (a) of Section 90001 shall be satisfied by an audit of that account and the supporting documentation required to be maintained by Section 86110.

(c) No audit or investigation of any candidate, controlled committee, or committee primarily supporting or opposing a candidate or a measure in connection with a report or statement required by Chapter 4 of this title, shall begin until after the last date for filing the first report or statement following the general, runoff or special election for the office for which the candidate ran, or following the election at which the measure was adopted or defeated, except that audits and investigations of statewide candidates, their controlled committees, and committees primarily supporting or opposing those statewide candidates who were defeated in the primary election and who are not required to file statements for the general election may begin after the last date for filing the first report or statement following the primary election. When the campaign statements or reports of a candidate, controlled committee, or a committee primarily supporting or opposing a candidate are audited and investigated pursuant to Section 90001, the audit and investigation shall cover all campaign statements and reports filed for the primary and general or special or runoff elections and any previous campaign statement or report filed pursuant to Section 84200 or 84200.5 since the last election for that office, but shall exclude any statements or reports which have

previously been audited pursuant to Section 90001 or 90003. When the campaign statements or reports of a committee primarily supporting or opposing a measure are audited and investigated, the audit and investigation shall cover all campaign statements and reports from the beginning date of the first campaign statement filed by the committee in connection with the measure. For all other committees, the audit and investigation shall cover all campaign statements filed during the previous two calendar years.

SEC. 4. The Legislature finds and declares that the provisions of this act further the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

CHAPTER 1140

An act to amend Section 4057.5 of, and to add Section 5230.5 to, the Family Code, relating to family law.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 4057.5 of the Family Code is amended to read:

4057.5. (a) (1) The income of the obligor parent's subsequent spouse or nonmarital partner shall not be considered when determining or modifying child support, except in an extraordinary case where excluding that income would lead to extreme and severe hardship to any child subject to the child support award, in which case the court shall also consider whether including that income would lead to extreme and severe hardship to any child supported by the obligor or by the obligor's subsequent spouse or nonmarital partner.

(2) The income of the obligee parent's subsequent spouse or nonmarital partner shall not be considered when determining or modifying child support, except in an extraordinary case where excluding that income would lead to extreme and severe hardship to any child subject to the child support award, in which case the court shall also consider whether including that income would lead to extreme and severe hardship to any child supported by the obligee or by the obligee's subsequent spouse or nonmarital partner.

(b) For purposes of this section, an extraordinary case may include a parent who voluntarily or intentionally quits work or reduces income, or who intentionally remains unemployed or underemployed and relies on a subsequent spouse's income.

(c) If any portion of the income of either parent's subsequent spouse or nonmarital partner is allowed to be considered pursuant to

this section, discovery for the purposes of determining income shall be based on W2 and 1099 income tax forms, except where the court determines that application would be unjust or inappropriate.

(d) If any portion of the income of either parent's subsequent spouse or nonmarital partner is allowed to be considered pursuant to this section, the court shall allow a hardship deduction based on the minimum living expenses for one or more stepchildren of the party subject to the order. In allowing a hardship deduction, a court shall comply with Sections 4070, 4071, 4072, and 4073.

(e) The enactment of this section constitutes cause to bring an action for modification of a child support order entered prior to the operative date of this section.

SEC. 2. Section 5230.5 is added to the Family Code, to read:

5230.5. Any obligee alleging arrearages in child support shall specify the amount thereof under penalty of perjury.

SEC. 3. It is the intent of the Legislature that the restrictions specified in Section 4075.5 of the Family Code on the use of a subsequent spouse or nonmarital partner's income is not subject to court standardization, but is subject to judgment on a case-by-case basis. It is also the intent of the Legislature that Section 4075.5 of the Family Code prohibit the establishment or use of any formula or local court guideline devised to determine when consideration of a subsequent spouse or nonmarital partner's income is relevant.

CHAPTER 1141

An act to amend Section 1241 of the Business and Professions Code, relating to clinical laboratories.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 1241 of the Business and Professions Code is amended to read:

1241. This chapter applies to all clinical laboratories in California except those owned and operated by:

(a) The United States of America, or any department, agency, or official thereof acting in his or her official capacity.

(b) An individual licensed physician and surgeon or podiatrist, or a partnership or professional corporation of five or fewer physicians and surgeons or podiatrists, that performs clinical laboratory tests or examinations only for the patients of that individual physician and surgeon, podiatrist, partnership, or professional corporation. If direct or indirect referred work is received from any source, all provisions of this chapter shall apply. This subdivision shall become inoperative when the United States Department of Health and Human Services

exempts state-licensed or state-registered laboratories from the requirements of the Clinical Laboratory Improvement Amendment of 1988 (P.L. 100-578) pursuant to subsection (p) of Section 263a of Title 42 of the United States Code and Section 493.513 of Title 42 of the Code of Federal Regulations, and the State Director of Health Services determines that this exemption has been granted. The director shall execute and retain a written declaration stating that the conditions requiring this subdivision to become inoperative have occurred.

(c) An academic institution accredited by an accrediting agency approved by the department when clinical laboratory procedures are performed for teaching or research purposes only, if the results of any examinations performed in such laboratories are not used in the diagnosis or treatment of disease.

(d) The Department of Corrections, except that after July 1, 1979, such exception shall not apply to any clinical laboratory of the Department of Corrections which conducts biomedical or behavioral research pursuant to Title 2.1 (commencing with Section 3500) of Part 3 of the Penal Code.

(e) The California Youth Authority.

(f) A nonprofit corporation or association, which contracts with or employs individual licensed physicians and surgeons or podiatrists to render medical care and the operations of which are directly funded at least 80 percent by the United States government, for laboratory work performed on the patients of such physicians and surgeons or podiatrists and under the supervision of such physicians and surgeons or podiatrists. If direct or indirect referred work is received from any source, all provisions of this chapter shall apply.

(g) A primary care clinic specified in subdivision (a) of Section 1204 of the Health and Safety Code, which contracts with or employs individual licensed physicians and surgeons or podiatrists to render medical care for laboratory work performed on the patients of such physicians and surgeons or podiatrists. If direct or indirect referred work is received from any source, all provisions of this chapter shall apply.

CHAPTER 1142

An act to amend Section 7349 of, and to add Section 7395.1 to, the Business and Professions Code, relating to cosmetology.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 7349 of the Business and Professions Code is amended to read:

7349. It is unlawful for any person, firm, or corporation to hire, employ, or allow to be employed, or permit to work, in or about an establishment, any person who performs or practices any occupation regulated under this chapter and is not duly licensed by the board, except that a licensed cosmetology establishment may utilize a student extern, as described in Section 7395.1.

Any person violating this section is subject to citation and fine pursuant to Section 7406 and is also guilty of a misdemeanor.

SEC. 2. Section 7395.1 is added to the Business and Professions Code, to read:

7395.1. (a) A student who is enrolled in a school of cosmetology approved by the Council for Private Postsecondary and Vocational Education in a course approved by the board may, upon completion of a minimum of 60 percent of the clock hours required for graduation in the course, work as an unpaid extern in a cosmetology establishment participating in the educational program of the school of cosmetology.

(b) A person working as an extern shall receive clock hour credit toward graduation, but that credit shall not exceed eight hours per week and shall not exceed 10 percent of the total clock hours required for completion of the course.

(c) The externship program shall be conducted in cosmetology establishments meeting all of the following criteria:

(1) The establishment is licensed by the board.

(2) The establishment has a minimum of four licensees working at the establishment, including employees and owners or managers.

(3) All licensees at the establishment are in good standing with the board.

(4) Licensees working at the establishment work for salaries or commissions rather than on a space rental basis.

(5) No more than one extern shall work in an establishment for every four licensees working in the establishment. No regularly employed licensee shall be displaced or have his or her work hours reduced or altered to accommodate the placement of an extern in an establishment. Prior to placement of the extern, the establishment shall agree in writing sent to the school and to all affected licensees that no reduction or alteration of any licensee's current work schedule shall occur. This shall not prevent a licensee from voluntarily reducing or altering his or her work schedule.

(6) Externs shall wear conspicuous school identification at all times while working in the establishment, and shall carry a school laminated identification, that includes a picture, in a form approved by the board.

(d) (1) A school participating in the externship program shall provide the participating establishment and the extern with a syllabus containing applicable information specified in Section 73880 of Title 5 of the California Code of Regulations. The extern, the school, and the establishment shall agree to the terms of and sign the syllabus prior to the extern beginning work at the establishment. No

less than 90 percent of the responsibilities and duties of the extern shall consist of the acts included within the practice of cosmetology as defined in Section 7316.

(2) The establishment shall consult with the assigning school regarding the extern's progress during the unpaid externship. The owner or manager of the establishment shall monitor and report on the student's progress to the school on a regular basis, with assistance from supervising licensees.

(3) A participating school shall assess the extern's learning outcome from the externship program. The school shall maintain accurate records of the extern's educational experience in the externship program and records that indicate how the extern's learning outcome translates into course credit.

(e) Participation in an externship program made available by a school shall be voluntary, may be terminated by the student at any time, and shall not be a prerequisite for graduation.

(f) The cosmetology establishment that chooses to utilize the extern is liable for the extern's general liability insurance, as well as cosmetology malpractice liability insurance, and shall furnish proof to the participating school that the establishment is covered by both forms of liability insurance and that the extern is covered under that insurance.

(g) (1) It is the purpose of the externship program authorized by this section to provide students with skills, knowledge, and attitudes necessary to acquire employment in the field for which they are being trained, and to extend formalized classroom instruction.

(2) Instruction shall be based on skills, knowledge, attitudes, and performance levels in the area of cosmetology for which the instruction is conducted.

(3) An extern may perform only acts listed within the definition of the practice of cosmetology as provided in Section 7316, if a licensee directly supervises those acts, except that an extern may not use or apply chemical treatments unless the extern has received appropriate training in application of those treatments from an approved cosmetology school. An extern may work on a paying client only in an assisting capacity and only with the direct and immediate supervision of a licensee.

(4) The extern shall not perform any work in a manner that would violate law.

CHAPTER 1143

An act to amend Section 1797.98a of, and to add and repeal Section 1797.98h of, the Health and Safety Code, relating to emergency medical services.

[Approved by Governor September 29, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 1797.98a of the Health and Safety Code is amended to read:

1797.98a. Each county may establish an emergency medical services fund, upon adoption of a resolution by the board of supervisors. The money in the fund shall be available for the reimbursements required by this chapter. The fund shall be administered by each county, except that a county electing to have the state administer its medically indigent services program may also elect to have its emergency medical services fund administered by the state. Costs of administering the fund shall be reimbursed by the fund, up to 10 percent of the amount of the fund. All interest earned on moneys in the fund shall be deposited in the fund for disbursement as specified in this section. The fund shall be utilized to reimburse physicians and surgeons and hospitals for patients who do not make payment for emergency medical services and for other emergency medical services purposes as determined by each county. Fifty-eight percent of the balance of the money in the fund after costs of administration shall be distributed to physicians and surgeons for emergency services provided by all physicians and surgeons, except those physicians and surgeons employed by county hospitals, in general acute care hospitals that provide basic or comprehensive emergency services up to the time the patient is stabilized, 25 percent of the balance of the fund after costs of administration shall be distributed only to hospitals providing disproportionate trauma and emergency medical care services, and 17 percent of the balance of the fund after costs of administration shall be distributed for other emergency medical services purposes as determined by each county, including, but not limited to, the funding of regional poison control centers. The source of the money in the fund shall be the penalty assessment made for this purpose, as provided in Section 1465 of the Penal Code.

SEC. 2. Section 1797.98h is added to the Health and Safety Code, to read:

1797.98h. (a) Notwithstanding Section 1797.98a, upon a finding by the county board of supervisors of the Counties of Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, or Yuba, that prior year unexpended and unencumbered funds exist within the county's emergency medical services fund, the board of supervisors may

without regard to the formula in Section 1797.98a, by four-fifths vote, authorize expenditure of those prior year unexpended and unencumbered funds for the purposes of funding the county's share of the poison control. Expenditures of the prior year unexpended and unencumbered funds for purposes other than poison control shall only be made pursuant to a written agreement as specified pursuant to subdivision (c). A county board of supervisors may make this finding only if the county has done all of the following:

- (1) Established an emergency medical services fund.
- (2) Established a reasonable mechanism for physicians and surgeons and hospitals to receive reimbursements.
- (3) Reimbursed physicians and surgeons and hospitals at a level equal to or greater than the level of reimbursement in effect as of July 1, 1994.

(b) For the purposes of this section, "prior year unexpended and unencumbered funds" means any funds that exist within the county's emergency medical services fund at the end of the fiscal year after subtracting both of the following:

- (1) Any claims for services provided in the prior fiscal year that are submitted to the fund within 60 days of the end of the prior fiscal year.

- (2) An amount encumbered to pay for estimated claims incurred during the prior fiscal year, but for which no claim for reimbursement has been submitted within 60 days of the end of the prior fiscal year.

(c) Any prior year unexpended and unencumbered funds authorized for expenditure pursuant to this section for purposes other than poison control may be expended only pursuant to a written agreement among the county, the principal medical society representing physicians and surgeons in the county, and the principal association representing hospitals in the county. The written agreement shall specify the amount of prior year unexpended and unencumbered funds to be expended for purposes other than poison control and the emergency medical services purposes for which the funds are to be expended.

(d) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

SEC. 3. Due to the unique circumstances concerning the geographic conditions and population profiles of the areas described in Section 1797.98h of the Health and Safety Code, it is necessary that the specific emergency medical services funding concerns of these areas be given special consideration, and the Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

CHAPTER 1144

An act to add Section 1373.621 to the Health and Safety Code, to add Sections 10116.5 and 11512.03 to the Insurance Code, and to add Section 2807.5 to the Labor Code, relating to health coverage.

[Approved by Governor September 29, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 1373.621 is added to the Health and Safety Code, to read:

1373.621. Except for a specialized health care service plan, every health care service plan contract that is issued, amended, delivered, or renewed in this state on or after January 1, 1995, which provides hospital, medical, or surgical expense coverage under an employer-sponsored group plan shall provide that an employer subject to Section 4980B of Title 26 of the United States Code may further continue benefits as required under Section 2807.5 of the Labor Code for any former employee and his or her spouse if the employee has worked for the employer for at least the five prior years and is over 60 years of age on the date employment ends. For purposes of subdivision (a) of Section 2807.5 of the Labor Code, the "applicable current group rate" means the total premiums charged by the health care service plan for coverage for the group, divided by the relevant number of covered persons.

SEC. 2. Section 10116.5 is added to the Insurance Code, to read:

10116.5. Every policy of disability insurance that is issued, amended, delivered, or renewed on or after January 1, 1995, that provides hospital, medical, or surgical expense coverage under an employer-sponsored group plan shall provide that an employer subject to Section 4980B of Title 26 of the United States Code may further continue benefits as required under Section 2807.5 of the Labor Code for any former employee and his or her spouse if the employee has worked for the employer for at least the five prior years and is over 60 years of age on the date employment ends.

SEC. 3. Section 11512.03 is added to the Insurance Code, to read:

11512.03. Every nonprofit hospital service plan contract that is issued, amended, delivered, or renewed in this state on or after January 1, 1995, that provides hospital, medical, or surgical expense coverage under an employer-sponsored group plan shall provide that an employer subject to Section 4980B of Title 26 of the United States Code may further continue benefits as required under Section 2807.5 of the Labor Code for any former employee and his or her spouse if the employee has worked for the employer for at least the five prior years and is over 60 years of age on the date employment ends.

SEC. 4. Section 2807.5 is added to the Labor Code, to read:

2807.5. (a) Any employer, whether private or public, that provides hospital, medical, or surgical expense coverage that a former employee may continue under Section 4980B of Title 26 of the United States Code, as added by the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272) and as may be later amended (hereafter "COBRA"), shall provide for an additional continuation of benefits to the former employee under this section. In the event a former employee who has worked for the employer for at least the prior five years and who is 60 years of age or older on the date employment ends is entitled to and so elects to continue benefits under COBRA for himself or herself and for any spouse, the employee or spouse may further continue benefits beyond the date coverage under COBRA ends, as set forth in subdivision (b). Except as otherwise specified in this section, continuation shall be under the same terms and conditions as if the continuation under COBRA had remained in force. For the employee or spouse, continuation following the end of COBRA is subject to payment of premiums to the employer at the time the group premium is due. The rate for continuation coverage under this section shall not exceed 213 percent of the applicable current group rate. Individuals ineligible for COBRA are not entitled to continuation benefits under this section.

(b) The employer shall notify the former employee of the availability of continuation benefits under this section at least 90 calendar days prior to the date continuation coverage under COBRA is scheduled to end. To continue health care coverage pursuant to this section, the individual shall elect to do so by notifying the employer in writing within 30 calendar days prior to the date continuation coverage under COBRA is scheduled to end.

(c) The continuation shall end automatically on the earlier of (1) the date the individual reaches age 65, (2) the date the employer ceases to maintain any group health plan (including successor plans), (3) the date the individual is covered under any group health plan not maintained by the employer, regardless of whether that coverage is less valuable, (4) the date the individual becomes entitled to Medicare under Title VIII of the Social Security Act, or (5) for a spouse, five years from the date employment ended.

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

CHAPTER 1145

An act to amend Sections 25356, 25402.2, 25402.8, 25501, 25517, 25518, 25524.1, 25524.2, 25605.5, 25608, 25687.7, and 25902 of, to repeal Sections 25137, 25216.4, 25309.5, 25406, 25501.3, 25501.5, 25502.5, 25524.25, 25524.3, 25536, 25606, 25607, 25940, and 25941 of, to repeal Chapter 4.7 (commencing with Section 25370) of, to repeal Chapter 5.5 (commencing with Section 25450) of, to repeal Chapter 5.7 (commencing with Section 25470) of, to repeal Chapter 7.1 (commencing with Section 25620) of, to repeal Chapter 7.5 (commencing with Section 25650) of, and to repeal Chapter 7.6 (commencing with Section 25675) of, Division 15 of, the Public Resources Code, relating to energy resources.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 25137 of the Public Resources Code is repealed.

SEC. 2. Section 25216.4 of the Public Resources Code is repealed.

SEC. 3. Section 25309.5 of the Public Resources Code is repealed.

SEC. 4. Section 25356 of the Public Resources Code is amended to read:

25356. (a) The commission shall, utilizing its own staff and other support staff having expertise and experience in, or with, the petroleum industry, gather, analyze, and interpret the information submitted to it pursuant to Section 25354 and other information relating to the supply and price of petroleum products, with particular emphasis on motor vehicle fuels, including, but not limited to, all of the following:

(1) The nature, cause, and extent of any petroleum or petroleum products shortage or condition affecting supply.

(2) The economic and environmental impacts of any petroleum and petroleum product shortage or condition affecting supply.

(3) Petroleum or petroleum product demand and supply forecasting methodologies utilized by the petroleum industry in California.

(4) The prices, with particular emphasis on retail motor fuel prices, and any significant changes in prices charged by the petroleum industry for petroleum or petroleum products sold in California and the reasons for those changes.

(5) The profits, both before and after taxes, of the industry as a whole and of major firms within it, including a comparison with other major industry groups and major firms within them as to profits, return on equity and capital, and price-earnings ratio.

(6) The emerging trends relating to supply, demand, and conservation of petroleum and petroleum products.

(7) The nature and extent of efforts of the petroleum industry to expand refinery capacity and to make acquisitions of additional supplies of petroleum and petroleum products, including activities relative to the exploration, development, and extraction of resources within the state.

(8) The development of a petroleum and petroleum products information system in a manner which will enable the state to take action to meet and mitigate any petroleum or petroleum products shortage or condition affecting supply.

(b) The commission shall analyze the impacts of state and federal policies and regulations upon the supply and pricing of petroleum products.

SEC. 5. Chapter 4.7 (commencing with Section 25370) of Division 15 of the Public Resources Code is repealed.

SEC. 6. Section 25402.2 of the Public Resources Code is amended to read:

25402.2. Any standard adopted by the commission pursuant to Sections 25402 and 25402.1, which is a building standard as defined in Section 25488.5, shall be submitted to the State Building Standards Commission for approval pursuant to, and is governed by, the State Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code). Building standards adopted by the commission and published in the State Building Standards Code shall be enforced as provided in Sections 25402 and 25402.1.

SEC. 7. Section 25402.8 of the Public Resources Code is amended to read:

25402.8. When assessing new building standards for residential and nonresidential buildings relating to the conservation of energy, the commission shall include in its deliberations the impact that those standards would have on indoor air pollution problems.

SEC. 8. Section 25406 of the Public Resources Code is repealed.

SEC. 9. Chapter 5.5 (commencing with Section 25450) of Division 15 of the Public Resources Code is repealed.

SEC. 9.5. Chapter 5.7 (commencing with Section 25470) of Division 15 of the Public Resources Code is repealed.

SEC. 10. Section 25501 of the Public Resources Code is amended to read:

25501. This chapter does not apply to any site and related facility: for which the Public Utilities Commission has issued a certificate of public convenience and necessity or which any municipal utility has approved before the effective date of this division.

SEC. 11. Section 25501.3 of the Public Resources Code is repealed.

SEC. 12. Section 25501.5 of the Public Resources Code is repealed.

SEC. 13. Section 25502.5 of the Public Resources Code is repealed.

SEC. 14. Section 25517 of the Public Resources Code is amended

to read:

25517. Except as provided in Section 25501, no construction of any thermal powerplant or electric transmission line shall be commenced by any electric utility without first obtaining certification as prescribed in this division. Any onsite improvements not qualifying as construction may be required to be restored as determined by the commission to be necessary to protect the environment, if certification is denied.

SEC. 15. Section 25518 of the Public Resources Code is amended to read:

25518. The Public Utilities Commission shall issue no certificate of public convenience and necessity for a site or related electrical facilities unless the utility has obtained a certificate from the commission.

SEC. 16. Section 25524.1 of the Public Resources Code is amended to read:

25524.1. (a) Except for the existing Diablo Canyon Units 1 and 2 owned by Pacific Gas and Electric Company and San Onofre Units 2 and 3 owned by Southern California Edison Company and San Diego Gas and Electric Company, no nuclear fission thermal powerplant requiring the reprocessing of fuel rods, including any to which this chapter does not otherwise apply, excepting any having a vested right as defined in this section, shall be permitted land use in the state or, where applicable, certified by the commission until both of the following conditions are met:

(1) The commission finds that the United States through its authorized agency has identified and approved, and there exists a technology for the construction and operation of, nuclear fuel rod reprocessing plants.

(2) The commission has reported its findings and the reasons therefor pursuant to paragraph (1) to the Legislature. That report shall be assigned to the appropriate policy committees for review. The commission may proceed to certify nuclear fission thermal powerplants 100 legislative days after reporting its findings unless within those 100 legislative days either house of the Legislature adopts by a majority vote of its members a resolution disaffirming the findings of the commission made pursuant to paragraph (1).

(3) A resolution of disaffirmance shall set forth the reasons for the action and shall provide, to the extent possible, guidance to the commission as to an appropriate method of bringing the commission's findings into conformance with paragraph (1).

(4) If a disaffirming resolution is adopted, the commission shall reexamine its original findings consistent with matters raised in the resolution. On conclusion of its reexamination, the commission shall transmit its findings in writing, with the reasons therefor, to the Legislature.

(5) If the findings are that the conditions of paragraph (1) have been met, the commission may proceed to certify nuclear fission thermal powerplants 100 legislative days after reporting its findings

to the Legislature unless within those 100 legislative days both houses of the Legislature act by statute to declare the findings null and void and takes appropriate action.

(6) To allow sufficient time for the Legislature to act, the reports of findings of the commission shall be submitted to the Legislature at least six calendar months prior to the adjournment of the Legislature sine die.

(b) The commission shall further find on a case-by-case basis that facilities with adequate capacity to reprocess nuclear fuel rods from a certified nuclear facility or to store that fuel if that storage is approved by an authorized agency of the United States are in actual operation or will be in operation at the time that the nuclear facility requires reprocessing or storage; provided, however, that the storage of fuel is in an offsite location to the extent necessary to provide continuous onsite full core reserve storage capacity.

(c) The commission shall continue to receive and process notices of intention and applications for certification pursuant to this division, but shall not issue a decision pursuant to Section 25523 granting a certificate until the requirements of this section have been met. All other permits, licenses, approvals, or authorizations for the entry or use of the land, including orders of court, which may be required may be processed and granted by the governmental entity concerned, but construction work to install permanent equipment or structures shall not commence until the requirements of this section have been met.

SEC. 17. Section 25524.2 of the Public Resources Code is amended to read:

25524.2. Except for the existing Diablo Canyon Units 1 and 2 owned by Pacific Gas and Electric Company and San Onofre Units 2 and 3 owned by Southern California Edison Company and San Diego Gas and Electric Company, no nuclear fission thermal powerplant, including any to which this chapter does not otherwise apply, but excepting those exempted herein, shall be permitted land use in the state, or where applicable, be certified by the commission until both of the following conditions have been met:

(a) The commission finds that there has been developed and that the United States through its authorized agency has approved and there exists a demonstrated technology or means for the disposal of high-level nuclear waste.

(b) (1) The commission has reported its findings and the reasons therefor pursuant to paragraph (a) to the Legislature. That report shall be assigned to the appropriate policy committees for review. The commission may proceed to certify nuclear fission thermal powerplants 100 legislative days after reporting its findings unless within those 100 legislative days either house of the Legislature adopts by a majority vote of its members a resolution disaffirming the findings of the commission made pursuant to subdivision (a).

(2) A resolution of disaffirmance shall set forth the reasons for the action and shall provide, to the extent possible, guidance to the

commission as to an appropriate method of bringing the commission's findings into conformance with subdivision (a).

(3) If a disaffirming resolution is adopted, the commission shall reexamine its original findings consistent with matters raised in the resolution. On conclusion of its reexamination, the commission shall transmit its findings in writing, with the reasons therefor, to the Legislature.

(4) If the findings are that the conditions of subdivision (a) have been met, the commission may proceed to certify nuclear fission thermal powerplants 100 legislative days after reporting its findings to the Legislature unless within those 100 legislative days both houses of the Legislature act by statute to declare the findings null and void and take appropriate action.

(5) To allow sufficient time for the Legislature to act, the reports of findings of the commission shall be submitted to the Legislature at least six calendar months prior to the adjournment of the Legislature sine die.

(c) As used in subdivision (a), "technology or means for the disposal of high-level nuclear waste" means a method for the permanent and terminal disposition of high-level nuclear waste. Nothing in this section requires that facilities for the application of that technology or means be available at the time that the commission makes its findings. That disposition of high-level nuclear waste does not preclude the possibility of an approved process for retrieval of the waste.

(d) The commission shall continue to receive and process notices of intention and applications for certification pursuant to this division but shall not issue a decision pursuant to Section 25523 granting a certificate until the requirements of this section have been met. All other permits, licenses, approvals, or authorizations for the entry or use of the land, including orders of court, which may be required may be processed and granted by the governmental entity concerned, but construction work to install permanent equipment or structures shall not commence until the requirements of this section have been met.

SEC. 18. Section 25524.25 of the Public Resources Code is repealed.

SEC. 19. Section 25524.3 of the Public Resources Code is repealed.

SEC. 20. Section 25536 of the Public Resources Code is repealed.

SEC. 21. Section 25605.5 of the Public Resources Code is amended to read:

25605.5. Standards adopted by the commission pursuant to Section 25605, which are building standards as defined in Section 25488.5, shall be submitted to the State Building Standards Commission for approval pursuant to, and are governed by, the State Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code). Building standards adopted by the commission and published in the State Building

Standards Code shall comply with, and be enforced as provided in, Section 25605.

SEC. 22. Section 25606 of the Public Resources Code is repealed.

SEC. 23. Section 25607 of the Public Resources Code is repealed.

SEC. 24. Section 25608 of the Public Resources Code is amended to read:

25608. The commission shall confer with officials of federal agencies, including the National Aeronautics and Space Administration, the National Institute of Standards and Technology, the Department of Energy, and the Department of Housing and Urban Development, to coordinate the adoption of regulations pursuant to Sections 25603 and 25605.

SEC. 25. Chapter 7.1 (commencing with Section 25620) of Division 15 of the Public Resources Code is repealed.

SEC. 26. Chapter 7.5 (commencing with Section 25650) of Division 15 of the Public Resources Code is repealed.

SEC. 27. Chapter 7.6 (commencing with Section 25675) of Division 15 of the Public Resources Code is repealed.

SEC. 28. Section 25687.7 of the Public Resources Code is amended to read:

25687.7. No projects that are eligible for funding under Chapter 6 (commencing with Section 3800) of Division 3 shall be eligible for funding under this chapter.

SEC. 29. Section 25902 of the Public Resources Code is amended to read:

25902. Any evaluations in the reports required by Section 25309 and any findings and determinations on the notice of intent pursuant to Chapter 6 (commencing with Section 25500) shall not be construed as a final evaluation, finding, or determination by the commission and a court action may not be brought to review any such evaluation, finding, or determination.

SEC. 30. Section 25940 of the Public Resources Code is repealed.

SEC. 31. Section 25941 of the Public Resources Code is repealed.

CHAPTER 1146

An act to amend Sections 65088.1, 65089, and 65089.2 of, to amend and renumber Sections 65089.4, 65089.5, 65089.6, and 65089.7 of, to add Sections 65089.3, 65089.4, and 65089.9 to, and to repeal Section 65089.3 of, the Government Code, relating to transportation.

[Approved by Governor September 29, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 65088.1 of the Government Code is amended to read:

65088.1. As used in this chapter the following terms have the following meanings:

(a) Unless the context requires otherwise, "regional agency" means the agency responsible for preparation of the regional transportation improvement program.

(b) Unless the context requires otherwise, "agency" means the agency responsible for the preparation and adoption of the congestion management program.

(c) "Commission" means the California Transportation Commission.

(d) "Department" means the Department of Transportation.

(e) "Local jurisdiction" means a city, a county, or a city and county.

(f) "Parking cash-out program" means an employer-funded program under which an employer offers to provide a cash allowance to an employee equivalent to the parking subsidy that the employer would otherwise pay to provide the employee with a parking space. "Parking subsidy" means the difference between the out-of-pocket amount paid by an employer on a regular basis in order to secure the availability of an employee parking space not owned by the employer and the price, if any, charged to an employee for use of that space.

A parking cash-out program may include a requirement that employee participants certify that they will comply with guidelines established by the employer designed to avoid neighborhood parking problems, with a provision that employees not complying with the guidelines will no longer be eligible for the parking cash-out program.

(g) "Urbanized area" has the same meaning as is defined in the 1990 federal census for urbanized areas of more than 50,000 population.

(h) "Interregional travel" means any trips that originate outside the boundary of the agency. A "trip" means a one-direction vehicle movement. The origin of any trip is the starting point of that trip. A roundtrip consists of two individual trips.

(i) "Multimodal" means the utilization of all available modes of travel that enhance the movement of people and goods, including, but not limited to, highway, transit, nonmotorized and demand management strategies including, but not limited to, telecommuting. The availability and practicality of specific multimodal systems, projects, and strategies varies by county and region in accordance with the size and complexity of different urbanized areas.

(j) "Level of service standard" is a threshold that defines a deficiency on the congestion management program highway and roadway system which requires the preparation of a deficiency plan. It is the intent of the Legislature that the agency shall use all elements of the program to implement strategies and actions that avoid the creation of deficiencies and to improve multimodal

mobility.

(k) "Performance measure" is an analytical planning tool that is used to quantitatively evaluate transportation improvements and to assist in determining effective implementation actions, considering all modes and strategies. Use of a performance measure as part of the program does not trigger the requirement for the preparation of deficiency plans.

SEC. 2. Section 65089 of the Government Code is amended to read:

65089. (a) A congestion management program shall be developed, adopted, and updated biennially, consistent with the schedule for adopting and updating the regional transportation improvement program, for every county that includes an urbanized area, and shall include every city and the county. The program shall be adopted at a noticed public hearing of the agency. The program shall be developed in consultation with, and with the cooperation of, the transportation planning agency, regional transportation providers, local governments, the department, and the air pollution control district or the air quality management district, either by the county transportation commission, or by another public agency, as designated by resolutions adopted by the county board of supervisors and the city councils of a majority of the cities representing a majority of the population in the incorporated area of the county.

(b) The program shall contain all of the following elements:

(1) (A) Traffic level of service standards established for a system of highways and roadways designated by the agency. The highway and roadway system shall include at a minimum all state highways and principal arterials. No highway or roadway designated as a part of the system shall be removed from the system. All new state highways and principal arterials shall be designated as part of the system. Level of service (LOS) shall be measured by Circular 212, (or by the most recent version of the Highway Capacity Manual), or by a uniform methodology adopted by the agency which is consistent with the Highway Capacity Manual. The determination as to whether an alternative method is consistent with the Highway Capacity Manual shall be made by the regional agency, except that the department shall make this determination instead if either (i) the regional agency is also the agency, as those terms are defined in Section 65088.1, or (ii) the department is responsible for preparing the regional transportation improvement plan for the county.

(B) In no case shall the LOS standards established be below the level of service E or the current level, whichever is farthest from level of service A. When the level of service on a segment or at an intersection fails to attain the established level of service standard, a deficiency plan shall be adopted pursuant to Section 65089.4.

(2) A performance element that includes performance measures to evaluate current and future multimodal system performance for the movement of people and goods. At a minimum, these performance measures shall incorporate highway and roadway

system performance, and measures established for the frequency and routing of public transit, and for the coordination of transit service provided by separate operators. These performance measures shall support mobility, air quality, land use, and economic objectives, and shall be used in the development of the capital improvement program required pursuant to paragraph (5), deficiency plans required pursuant to Section 65089.4, and the land use analysis program required pursuant to paragraph (4).

(3) (A) A trip reduction and travel demand element that promotes alternative transportation methods, including, but not limited to, carpools, vanpools, transit, bicycles, and park-and-ride lots; improvements in the balance between jobs and housing; and other strategies, including, but not limited to, flexible work hours, telecommuting, and parking management programs. The agency shall consider parking cash-out programs during the development and update of the trip reduction and travel demand element.

(B) The agency and respective air pollution control district or air quality management district shall coordinate the development of trip reduction responsibilities and shall avoid duplication of responsibilities between agencies. A multiple site employer, as specified in paragraph (4) of subdivision (e) of Section 40717 of the Health and Safety Code, shall have the option of complying with a district employer trip reduction rule, or a similar rule proposed pursuant to a federal implementation plan, and reporting directly to the district or a responsible federal or state agency. A multiple site employer that exercises this option shall be exempt from any employer-based trip reduction requirement imposed pursuant to the trip reduction and travel demand element.

(C) Except for paragraph (B), nothing in this section prevents a local jurisdiction from adopting transportation demand management measures that include or exceed the requirements established by the agency or by the air pollution control district or air quality management district.

(4) A program to analyze the impacts of land use decisions made by local jurisdictions on regional transportation systems, including an estimate of the costs associated with mitigating those impacts. This program shall measure, to the extent possible, the impact to the transportation system using the performance measures described in paragraph (2). In no case shall the program include an estimate of the costs of mitigating the impacts of interregional travel. The program shall provide credit for local public and private contributions to improvements to regional transportation systems. However, in the case of toll road facilities, credit shall only be allowed for local public and private contributions which are unreimbursed from toll revenues or other state or federal sources. The agency shall calculate the amount of the credit to be provided. The program defined under this section may require implementation through the requirements and analysis of the California Environmental Quality Act, in order to avoid duplication.

(5) A seven-year capital improvement program, developed using the performance measures described in paragraph (2) to determine effective projects that maintain or improve the performance of the multimodal system for the movement of people and goods, to mitigate regional transportation impacts identified pursuant to paragraph (4). The program shall conform to transportation-related vehicle emission air quality mitigation measures, and include any project that will increase the capacity of the multimodal system. It is the intent of the Legislature that, when roadway projects are identified in the program, consideration be given for maintaining bicycle access and safety at a level comparable to that which existed prior to the improvement or alternation. The capital improvement program may also include safety, maintenance, and rehabilitation projects that do not enhance the capacity of the system but are necessary to preserve the investment in existing facilities.

(c) The agency, in consultation with the regional agency, cities, and the county, shall develop a uniform data base on traffic impacts for use in a countywide transportation computer model and shall approve transportation computer models of specific areas within the county that will be used by local jurisdictions to determine the quantitative impacts of development on the circulation system that are based on the countywide model and standardized modeling assumptions and conventions. The computer models shall be consistent with the modeling methodology adopted by the regional planning agency. The data bases used in the models shall be consistent with the data bases used by the regional planning agency. Where the regional agency has jurisdiction over two or more counties, the data bases used by the agency shall be consistent with the data bases used by the regional agency.

(d) (1) The city or county in which a commercial development will implement a parking cash-out program which is included in a congestion management program pursuant to subdivision (b), or in a deficiency plan pursuant to Section 65089.4, shall grant to that development an appropriate reduction in the parking requirements otherwise in effect for new commercial development.

(2) At the request of an existing commercial development that has implemented a parking cash-out program, the city or county shall grant an appropriate reduction in the parking requirements otherwise applicable based on the demonstrated reduced need for parking, and the space no longer needed for parking purposes may be used for other appropriate purposes.

(e) Pursuant to the federal Intermodal Surface Transportation Efficiency Act of 1991 and regulations adopted pursuant to the act, the department shall submit a request to the Federal Highway Administration Division Administrator to accept the congestion management program in lieu of development of a new congestion management system otherwise required by the act.

SEC. 3. Section 65089.2 of the Government Code is amended to read:

65089.2. (a) Congestion management programs shall be submitted to the regional agency. The regional agency shall evaluate the consistency between the program and the regional transportation plans required pursuant to Section 65080. In the case of a multicounty regional transportation planning agency, that agency shall evaluate the consistency and compatibility of the programs within the region.

(b) The regional agency, upon finding that the program is consistent, shall incorporate the program into the regional transportation improvement program as provided for in Section 65082. If the regional agency finds the program is inconsistent, it may exclude any project in the congestion management program from inclusion in the regional transportation improvement program.

(c) (1) The regional agency shall not program any surface transportation program funds and congestion mitigation and air quality funds pursuant to Section 182.6 and 182.7 of the Streets and Highways Code in a county unless a congestion management program has been adopted by December 31, 1992, as required pursuant to Section 65089. No surface transportation program funds or congestion mitigation and air quality funds shall be programmed for a project in a local jurisdiction that has been found to be in nonconformance with a congestion management program pursuant to Section 65089.5 unless the agency finds that the project is of regional significance.

(2) Notwithstanding any other provision of law, upon the designation of an urbanized area, pursuant to the 1990 federal census or a subsequent federal census, within a county which previously did not include an urbanized area, a congestion management program as required pursuant to Section 65089 shall be adopted within a period of 18 months after designation by the Governor.

(d) (1) It is the intent of the Legislature that the regional agency, when its boundaries include areas in more than one county, should resolve inconsistencies and mediate disputes which arise between agencies related to congestion management programs adopted for those areas.

(2) It is the further intent of the Legislature that disputes which may arise between regional agencies, or agencies which are not within the boundaries of a multicounty regional transportation planning agency, should be mediated and resolved by the Secretary of Business, Housing and Transportation Agency, or an employee of that agency designated by the secretary, in consultation with the air pollution control district or air quality management district within whose boundaries the regional agency or agencies are located.

(e) At the request of the agency, a local jurisdiction that owns, or is responsible for operation of, a trip-generating facility in another county shall participate in the congestion management program of the county where the facility is located. If a dispute arises involving a local jurisdiction, the agency may request the regional agency to mediate the dispute through procedures pursuant to subdivision (d)

of Section 65089.2. Failure to resolve the dispute does not invalidate the congestion management program.

SEC. 4. Section 65089.3 of the Government Code is repealed.

SEC. 5. Section 65089.3 is added to the Government Code, to read:

65089.3. The agency shall monitor the implementation of all elements of the congestion management program. The department is responsible for data collection and analysis on state highways, unless the agency designates that responsibility to another entity. The agency may also assign data collection and analysis responsibilities to other owners and operators of facilities or services if the responsibilities are specified in its adopted program. The agency shall consult with the department and other affected owners and operators in developing data collection and analysis procedures and schedules prior to program adoption. At least biennially, the agency shall determine if the county and cities are conforming to the congestion management program, including, but not limited to, all of the following:

(a) Consistency with levels of service standards, except as provided in Section 65089.4.

(b) Adoption and implementation of a trip reduction and travel demand ordinance.

(c) Adoption and implementation of a program to analyze the impacts of land use decisions, including the estimate of the costs associated with mitigating these impacts.

(d) Adoption and implementation of a deficiency plan pursuant to Section 65089.4 when highway and roadway level of service standards are not maintained on portions of the designated system.

SEC. 6. Section 65089.4 of the Government Code is amended and renumbered to read:

65089.5. (a) If, pursuant to the monitoring provided for in Section 65089.3, the agency determines, following a noticed public hearing, that a city or county is not conforming with the requirements of the congestion management program, the agency shall notify the city or county in writing of the specific areas of nonconformance. If, within 90 days of the receipt of the written notice of nonconformance, the city or county has not come into conformance with the congestion management program, the governing body of the agency shall make a finding of nonconformance and shall submit the finding to the commission and to the Controller.

(b) (1) Upon receiving notice from the agency of nonconformance, the Controller shall withhold apportionments of funds required to be apportioned to that nonconforming city or county by Section 2105 of the Streets and Highways Code.

(2) If, within the 12-month period following the receipt of a notice of nonconformance, the Controller is notified by the agency that the city or county is in conformance, the Controller shall allocate the apportionments withheld pursuant to this section to the city or

county.

(3) If the Controller is not notified by the agency that the city or county is in conformance pursuant to paragraph (2), the Controller shall allocate the apportionments withheld pursuant to this section to the agency.

(c) The agency shall use funds apportioned under this section for projects of regional significance which are included in the capital improvement program required by paragraph (5) of subdivision (b) of Section 65089, or in a deficiency plan which has been adopted by the agency. The agency shall not use these funds for administration or planning purposes.

SEC. 7. Section 65089.4 is added to the Government Code, to read:

65089.4. (a) A local jurisdiction shall prepare a deficiency plan when highway or roadway level of service standards are not maintained on segments or intersections of the designated system. The deficiency plan shall be adopted by the city or county at a noticed public hearing.

(b) The agency shall calculate the impacts subject to exclusion pursuant to subdivision (f) of this section, after consultation with the regional agency, the department, and the local air quality management district or air pollution control district. If the calculated traffic level of service following exclusion of these impacts is consistent with the level of service standard, the agency shall make a finding at a publicly noticed meeting that no deficiency plan is required and so notify the affected local jurisdiction.

(c) The agency shall be responsible for preparing and adopting procedures for local deficiency plan development and implementation responsibilities, consistent with the requirements of this section. The deficiency plan shall include all of the following:

(1) An analysis of the cause of the deficiency. This analysis shall include the following:

(A) Identification of the cause of the deficiency.

(B) Identification of the impacts of those local jurisdictions within the jurisdiction of the agency that contribute to the deficiency. These impacts shall be identified only if the calculated traffic level of service following exclusion of impacts pursuant to subdivision (f) indicates that the level of service standard has not been maintained, and shall be limited to impacts not subject to exclusion.

(2) A list of improvements necessary for the deficient segment or intersection to maintain the minimum level of service otherwise required and the estimated costs of the improvements.

(3) A list of improvements, programs, or actions, and estimates of costs, that will (A) measurably improve multimodal performance, using measures defined in paragraphs (1) and (2) of subdivision (b) of Section 65089, and (B) contribute to significant improvements in air quality, such as improved public transit service and facilities, improved nonmotorized transportation facilities, high occupancy vehicle facilities, parking cash-out programs, and transportation

control measures. The air quality management district or the air pollution control district shall establish and periodically revise a list of approved improvements, programs, and actions that meet the scope of this paragraph. If an improvement, program, or action on the approved list has not been fully implemented, it shall be deemed to contribute to significant improvements in air quality. If an improvement, program, or action is not on the approved list, it shall not be implemented unless approved by the local air quality management district or air pollution control district.

(4) An action plan, consistent with the provisions of Chapter 5 (commencing with Section 66000), that shall be implemented, consisting of improvements identified in paragraph (2), or improvements, programs, or actions identified in paragraph (3), that are found by the agency to be in the interest of the public health, safety, and welfare. The action plan shall include a specific implementation schedule. The action plan shall include implementation strategies for those jurisdictions that have contributed to the cause of the deficiency in accordance with the agency's deficiency plan procedures. The action plan need not mitigate the impacts of any exclusions identified in subdivision (f). Action plan strategies shall identify the most effective implementation strategies for improving current and future system performance.

(d) A local jurisdiction shall forward its adopted deficiency plan to the agency within 12 months of the identification of a deficiency. The agency shall hold a noticed public hearing within 60 days of receiving the deficiency plan. Following that hearing, the agency shall either accept or reject the deficiency plan in its entirety, but the agency may not modify the deficiency plan. If the agency rejects the plan, it shall notify the local jurisdiction of the reasons for that rejection, and the local jurisdiction shall submit a revised plan within 90 days addressing the agency's concerns. Failure of a local jurisdiction to comply with the schedule and requirements of this section shall be considered to be nonconformance for the purposes of Section 65089.5.

(e) The agency shall incorporate into its deficiency plan procedures, a methodology for determining if deficiency impacts are caused by more than one local jurisdiction within the boundaries of the agency.

(1) If, according to the agency's methodology, it is determined that more than one local jurisdiction is responsible for causing a deficient segment or intersection, all responsible local jurisdictions shall participate in the development of a deficiency plan to be adopted by all participating local jurisdictions.

(2) The local jurisdiction in which the deficiency occurs shall have lead responsibility for developing the deficiency plan and for coordinating with other impacting local jurisdictions. If a local jurisdiction responsible for participating in a multi-jurisdictional deficiency plan does not adopt the deficiency plan in accordance

with the schedule and requirements of paragraph (a) of this section, that jurisdiction shall be considered in nonconformance with the program for purposes of Section 65089.5.

(3) The agency shall establish a conflict resolution process for addressing conflicts or disputes between local jurisdictions in meeting the multi-jurisdictional deficiency plan responsibilities of this section.

(f) The analysis of the cause of the deficiency prepared pursuant to paragraph (1) of subdivision (c) shall exclude the following:

(1) Interregional travel.

(2) Construction, rehabilitation, or maintenance of facilities that impact the system.

(3) Freeway ramp metering.

(4) Traffic signal coordination by the state or multi-jurisdictional agencies.

(5) Traffic generated by the provision of low-income and very low income housing.

(6) (A) Traffic generated by high-density residential development located within one-fourth mile of a fixed rail passenger station, and

(B) Traffic generated by any mixed use development located within one-fourth mile of a fixed rail passenger station, if more than half of the land area, or floor area, of the mixed use development is used for high density residential housing, as determined by the agency.

(g) For the purposes of this section, the following terms have the following meanings:

(1) "High density" means residential density development which contains a minimum of 24 dwelling units per acre and a minimum density per acre which is equal to or greater than 120 percent of the maximum residential density allowed under the local general plan and zoning ordinance. A project providing a minimum of 75 dwelling units per acre shall automatically be considered high density.

(2) "Mixed use development" means development which integrates compatible commercial or retail uses, or both, with residential uses, and which, due to the proximity of job locations, shopping opportunities, and residences, will discourage new trip generation.

SEC. 8. Section 65089.5 of the Government Code is amended and renumbered to read:

65089.6. Failure to complete or implement a congestion management program shall not give rise to a cause of action against a city or county for failing to conform with its general plan, unless the city or county incorporates the congestion management program into the circulation element of its general plan.

SEC. 9. Section 65089.6 of the Government Code is amended and renumbered to read:

65089.7. A proposed development specified in a development agreement entered into prior to July 10, 1989, shall not be subject to

any action taken to comply with this chapter, except actions required to be taken with respect to the trip reduction and travel demand element of a congestion management program pursuant to paragraph (3) of subdivision (b) of Section 65089.

SEC. 10. Section 65089.7 of the Government Code is amended and renumbered to read:

65089.8. (a) Buildings and structures that were damaged or destroyed in Los Angeles County as a result of the civil unrest during the state of emergency declared by the Governor on April 29, 1992, are not subject to the requirements of this chapter when permission is sought to repair or rebuild. This section does not exempt buildings or structures from any other requirement of the local jurisdiction otherwise applicable.

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

SEC. 11. Section 65089.9 is added to the Government Code, to read:

65089.9. The study steering committee established pursuant to Section 6 of Chapter 444 of the Statutes of 1992 may designate at least two congestion management agencies to participate in a demonstration study comparing multimodal performance standards to highway level of service standards. The department shall make available, from existing resources, fifty thousand dollars (\$50,000) from the Transportation Planning and Development Account in the State Transportation Fund to fund each of the demonstration projects. The designated agencies shall submit a report to the Legislature not later than June 30, 1997, regarding the findings of each demonstration project.

CHAPTER 1147

An act to amend Sections 48610.5, 48623, 48632, 48651, 48660, 48661, 48670, and 48674 of, to add Sections 48625, 48644, 48671.5, and 48695 to, to repeal Sections 3471 and 3472 of, and to amend, repeal, and add Section 48650 of, the Public Resources Code, relating to oil recycling, and making an appropriation therefor.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 3471 of the Public Resources Code is repealed.

SEC. 2. Section 3472 of the Public Resources Code is repealed.

SEC. 3. Section 48610.5 of the Public Resources Code is amended

to read:

48610.5. "Bulk oil" means oil which is in nonpackaged form in containers larger than 55 gallons. "Bulk oil" does not include oil sold in 55 gallon containers or oil sold in an amount less than 55 gallons, regardless of container type.

SEC. 4. Section 48623 of the Public Resources Code is amended to read:

48623. "Used oil hauler" means a hazardous waste hauler registered pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code who transports used oil to a used oil recycling facility certified pursuant to Article 7 (commencing with Section 48660), to a used oil storage facility, to a used oil transfer facility, or to an out-of-state recycling facility registered with the Environmental Protection Agency and operated in substantial compliance with applicable regulatory standards of the state in which the recycling facility is located.

SEC. 5. Section 48625 is added to the Public Resources Code, to read:

48625. The following terms have the following meaning:

(a) "Used oil storage facility" has the same meaning as defined in subdivision (g) of Section 25250.1 of the Health and Safety Code.

(b) "Used oil transfer facility" has the same meaning as defined in subdivision (h) of Section 25250.1 of the Health and Safety Code.

SEC. 6. Section 48632 of the Public Resources Code is amended to read:

48632. The board may issue grants or loans pursuant to Section 48631 for only the following purposes:

(a) To local governments for providing opportunities for used lubricating oil collection, which are in addition to those included in the local used oil collection programs adopted pursuant to Article 10 (commencing with Section 48690).

(b) To nonprofit entities for projects, which may include one or more of the following programs or activities:

(1) Establishing used lubricating oil collection centers.

(2) Providing containers and other materials and supplies that the public can utilize in an environmentally sound manner to store used lubricating oil for pickup or return to a used oil collection center.

(3) Obtaining equipment and establishing procedures to comply with federal, state, and local law regarding the collection, handling, and storage of used oil.

(c) Research, testing, and demonstration projects to develop collection technologies and uses for recycled or used oil.

SEC. 7. Section 48644 is added to the Public Resources Code, to read:

48644. The board shall maintain access to a toll-free telephone number which is to be used for the purpose of informing callers of the following:

(a) The permissible methods of recycling or disposing of used oil.

(b) Specific establishments located in the area of the caller that

have notified the board that they accept used oil.

SEC. 8. Section 48650 of the Public Resources Code is amended to read:

48650. (a) Beginning October 1, 1992, every oil manufacturer shall pay to the board, on or before the last day of the month following each quarter, an amount equal to four cents (\$0.04) for every quart, or sixteen cents (\$0.16) for every gallon, of lubricating oil sold or transferred in the state, or imported into the state for use in the state in that quarter. Except as provided in subdivision (b), no payment is required for oil which meets any of the following:

(1) Oil for which a payment has already been made to the board pursuant to this section.

(2) Oil exported or sold for export from the state.

(3) Oil sold for use in vessels operated in interstate or foreign commerce.

(4) Oil imported into the state in the engine crankcase, transmission, gear box, or differential of an automobile, bus, truck, vessel, plane, train, or heavy equipment or machinery.

(5) Bulk oil imported into, transferred in, or sold in the state to a motor carrier, as defined in Section 408 of the Vehicle Code, and used in a vehicle designated in subdivisions (a) and (b) of Section 34500 of the Vehicle Code.

(6) The oil handled by the oil manufacturer otherwise subject to payment pursuant to this subdivision has a total volume of 500 gallons or less for each quarter.

(b) If oil exempted from payment pursuant to subdivision (a) is subsequently sold or transferred for use, or is used, in this state, and the use does not qualify for exemption pursuant to subdivision (a), the entity which sells, transfers, or uses the oil for a purpose which is not exempt from payment, shall make the payment specified in subdivision (a).

(c) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

SEC. 9. Section 48650 is added to the Public Resources Code, to read:

48650. (a) Beginning October 1, 1992, every oil manufacturer shall pay to the board, on or before the last day of the month following each quarter, an amount equal to four cents (\$0.04) for every quart, or sixteen cents (\$0.16) for every gallon, of lubricating oil sold or transferred in the state, or imported into the state for use in the state in that quarter. Except as provided in subdivision (b), no payment is required for oil which meets any of the following:

(1) Oil for which a payment has already been made to the board pursuant to this section.

(2) Oil exported or sold for export from the state.

(3) Oil sold for use in vessels operated in interstate or foreign commerce.

(4) Oil imported into the state in the engine crankcase,

transmission, gear box, or differential of an automobile, bus, truck, vessel, plane, train, or heavy equipment or machinery.

(5) Bulk oil imported into, transferred in, or sold in the state to a motor carrier, as defined in Section 408 of the Vehicle Code, and used in a vehicle designated in subdivisions (a) and (b) of Section 34500 of the Vehicle Code.

(6) The oil handled by the oil manufacturer otherwise subject to payment pursuant to this subdivision has a volume of five gallons or less.

(b) If oil exempted from payment pursuant to subdivision (a) is subsequently sold or transferred for use, or is used, in this state, and the use does not qualify for exemption pursuant to subdivision (a), the entity which sells, transfers, or uses the oil for a purpose which is not exempt from payment, shall make the payment specified in subdivision (a).

(c) This section shall become operative on January 1, 2000.

SEC. 10. Section 48651 of the Public Resources Code is amended to read:

48651. (a) The board shall pay a recycling incentive to every industrial generator, curbside collection program, and certified used oil collection center, for used lubricating oil collected from the public, or generated by the certified used oil collection center or the industrial generator, after April 1, 1993, and transported by a used oil hauler to the facilities specified in Section 48623.

(b) The board shall pay a recycling incentive to an electric utility, as defined in Section 25108, for used lubricating oil generated after April 1, 1993, and used by the electric utility for electrical generation if the utility's use of the used lubricating oil meets the requirements of subparagraph (C) of paragraph (2) of subdivision (d) of Section 25143.2 of the Health and Safety Code and the used oil complies with the standards for recycled oil established in subdivision (c) of Section 25250.1 of the Health and Safety Code.

(c) A person or entity that generates used industrial oil or a used oil storage facility or a used oil transfer facility that accepts used oil shall cause that oil to be transported by a used oil hauler to a certified oil recycling facility or an out-of-state recycling facility registered with the Environmental Protection Agency and operating in substantial compliance with applicable regulatory standards of the state in which the recycling facility is located.

SEC. 11. Section 48660 of the Public Resources Code is amended to read:

48660. (a) No used oil collection center shall be eligible for the payment of recycling incentives until the board has certified that the center is in compliance with the requirements specified in subdivision (b). Before certification, the board may require the center to submit any information that the board determines is necessary to find that the center is in compliance with those requirements. Used oil collection centers shall reapply for certification every two years. The board may cancel the certification

of a center if the board finds, after a public hearing, that the center is not or has not been in compliance with the requirements contained in subdivision (b). The board may withhold the payment of recycling incentives for used oil collected by a center if the board finds that the center was not in compliance with the requirements contained in subdivision (b) during the time in which the used oil was collected.

(b) In order to be eligible for certification by the board and the payment of recycling incentives, the used oil collection center shall do all of the following:

(1) (A) Accept used lubricating oil from the public at no charge during the hours between 8 a.m. and 8 p.m. that the entity operating as the center is open for business.

(B) The board may approve alternative hours for oil acceptance by an individual collection center if either of the following conditions are met:

(i) The center accepts oil for 12 continuous hours daily.

(ii) The collection center demonstrates that compliance with the requirements of Section 280.42 of Title 40 of the Code of Federal Regulations prevents the collection center from complying with subparagraph (A).

(2) Pay to any person an amount equal to the recycling incentive which the center will receive for used lubricating oil brought to the center in containers by the person. Nothing in this chapter prohibits any person from donating used lubricating oil to a collection center. With the exception of used oil collection centers that generate used oil by servicing motor vehicles, the recycling incentive may be in the form of a credit that may be applied toward the purchase of goods or services offered by the collection center, as determined by the board.

(3) Provide information to the board for informing the public of the center's acceptance of used lubricating oil.

(4) Provide notice to the public, through onsite signs and periodic advertising in local media, of the center's acceptance of used lubricating oil from the public. Onsite signs shall be of a design specified by the board and shall be at least two feet by three in size, easily readable from a public street, and shall include the words "Used Oil Collection Center—Recycling Incentive Paid for Used Lubricating Oil in Containers During Business Hours from Members of the Public Who Change Their Own Oil." A used oil collection center which does not accept oil from the public during all of its business hours, but meets the requirements of paragraph (1), shall indicate on that sign the hours when used oil is accepted at no charge from the public and these hours shall be posted instead of the words "Business Hours." Where local zoning ordinances prevent signs of a size consistent with this section, an onsite sign shall be of the maximum allowable size.

(c) Notwithstanding subdivision (b), a used oil collection center shall not accept more than 20 gallons of used lubricating oil, in

containers not larger than five gallons, from a person each day, and may refuse to accept used lubricating oil which has been contaminated in a manner other than that which would occur through normal use.

(d) Notwithstanding subdivision (b), no collection center shall knowingly accept used oil for which a payment has not been made pursuant to Section 48650.

SEC. 12. Section 48661 of the Public Resources Code is amended to read:

48661. (a) On and after July 1, 1992, the department shall annually inspect used oil recycling facilities.

(b) Within 135 days following inspection, the department shall submit a report to the board, describing all of the following:

(1) Any violations of Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

(2) Any corrective actions ordered or agreed to by the department.

(3) Progress by the facility in correcting violations identified in previous inspections.

(c) In the report required by subdivision (b), the department shall specifically state whether any of the following occurred:

(1) The department has identified violations of subdivision (c) of Section 25250.1 of the Health and Safety Code regarding achievement of minimum standards of purity for recycled oil.

(2) The department has identified violations of regulations requiring financial responsibility assurance for liability, closure, and postclosure obligations.

(3) Where prior contamination has been identified, the facility has an approved corrective action plan and has not been found to be in violation of its requirements.

(4) The department has identified violations that meet the criteria for class 1 violations, as defined in Section 66260.10 of Title 22 of the California Code of Regulations.

SEC. 13. Section 48670 of the Public Resources Code is amended to read:

48670. To be eligible for payment of a recycling incentive, an industrial generator of used lubricating oil, a used oil collection center, or a curbside collection program shall report to the board, for each quarter, the amount of lubricating oil purchased and the amount of used lubricating oil that is transported to a certified used oil recycling facility, or to a used oil storage facility or to a used oil transfer facility, or that is transported to an out-of-state recycling facility registered with the Environmental Protection Agency and operating in substantial compliance with the applicable regulatory standards of the state in which the facility is located, or that is used to generate electricity pursuant to subdivision (b) of Section 48651. The reports shall be submitted on or before the 45th day following each quarter, in the form and manner which the board may prescribe, and shall include copies of manifests or modified manifest

receipts from used oil haulers. The board may delegate to the executive officer the authority to accept reports submitted after the 45th day and to reduce, eliminate, or approve the amount of incentive fee to be paid due to the late submission of the report. The board may provide, by regulation, for a longer reporting period for industrial generators that generate less than 1,000 gallons of used oil annually.

SEC. 14. Section 48671.5 is added to the Public Resources Code, to read:

48671.5. The manufacturer of every container that contains lubricating oils or industrial oils, and which is intended for sale to consumers in California, shall do either of the following:

(a) Label the containers in at least seven-point typeface as follows:

“Used oil is generally classified as a hazardous waste in California. Do not dispose of used oil in garbage, sewers, or the ground. To find out how to properly recycle used oil in your area, call (800) _____.”

The toll-free telephone number on the label shall be the number maintained by the board pursuant to Section 48644.

(b) Provide signs or other written material to retailers appropriate for informing consumers of the information that would otherwise be contained in the label set forth in paragraph (a).

SEC. 15. Section 48674 of the Public Resources Code is amended to read:

48674. After receiving a block grant pursuant to paragraph (4) of subdivision (a) of Section 48653, each local government shall submit a report to the board, on or before the date specified by the board, which includes any amendments to the local used oil collection program adopted pursuant to Section 48690, a description of all measures taken to implement the program, and a description of how the block grant was expended.

SEC. 16. Section 48695 is added to the Public Resources Code, to read:

48695. (a) The board may, on or before July 1, 1995, establish a pilot program for recycling used oil filters. Any pilot program established pursuant to this section shall develop opportunities for the public to voluntarily dispose of used oil filters and be eligible for an incentive fee of four cents (\$.04) upon disposal.

(b) The board shall operate any pilot program established pursuant to this section from July 1, 1995, until July 1, 1997. The board shall, in conducting any pilot program established pursuant to this section, solicit voluntary participation by certified used oil collection centers and curbside collection programs, operate the program in specific geographic areas selected by the board, and pay a recycling incentive fee to every participating curbside collection program or certified used oil collection center for used oil filters collected from the public and transferred to a metal reclaimer for the purpose of recycling.

(c) The board shall, on or before November 1, 1997, prepare a

report on the success or failure of any pilot program established pursuant to this section and include recommendations for legislation, if warranted, for a used oil filter recycling program. The board shall make the report available to the Governor, the appropriate policy and fiscal committees of the Legislature, and, upon request, to Members of the Legislature.

(d) The department shall not expend more than one hundred twenty thousand dollars (\$120,000) annually during each year of the two-year pilot program for purposes of conducting the program.

(e) If a statewide oil filter recycling program is enacted by the Legislature prior to July 1, 1997, the board shall terminate the pilot program and prepare the final report within six months of the enactment of the oil filter recycling program.

SEC. 17. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1148

An act to amend Section 2080 of, and to add Section 2081.5 to, the Fish and Game Code, relating to endangered species, and making an appropriation therefor.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 2080 of the Fish and Game Code is amended to read:

2080. No person shall import into this state, export out of this state, or take, possess, purchase, or sell within this state, any species, or any part or product thereof, that the commission determines to be an endangered species or a threatened species, or attempt any of those acts, except as otherwise provided in this chapter, the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of this code), or the California Desert Native Plants Act (Division 23 (commencing with Section 80001) of the Food and Agricultural Code).

SEC. 2. Section 2081.5 is added to the Fish and Game Code, to read:

2081.5. If an ongoing surface mining operation has been issued a permit pursuant to Section 2770 of the Public Resources Code by the lead agency, as defined in Section 2728 of the Public Resources Code, is in compliance with the permit with regard to matters relating to plants, and is in compliance with any memorandum of understanding with the department for any of the purposes specified in Section 2081 of this code, the following provisions shall apply:

(a) The surface mining operator is not liable for criminal prosecution pursuant to this code for any take of a threatened or endangered plant species that is incidental to the surface mining operation.

(b) If a plant species that exists on the private property of the surface mining operator is added to the list of threatened species or endangered species pursuant to this chapter after the date that the operator was issued the permit, or if a plant species on the list of threatened species or endangered species adopted pursuant to this chapter is newly discovered on the private property of the operator after that date, the department shall notify the operator by mail within 14 days of the addition to the list or knowledge of the new discovery by the department. Within 30 days from the date of the notification, the department shall meet with the operator to discuss an interim and permanent plan for the protection of the newly added or newly discovered plant species. Within 60 days of the initial meeting with the operator, the department shall issue reasonable and feasible interim management measures required to protect the newly added or newly discovered plant species that take into account the economic impact on the surface mining operation. The department shall work with the operator to develop and finalize a reasonable memorandum of understanding for one of the purposes specified in Section 2081 for the protection of the newly added or newly discovered plant species as expeditiously as possible. Both the interim management measures and the final memorandum of understanding shall, to the extent feasible, avoid interference with ongoing surface mining operations. The department shall send a copy of the final memorandum of understanding to the lead agency that issued the permit to the operator for the lead agency's information.

(c) The surface mining operator shall pay a fee to the department in the amount the department determines is necessary to pay the department's actual costs incurred in preparing interim management measures and developing and finalizing a memorandum of understanding for the protection of the newly added or newly discovered plant species. The fees shall be deposited in the Endangered and Rare Fish, Wildlife, and Plant Species Conservation and Enhancement Account in the Fish and Game Preservation Fund and, notwithstanding Section 13340 of the Government Code, are continuously appropriated to the department for purposes of implementing this section.

CHAPTER 1149

An act to amend Sections 4461, 4463, 22507.8, 22511.5, 22511.55, 22511.56, 22511.6, 22511.7, 22511.8, 42001.5, and 42002.5 of, and to add Section 22511.59 to, the Vehicle Code, relating to vehicles, and making an appropriation therefor.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. The Legislature intends that the Department of Motor Vehicles do all of the following:

(a) Publicize the availability of temporary placards for travelers who are disabled persons by utilizing appropriate channels and venues within and among the disabled community, the motor vehicle rental industry, the California State Automobile Association, travel agents, and community visitors' bureaus.

(b) Work cooperatively with the motor vehicle rental industry to expedite the issuance of the temporary placards through the mail, including, but not limited to, distributing applications for the temporary placards through motor vehicle rental agencies.

(c) Promptly process all applications from disabled persons for the temporary placards.

SEC. 2. Section 4461 of the Vehicle Code is amended to read:

4461. (a) No person shall lend any certificate of ownership, registration card, license plate, special plate, validation tab, or permit issued to him or her if the person desiring to borrow it would not be entitled to its use, nor shall any person knowingly permit its use by one not entitled to it.

(b) No person to whom a disabled person placard has been issued shall lend the placard to any other person, nor shall any disabled person knowingly permit the use of the placard by one not entitled to it. A person to whom a disabled person placard has been issued may permit another person to use the placard only while in the presence or reasonable proximity of the disabled person for the purpose of transporting the disabled person. A violation of this subdivision is a misdemeanor.

(c) Except for the purpose of transporting disabled persons as specified in subdivision (b), no person shall display any disabled person placard that was not issued to him or her or that has been canceled or revoked pursuant to Section 22511.6. A violation of this subdivision is a misdemeanor.

(d) For the purposes of subdivisions (b) and (c), "disabled person placard" means a placard issued pursuant to Section 22511.55 or 22511.59.

SEC. 3. Section 4463 of the Vehicle Code is amended to read:

4463. (a) Every person who, with intent to prejudice, damage, or

defraud, commits any of the following acts is guilty of a felony and upon conviction thereof shall be punished by imprisonment in the state prison for 16 months, two or three years, or by imprisonment in the county jail for not more than one year:

(1) Alters, forges, counterfeits, or falsifies any certificate of ownership, registration card, certificate, license, license plate, device issued pursuant to Section 4853, special plate, or permit provided for by this code or any comparable certificate of ownership, registration card, certificate, license, license plate, device comparable to that issued pursuant to Section 4853, special plate, or permit provided for by any foreign jurisdiction, or alters, forges, counterfeits, or falsifies any such document, device, or plate with intent to represent it as issued by the department, or alters, forges, counterfeits, or falsifies with fraudulent intent any endorsement of transfer on a certificate of ownership or other document evidencing ownership, or with fraudulent intent displays or causes or permits to be displayed or have in his or her possession any blank, incomplete, canceled, suspended, revoked, altered, forged, counterfeit, or false certificate of ownership, registration card, certificate, license, license plate, device issued pursuant to Section 4853, special plate, or permit.

(2) Utters, publishes, passes, or attempts to pass, as true and genuine, any false, altered, forged, or counterfeited matter listed in subdivision (a) knowing it to be false, altered, forged, or counterfeited.

(b) Every person who, with intent to prejudice, damage, or defraud, commits any of the following acts is guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail for six months or by a fine of not less than five hundred dollars (\$500) or more than one thousand dollars (\$1,000), or by both that fine and imprisonment, which penalty shall not be suspended:

(1) Forges, counterfeits, or falsifies any disabled person placard or any comparable placard relating to parking privileges for disabled persons provided for by any foreign jurisdiction, or forges, counterfeits, or falsifies any disabled person placard with intent to represent it as issued by the department.

(2) Passes, or attempts to pass, as true and genuine, any false, forged, or counterfeit disabled person placard knowing it to be false, forged, or counterfeited.

(3) Acquires, possesses, sells, or offers for sale a genuine or counterfeit disabled person placard.

(c) Every person who, with fraudulent intent, displays or causes or permits to be displayed any forged, counterfeit, or false disabled person placard, is guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail for six months or by a fine of not less than five hundred dollars (\$500) or more than one thousand dollars (\$1,000), or by both that fine and imprisonment, which penalty shall not be suspended.

(d) No person shall lend any disabled person placard issued to him

or her, nor shall any person knowingly permit its use by one not entitled to it. A disabled person placard holder may permit another person to use the placard for the purpose of transporting the disabled person for whom the placard was issued. A violation of this subdivision is a misdemeanor.

(e) For purposes of subdivision (b), (c), or (d), "disabled person placard" means a placard issued pursuant to Section 22511.55 or 22511.59.

SEC. 4. Section 22507.8 of the Vehicle Code is amended to read:

22507.8. (a) It is unlawful for any person to park or leave standing any vehicle in a stall or space designated for disabled persons and disabled veterans pursuant to Section 22511.7 or 22511.8, unless the vehicle displays either a special identification license plate issued pursuant to Section 5007 or a distinguishing placard issued pursuant to Section 22511.55 or 22511.59.

(b) It is unlawful for any person to obstruct, block, or otherwise bar access to those parking stalls or spaces except as provided in subdivision (a).

(c) It is unlawful for any person to park or leave standing any vehicle, including a vehicle displaying a special identification license plate issued pursuant to Section 5007 or a distinguishing placard issued pursuant to Section 22511.55 or 22511.59, in either of the following places:

(1) On the lines marking the boundaries of a parking stall or space designated for disabled persons or disabled veterans.

(2) In any area of the pavement within a parking lot or parking facility that is marked by crosshatched lines and is thereby designated for the loading and unloading of vehicles pursuant to any local ordinance.

(d) Subdivisions (a), (b), and (c) apply to all offstreet parking facilities owned or operated by the state, and to all offstreet parking facilities owned or operated by a local authority. Subdivisions (a), (b), and (c) also apply to any privately owned and maintained offstreet parking facility.

SEC. 5. Section 22511.5 of the Vehicle Code is amended to read:

22511.5. (a) (1) Any disabled person or disabled veteran displaying special identification license plates issued under Section 5007 or a distinguishing placard issued under Section 22511.55 or 22511.59 shall be allowed to park for unlimited periods in any of the following zones:

(A) In any restricted zone described in paragraph (5) of subdivision (a) of Section 21458 or on streets upon which preferential parking privileges and height limits have been given pursuant to Section 22507.

(B) In any parking zone that is restricted as to the length of time parking is permitted as indicated by a sign erected pursuant to a local ordinance.

(2) Any disabled person or disabled veteran shall be allowed to park in any metered parking space without being required to pay

any parking meter fees.

(3) This subdivision does not apply to any zone for which state law or ordinance absolutely prohibits stopping, parking, or standing of all vehicles, or which the law or ordinance reserves for special types of vehicles, or to the parking of any vehicle that is involved in the operation of a street vending business.

(b) Any disabled person or disabled veteran shall be allowed to park a vehicle displaying a special identification disabled person license plate or placard issued by a foreign jurisdiction with the same parking privileges authorized in this code for any vehicle displaying a special identification license plate or a distinguishing placard issued by the Department of Motor Vehicles.

SEC. 6. Section 22511.55 of the Vehicle Code is amended to read:

22511.55. (a) (1) Any disabled person or disabled veteran may apply to the department for the issuance of a distinguishing placard. The placard may be used in lieu of the special identification license plate or plates issued under Section 5007 for parking purposes described in Section 22511.5 when suspended from the rear view mirror or, if there is no rear view mirror, when displayed on the dashboard of a vehicle. It is the intent of the Legislature to encourage the use of these distinguishing placards because they provide law enforcement officers with a more readily recognizable symbol for distinguishing vehicles qualified for the parking privilege. The placard shall be the size and color determined by the department, shall bear the International Symbol of Access adopted pursuant to Section 3 of Public Law 100-641, commonly known as the "wheelchair symbol." The department shall incorporate instructions for the lawful use of a placard, and a summary of the penalties for the unlawful use of a placard, into the identification card issued to the placard owner.

(2) (A) The department may establish procedures for the issuance and renewal of the placards. The placards shall have a fixed expiration date of June 30 every two years. Whenever any application for a placard is submitted to the department on or after January 1 of the year of expiration, the fee shall be for the current and subsequent renewal period.

(B) As used in this section, "year" means the period between the inclusive dates of July 1 through June 30.

(C) Prior to the end of each year, the department shall, for the most current three years available, compare its record of disability placards issued against the records of the Bureau of Vital Statistics of the State Department of Health Services, or its successor, and withhold any renewal notices that otherwise would have been sent, for any placard holders identified as deceased.

(3) The fee for an original application or renewal application is six dollars (\$6).

(4) Except as provided in paragraph (5), no person is eligible for more than one placard at any time.

(5) Organizations and agencies involved in the transportation of

disabled persons or disabled veterans may apply for a placard for each vehicle used for the purpose of transporting disabled persons or disabled veterans.

(b) Prior to issuing any disabled person or disabled veteran a distinguishing placard, the department may require the applicant to submit a certificate signed by the physician or surgeon substantiating the disability. The disability of any person who has lost, or has lost use of, one or more lower extremities or both hands, or who has significant limitation in the use of lower extremities, may also be certified by a licensed chiropractor. The blindness of any applicant shall be certified by a licensed physician or surgeon who specializes in diseases of the eye or a licensed optometrist.

(c) (1) Any person who has been issued a distinguishing placard pursuant to subdivision (a) may apply to the department for a substitute placard without recertification of eligibility, if that placard has been lost or stolen.

(2) The fee for a substitute placard issued pursuant to paragraph (1) is six dollars (\$6).

(d) The distinguishing placard shall be returned to the department not later than 60 days after the death of the disabled person or disabled veteran to whom to placard was issued.

SEC. 7. Section 22511.56 of the Vehicle Code is amended to read: 22511.56. Any person using a distinguishing placard issued pursuant to Section 22511.55 or 22511.59 for parking as permitted by Section 22511.5 shall, upon request of any peace officer or person authorized to enforce parking laws, ordinances, or regulations, present identification and evidence of the issuance of that placard to that person.

(b) Failure to present the requested identification and evidence of the issuance of that placard shall be a rebuttable presumption that the placard is being misused and that the associated vehicle has been parked in violation of the provisions of Section 22507.8.

(c) In addition to any other applicable penalty for the misuse of a placard, the officer or parking enforcement person may confiscate a placard being used for parking purposes that benefit any person other than the person to whom the placard was issued by the Department of Motor Vehicles. A placard lawfully used by a person transporting a disabled person pursuant to subdivision (b) of Section 4461 shall not be confiscated.

SEC. 8. Section 22511.59 is added to the Vehicle Code, to read: 22511.59. (a) Upon receipt of the applications and documents required by subdivisions (b), (c), or (d), the department shall issue a temporary distinguishing placard bearing the International Symbol of Access adopted pursuant to Section 3 of Public Law 100-641 commonly known as the "wheelchair symbol." During the period for which it is valid, the temporary distinguishing placard may be used for the parking purposes described in Section 22511.5 in the same manner as a distinguishing placard issued pursuant to Section 22511.55.

(b) (1) Any person who is temporarily disabled for a period of not more than six months may apply to the department for the issuance of the temporary distinguishing placard described in subdivision (a).

(2) Prior to issuing a placard pursuant to this subdivision, the department shall require the applicant to submit a certificate signed by a physician or surgeon, substantiating the temporary disability and stating the date upon which the disability is expected to terminate.

(3) A placard issued pursuant to this subdivision shall expire not later than 180 days from the date of issuance or upon the expected termination date of the disability, as stated on the certificate required by paragraph (2), whichever is less.

(c) (1) Any disabled person or disabled veteran who is not a resident of this state and plans to travel within the state may apply to the department for the issuance of the temporary distinguishing placard described in subdivision (a).

(2) Prior to issuing a placard pursuant to this subdivision, the department shall require the applicant to submit certification of the disability, as described in subdivision (b) of Section 22511.55.

(3) A placard issued pursuant to this subdivision shall expire not later than 90 days from the date of issuance.

(d) (1) Any disabled person or disabled veteran who has been issued either a distinguishing placard pursuant to Section 22511.55 or special identification license plates pursuant to Section 5007, but not both, may apply to the department for the issuance of the temporary distinguishing placard for the purpose of travel described in subdivision (a).

(2) Prior to issuing a placard pursuant to this subdivision, the department shall require the applicant to submit either the number identifying the distinguishing placard issued pursuant to Section 22511.55 or the number on the special identification license plates.

(3) A placard issued pursuant to this subdivision shall expire not later than 30 days from the date of issuance.

(e) The fee for a placard issued pursuant to this section is six dollars (\$6).

SEC. 9. Section 22511.6 of the Vehicle Code is amended to read:

22511.6. (a) The Department of Motor Vehicles may cancel or revoke a distinguishing placard issued pursuant to Section 22511.55 or 22511.59 in any of the following events:

(1) When the department is satisfied that the placard was fraudulently obtained or erroneously issued.

(2) When the department determines that the required fee has not been paid and the fee is not paid upon reasonable notice and demand.

(3) When the placard could have been refused when last issued or renewed.

(4) When the department determines that the owner of the placard has committed any offense described in Section 4461 or 4463, involving the placard to be canceled or revoked.

(5) When the department determines that the owner of the placard is deceased.

(b) Whenever the Department of Motor Vehicles cancels or revokes a distinguishing placard, the owner or person in possession of the placard shall immediately return the placard to the department.

SEC. 10. Section 22511.7 of the Vehicle Code is amended to read:

22511.7. In addition to Section 22511.8 for offstreet parking, a local authority may, by ordinance or resolution, designate parking spaces for the exclusive use of any vehicle which displays either a special identification license plate issued pursuant to Section 5007 or a distinguishing placard issued pursuant to Section 22511.55 or 22511.59. Whenever a local authority so designates a parking space, it shall be indicated by blue paint on the curb or edge of the paved portion of the street adjacent to the space. In addition to blue paint, the space shall also be indicated by signs or other suitable means. In areas where snow or ice may obscure the blue paint, a clearly visible sign appropriately designating the space is sufficient for purposes of this section.

This section does not restrict the privilege granted to disabled persons and disabled veterans by Section 22511.5.

SEC. 11. Section 22511.8 of the Vehicle Code is amended to read:

22511.8. (a) Any local authority, by ordinance or resolution, and any person in lawful possession of an offstreet parking facility may designate stalls or spaces in an offstreet parking facility owned or operated by the local authority or person for the exclusive use of any vehicle which displays either a special identification license plate issued pursuant to Section 5007 or a distinguishing placard issued pursuant to Section 22511.55 or 22511.59. The designation shall be made by posting a sign as described in paragraph (1), and by either of the markings described in paragraph (2) or (3):

(1) By posting immediately adjacent to, and visible from, each stall or space, a sign consisting of a profile view of a wheelchair with occupant in white on a blue background.

(2) By outlining or painting the stall or space in blue and outlining on the ground in the stall or space in white or suitable contrasting color a profile view depicting a wheelchair with occupant.

(3) By outlining a profile view of a wheelchair with occupant in white on a blue background, of the same dimensions as in paragraph (2). The profile view shall be located so that it is visible to a traffic enforcement officer when a vehicle is properly parked in the space.

(b) If posted in accordance with subdivision (d) or (e), the owner or person in lawful possession of a privately owned or operated offstreet parking facility, after notifying the police or sheriff's department, may cause the removal of a vehicle from a stall or space designated pursuant to subdivision (a) in the facility to the nearest public garage unless a special identification license plate issued pursuant to Section 5007 or distinguishing placard issued pursuant to Section 22511.55 or 22511.59 is displayed on the vehicle.

(c) If posted in accordance with subdivision (d), the local authority owning or operating an offstreet parking facility, after notifying the police or sheriff's department, may cause the removal of a vehicle from a stall or space designated pursuant to subdivision (a) in the facility to the nearest public garage unless a special identification license plate issued pursuant to Section 5007 or a distinguishing placard issued pursuant to Section 22511.55 or 22511.59 is displayed on the vehicle.

(d) Except as provided in Section 22511.9, the posting required for an offstreet parking facility owned or operated either privately or by a local authority shall consist of a sign not less than 17 by 22 inches in size with lettering not less than one inch in height which clearly and conspicuously states the following: "Unauthorized vehicles not displaying distinguishing placards or license plates issued for physically handicapped persons will be towed away at owner's expense. Towed vehicles may be reclaimed at

_____ or by telephoning

(Address)

_____"
(Telephone number of local law enforcement agency)

The sign shall be posted in either of the following locations:

- (1) Immediately adjacent to, and visible from, the stall or space.
- (2) In a conspicuous place at each entrance to the offstreet parking facility.

(e) If the parking facility is privately owned and public parking is prohibited by the posting of a sign meeting the requirements of paragraph (1) of subdivision (a) of Section 22658, the requirements of subdivision (b) may be met by the posting of a sign immediately adjacent to, and visible from, each stall or space indicating that a vehicle not meeting the requirements of subdivision (a) will be removed at the owner's expense and containing the telephone number of the local traffic law enforcement agency.

(f) This section does not restrict the privilege granted to disabled persons and disabled veterans by Section 22511.5.

SEC. 12. Section 42001.5 of the Vehicle Code, as amended by Chapter 221 of the Statutes of 1994, is amended to read:

42001.5. Every person convicted of an infraction for a violation of subdivision (i) or (l) of Section 22500, Section 22507.8, or Section 22522, shall be punished by a fine of not less than two hundred fifty dollars (\$250). No part of any fine imposed shall be suspended, except the court may suspend that portion of the fine above one hundred dollars (\$100) for a violation of subdivision (i) or (l) of Section 22500 or of Section 22522, and the court may suspend the imposition of the fine for a conviction for a violation of Section 22507.8 if the person convicted possessed at the time of the offense, but failed to display, a valid distinguishing license plate or placard issued pursuant to Section 22511.5, a valid special identification license plate issued pursuant to Section 5007, or a distinguishing

placard issued pursuant to Section 22511.55 or 22511.59. The fine may be paid in installments if the court determines that the defendant is unable to pay the entire amount in one payment.

SEC. 13. Section 42002.5 of the Vehicle Code is amended to read:

42002.5. Notwithstanding Section 42002, every person convicted of a violation of Section 10852 or 10853 involving a vehicle that has been modified for the use of a disabled veteran or any other disabled person and that displays a special identification license plate issued pursuant to Section 5007 or a distinguishing placard issued pursuant to Section 22511.55 or 22511.59, if those facts are known or should reasonably have been known to the person, shall be punished by a fine of not more than two thousand dollars (\$2,000) or by imprisonment in the county jail for not more than one year, or by both the fine and imprisonment.

SEC. 14. The sum of one hundred seventy-four thousand dollars (\$174,000) is hereby appropriated from the Motor Vehicle Account in the State Transportation Fund to the Department of Motor Vehicles for expenditure in the 1994–1995 fiscal year for the purpose of implementing Sections 1 to 12, inclusive, of this act.

CHAPTER 1150

An act to amend Sections 41791.5 and 41820.5 of the Public Resources Code, relating to solid waste, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 41791.5 of the Public Resources Code is amended to read:

41791.5. (a) (1) Notwithstanding Section 41791, and except as provided in subdivision (b), each city, county, and regional agency shall submit its source reduction and recycling element and its nondisposal facility element to the board in accordance with the following schedule:

(A) For any jurisdiction with less than eight years of remaining disposal site capacity, the source reduction and recycling element and the nondisposal facility element shall be submitted on or before April 30, 1994.

(B) For any jurisdiction with eight or more years, but less than 15 years, of remaining disposal site capacity, the source reduction and recycling element and the nondisposal facility element shall be submitted on or before August 31, 1994.

(C) For any jurisdiction with 15 or more years of remaining disposal site capacity, the source reduction and recycling element

and the nondisposal facility element shall be submitted on or before December 31, 1994.

(2) For purposes of this section, "remaining disposal site capacity" means capacity remaining as of January 1, 1990. For each jurisdiction, disposal site capacity shall be deemed to be the countywide permitted disposal site capacity.

(3) Notwithstanding Section 41791, a county or regional agency that has adopted a countywide or regional agency integrated waste management plan may submit the plan and its elements to the board for review and approval pursuant to the schedule set forth in paragraph (1).

(b) A city which is incorporated after January 1, 1990, shall submit a source reduction and recycling element, a household hazardous waste element, and a nondisposal facility element to the board for approval within 18 months from the date that the city was incorporated or within 18 months of the effective date of this section, whichever is later.

SEC. 2. Section 41820.5 of the Public Resources Code is amended to read:

41820.5. (a) In addition to its authority under Section 41820, the board may, after a public hearing, grant a time extension from the diversion requirements of Section 41780 to a city if both of the following conditions exist:

(1) The city was incorporated pursuant to Division 3 (commencing with Section 56000) of Title 5 of the Government Code after January 1, 1990.

(2) The county within which the city is located did not include provisions in its franchises which ensured that the now incorporated area would comply with the diversion requirements of Section 41780.

(b) The board may authorize a city which meets the requirements of subdivision (a) to submit a source reduction and recycling element which includes an implementation schedule that shows both of the following:

(1) For the initial element, the city shall divert 25 percent of all solid waste from landfill or transformation facilities within three years from the date on which the board approves the element, through source reduction, recycling, and composting activities.

(2) For the first revision of the element, the city shall divert 50 percent of all solid waste from landfill or transformation facilities within eight years from the date on which the board approves the element, through source reduction, recycling, and composting activities.

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

In order to provide clarity to the regulated community, it is necessary that this act take effect immediately.

CHAPTER 1151

An act to amend Sections 25200.1.5, 25200.2, 25201.4, 25205.14, 25404, and 25404.5 of, and to add Sections 25187.9 and 25123.4 to, the Health and Safety Code, and to repeal Section 43152.15 of the Revenue and Taxation Code, relating to hazardous waste.

[Approved by Governor September 29, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 25123.4 is added to the Health and Safety Code, to read:

25123.4. "Transportable hazardous waste treatment unit" or "transportable treatment unit" means mobile equipment which performs treatment, is transported onto a facility to perform treatment, and is not permanently stationed at a single facility.

SEC. 2. Section 25187.9 is added to the Health and Safety Code, to read:

25187.9. (a) The department shall establish a program to delegate the authority to enforce this chapter administratively in San Diego County to a certified unified program agency in San Diego County who requests that delegation and who meets the eligibility requirements adopted pursuant to subdivision (a). The department shall delegate that authority by means of an agreement negotiated between the department and the certified unified program agency. A delegation agreement shall delegate only the authority granted to the department by Sections 25187 and 25189.2, but shall not delegate the authority specified in subdivision (c) or the authority to issue an order that takes effect upon issuance based upon a finding of imminent and substantial endangerment pursuant to subdivision (f) of Section 25187. The delegated authority may be exercised by the certified unified program agency to take enforcement action against violations committed by transporters, facilities deemed to hold a permit-by-rule pursuant to the regulations adopted by the department, and generators, including, but not limited to, generators conducting treatment pursuant to the regulations adopted by the department, generators conducting treatment conditionally authorized pursuant to Section 25200.3, and generators conducting treatment conditionally exempted pursuant to subdivision (a) or (c) of Section 25201.5.

(b) The department shall provide ongoing coordination and regular evaluation of the certified unified program agency authorized pursuant to this section. The certified unified program agency shall annually submit a summary report to the department on the status of orders issued under the authority of that delegation agreement. The department shall adopt regulations defining the criteria for eligibility for the certified unified program agency to

receive a delegation of authority pursuant to this section and other procedures necessary to implement this section. The department may rescind the delegation of authority if the certified unified program agency does not maintain eligibility for authorization under these regulations. The regulations shall include, but are not limited to, a requirement that the certified unified program agency consult with the district attorney for the county on the development of policies to be followed by the certified unified program agency in exercising the authority delegated pursuant to this section and the minimum training required for the staff of the certified unified program agency. The regulations shall also include provisions to ensure that a person shall not be subject to an order issued by the department and by the certified unified program agency for the same act, violation, or failure to act. The regulations shall also include a requirement that the certified unified program agency have the ability to represent itself in administrative appeal hearings. The regulations shall also include provisions to ensure that the enforcement authority delegated to the certified unified program agency will be exercised consistently throughout the state.

(c) The delegation of authority made pursuant to subdivision (a) shall not include jurisdiction over a hazardous waste facility that is authorized under a hazardous waste facilities permit issued by the department pursuant to Section 25200 or that has been granted interim status pursuant to Section 25200.5. An agreement made pursuant to this section that delegates enforcement authority to the certified unified program agency shall specify the facilities located within the agency's jurisdiction that are not included within the agreement.

(d) A local health officer or designated local public officer that, prior to January 1, 1995, has been delegated authority by the department to enforce this chapter in San Diego County pursuant to Section 25187.7 shall, notwithstanding any change made to this section by the act adding this section, continue to have all authority that was delegated to that officer, and the delegation shall remain in full force and effect in accordance with Section 25187.7.

(e) Nothing in this section limits the application or effect of Section 25187.8.

(f) The department shall annually determine the total ongoing, necessary, and reasonable costs of coordinating and evaluating the program authorized by this section and shall maintain detailed cost records sufficient to substantiate the total annual costs. The department shall annually submit to the Secretary for Environmental Protection an itemized cost report as verification of the total annual costs, which shall be included by the secretary in the surcharge which the secretary is required to adjust pursuant to subdivision (b) of Section 25404.5.

(g) For purposes of this section, "certified unified program agency" means a county, city, or local agency certified to implement the unified program pursuant to Chapter 6.11 (commencing with

Section 25404) in San Diego County.

SEC. 3. Section 25200.1.5 of the Health and Safety Code is amended to read:

25200.1.5. (a) The department may establish an administrative process to certify hazardous waste environmental technologies that it determines will not pose a significant potential hazard to the public health and safety or to the environment if they are used under specified operating conditions and can be operated without specialized training and with minimal maintenance. Hazardous waste environmental technologies which may be certified shall include, but not are not limited to, hazardous waste management technologies, site mitigation technologies, and waste minimization and pollution prevention technologies. The certification process shall not be used for hazardous waste incineration technologies. The certification shall include all of the following:

(1) A statement of the technical specifications applicable to the technology.

(2) A determination of the composition of the hazardous wastes or chemical constituents for which the technology can appropriately be used.

(3) An estimate of the efficacy and efficiency of the technology in regard to the hazardous wastes or chemical constituents for which it is certified.

(4) A specification of the minimal operational standards the technology is required to meet to ensure that the certified technology is managed properly and used safely.

(b) An applicant for certification of a hazardous waste environmental technology shall provide the department with any information required by the department to make a determination on the application for certification.

(c) The department's proposed decision on an application for certification of a hazardous waste environmental technology shall be published in the California Regulatory Notice Register and shall be subject to a 30-day comment period. The department's final decision on an application for certification of a hazardous waste environmental technology shall become effective not sooner than 30 days after publication of the final decision in the California Regulatory Notice Register.

(d) The department may decertify a hazardous waste environmental technology if it determines, on the basis of any information, that the hazardous waste environmental technology may pose a significant potential hazard to the public health and safety or to the environment. The department may decertify a hazardous waste environmental technology in accordance with the procedure set forth in subdivision (c).

(e) The department's decision on an application for certification under this section is exempt from the requirements of Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) of

Part 1 of Division 3 of Title 2 of the Government Code, and shall not be subject to the review and approval of the Office of Administrative Law.

(f) Based on the determination made by the department pursuant to subdivision (a), other local and state government permitting authorities may take this certification process into consideration when making their permitting decisions.

(g) (1) The department shall place appropriate conditions on any certification granted pursuant to this section. Those conditions may include, but are not limited to, all of the following:

(A) Limits on the types, volume, and concentration of waste streams that may be employed with the technology.

(B) Operating requirements.

(C) Monitoring requirements.

(2) Any technology certified by the department pursuant to this section may be eligible for authorization pursuant to permit-by-rule or conditional authorization pursuant to Section 25200.3, or conditional exemption pursuant to Section 25201.5, only if the department determines that the use of that technology to handle the waste stream or streams is demonstrated to be as safe and as effective as the processes that are subject to regulation pursuant to permit-by-rule or conditional authorization pursuant to Section 25200.3 or conditional exemption pursuant to Section 25201.5. A certified technology determined to be eligible for authorization pursuant to permit-by-rule shall, in addition to any conditions placed on the certification pursuant to paragraph (1), operate in accordance with all conditions of the certification and permit-by-rule.

(3) In determining the placement of a technology certified pursuant to this section for operation pursuant to permit-by-rule or pursuant to a grant of conditional authorization under Section 25200.3 or conditional exemption under Section 25201.5, the department shall, to the extent information is available, consider all the following factors in making its determination:

(A) The hazardous waste streams that are treated using the treatment methods and the hazards to health or safety or the environment posed by those hazardous wastes and their hazardous constituents.

(B) The complexity of the treatment method, the degree of difficulty in carrying it out, and the technology that is used to carry it out.

(C) Chemical or physical hazards that are associated with the use of the treatment process and the degree to which these hazards are similar to, or differ from, the chemical or physical hazards that are associated with the production processes that are carried out in the facilities that produce the hazardous waste that is treated using the treatment methods.

(D) The levels of specialized operator training, equipment maintenance, and monitoring that are required to ensure the safety of the treatment method and its effectiveness in treating particular

hazardous waste streams.

(E) The types of accidents that may occur during the treatment of particular types of hazardous waste streams, the likely consequences of those accidents, and the actual accident history associated with use of the treatment method.

(h) The department shall charge fees to review and certify environmental technologies pursuant to this section that are sufficient to recover the actual costs of the department in reviewing and approving the technology.

(i) The department shall implement a program to continually monitor and oversee manufacturers and users of technologies certified pursuant to this section, in order to ensure that the certified technologies are operating in a manner which is not hazardous to human health and safety or to the environment.

(j) The department shall adopt regulations to implement the certification process.

SEC. 4. Section 25200.2 of the Health and Safety Code is amended to read:

25200.2. (a) The department shall develop a permitting process for transportable hazardous waste treatment units for treating waste in accordance with the requirements of the federal act and with the requirements of this chapter for hazardous wastes which are not otherwise subject to the federal act.

(b) The operator of a transportable hazardous waste treatment unit shall pay the same annual fee as facilities authorized to operate pursuant to a permit-by-rule specified in subdivision (a) of Section 25205.14. The operator of a unit is exempt from paying the facility fee specified in Section 25205.2 for any year or reporting period during which the unit was operating for any activity authorized under permit, except as specified in subdivision (b) of Section 25205.12.

(c) A transportable hazardous waste treatment unit operating pursuant to a hazardous waste facilities permit or pursuant to the department's regulations for operation under a permit-by-rule may operate at a facility for a period not to exceed one year. If the owner or operator of the transportable hazardous waste treatment unit shows cause, the department may authorize up to two extensions of this period, of six months duration, during which the transportable hazardous waste treatment unit may operate at the facility, if the department reviews the justification for the extension request after the first six-month period.

SEC. 5. Section 25201.4 of the Health and Safety Code is amended to read:

25201.4. (a) The department shall establish a program in the jurisdictions which do not have a local hazardous waste generator inspection program to inspect generators pursuant to subdivision (b) for compliance with the requirements of Sections 25200.3 and 25201.5, and with the requirements concerning operation under a permit-by-rule, including the regulations adopted by the department pursuant to those sections.

(b) (1) A certified unified program agency may, as part of an existing hazardous waste generator inspection program, develop a local program to inspect facilities performing treatment pursuant to permit-by-rule, generators authorized pursuant to Section 25200.3, and generators performing treatment conditionally exempted pursuant to subdivision (a) or (c) of Section 25201.5, for compliance with the requirements of applicable statutes and regulations.

(2) Any program operated by a certified unified program agency pursuant to this section shall be conducted in accordance with the standards adopted by the department pursuant to subdivision (c).

(3) Any program operated by a certified unified program agency pursuant to this section shall, at a minimum, ensure that within two years of the date that a person notifies the local agency that it is conducting treatment activities pursuant to permit-by-rule, or under Section 25200.3 or 25201.5, a site inspection shall be conducted at the facility, including verification of compliance with applicable generator requirements, container standards, and administrative and recordkeeping requirements, and that a compliance inspection shall be conducted at the facility to verify compliance with all applicable requirements every two years thereafter. Initial verification inspections which are conducted prior to the department's adoption of standards pursuant to subdivision (c) shall not be required to be conducted in accordance with those standards.

(4) The department's inspection program shall be designed to ensure that within two years of the date that a person notifies the department that it is conducting treatment activities pursuant to permit-by-rule, or Section 25200.3 or 25201.5, a site inspection shall be conducted at the facility, including verification of compliance with applicable generator requirements, container standards, administrative and recordkeeping requirements, and that a compliance inspection shall be conducted at the facility to verify compliance with all applicable requirements every two years thereafter. Initial verification inspections which are conducted prior to the department's adoption of standards pursuant to subdivision (c) shall not be required to be conducted in accordance with those standards.

(5) The certified unified program agencies operating a program pursuant to this section may assess inspection fees to the persons conducting treatment under a grant of authorization pursuant to Section 25200.3, conditionally exempt pursuant to subdivision (a) or (c) of Section 25201.5, or under a permit-by-rule, to cover the costs of the local program. In accordance with subdivision (a) of Section 25404.5, persons paying the inspection fees shall not be required to pay fees pursuant to Section 25205.14.

(c) The department shall, upon consultation with certified unified program agencies, adopt regulations establishing standards which provide criteria for the implementation of a local inspection program to inspect facilities or transportable treatment units operating pursuant to permit-by-rule, generators conditionally authorized

pursuant to Section 25200.3, and generators conditionally exempted pursuant to subdivision (a) or (c) of Section 25201.5. These standards shall include, but not be limited to, qualification standards, inspection and enforcement standards, and reporting criteria. The development and publication of these standards is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(d) For purposes of this section, "certified unified program agency" means a county, city, or local agency certified to implement the unified program pursuant to Chapter 6.11 (commencing with Section 25404).

SEC. 6. Section 25205.14 of the Health and Safety Code is amended to read:

25205.14. (a) Except as provided in Section 25404.5, the owner or operator of a facility or transportable treatment unit operating pursuant to a permit-by-rule shall pay a fee to the board per facility or transportable treatment unit for each reporting period, or portion thereof. The fee for the 1993 reporting period shall be one thousand one hundred forty dollars (\$1,140). Thereafter, the fee shall be adjusted annually by the board to reflect increases and decreases in the cost of living, as measured by the United States Department of Labor or a successor agency. The owner or operator of a facility or transportable treatment unit operating pursuant to a permit-by-rule shall also pay a fee in the amount of 50 percent of the fee specified in this subdivision for each modification of the notification required by Sections 67450.2 and 67450.3 of Title 22 of the California Code of Regulations, as those sections read on January 1, 1995, or as those sections may subsequently be amended. The reporting period shall begin January 1 of each calendar year. On or before January 31 of each calendar year, the department shall notify the board of all known owners or operators operating pursuant to a permit-by-rule. The department shall also notify the board of any owner or operator authorized to operate under conditional authorization or pursuant to a permit-by-rule within 60 days after being authorized.

(b) Except as provided in Section 25404.5, a generator operating under a grant of conditional authorization pursuant to Section 25200.3 shall pay a fee to the board per facility for each reporting period, or portion thereof. The fee for the 1993 reporting period shall be one thousand one hundred forty dollars (\$1,140). Thereafter, the fee shall be adjusted annually by the board to reflect increases and decreases in the cost of living, as measured by the United States Department of Labor or a successor agency. A generator shall also pay a fee in the amount of 50 percent of the fee specified in the subdivision for each notification amendment required by subdivision (l) of Section 25200.3. The reporting period shall begin January 1 of each calendar year. On or before January 31 of each calendar year, the department shall notify the board of all known generators operating pursuant to a grant of conditional authorization under Section 25200.3. The department shall also notify the board of any

generator authorized to operate under conditional authorization within 60 days of the receipt of notification.

(c) Except as provided in Section 25404.5, a generator performing treatment conditionally exempted pursuant to Section 25144.6 or subdivision (a) or (c) of Section 25201.5 shall pay one hundred dollars (\$100) to the board per facility for the operating period, or portion thereof, and fifty dollars (\$50) every reporting period thereafter. The reporting period shall begin January 1 of each calendar year. On or before January 31 of each calendar year, the department shall notify the board of all known facilities performing treatment conditionally exempted by subdivision (a) or (c) of Section 25201.5. The department shall also notify the board of any generator who notifies the department that the generator is conducting a conditionally exempt treatment operation within 60 days of the receipt of the notification.

(d) The fees imposed pursuant to this section shall be paid in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code.

(e) Notwithstanding subdivisions (a), (b), and (c), the fees for the 1993 reporting period for facilities operating permit-by-rule fixed treatment units or for generators conditionally authorized to operate pursuant to Section 25200.3 or performing treatment conditionally exempted pursuant to Section 25201.5 shall be remitted to the department at the time the notifications required by Sections 25200.3, 25201.5, and 25202.13 are submitted to the department.

SEC. 7. Section 25404 of the Health and Safety Code is amended to read:

25404. (a) For purposes of this chapter, "secretary" means the Secretary for Environmental Protection.

(b) On or before January 1, 1996, the secretary shall adopt implementing regulations and implement a unified hazardous waste and hazardous materials management regulatory program, which shall be known as the unified program, after holding an appropriate number of public hearings throughout the state. The unified program shall be developed in close consultation with the director, the Director of the Office of Emergency Services, the State Fire Marshal, the executive officers and chairpersons of the State Water Resources Control Board and the California regional water quality control boards, the local health officers, local fire services, and other appropriate officers of interested local agencies, and affected businesses and interested members of the public, including environmental organizations.

(c) The unified program shall consolidate the administration of the following requirements, and shall, to the maximum extent feasible within statutory constraints, ensure the coordination and consistency of any regulations adopted pursuant to those requirements:

(1) The requirements of Chapter 6.5 (commencing with Section 25100) applicable to hazardous waste generators, hazardous waste

generators conducting treatment conditionally authorized pursuant to Section 25200.3, hazardous waste generators conducting treatment exempted pursuant to Section 25201.5, and facilities deemed to hold a permit-by-rule pursuant to the regulations adopted by the department, except for the corrective action and phase I environmental assessment requirements of Sections 25200.10 and 25200.14. A certified unified program agency may enforce the requirements of Sections 25200.10 and 25200.14 pursuant to regulations adopted by the secretary.

(2) The requirement of subdivision (c) of Section 25270.5 for owners and operators of aboveground storage tanks to prepare a spill prevention control and countermeasure plan.

(3) The requirements of Chapter 6.7 (commencing with Section 25280) concerning underground storage tanks, except for the requirements of Section 25297.1 related to the abatement of unauthorized releases of hazardous substances from underground storage tanks, and the requirements of any underground storage tank ordinance adopted by a city or county. A certified unified program agency may oversee the abatement of unauthorized releases of hazardous substances from underground storage tanks pursuant to Section 25297.1.

(4) The requirements of Article 1 (commencing with Section 25501) of Chapter 6.95 concerning hazardous material release response plans and inventories.

(5) The requirements of Article 2 (commencing with Section 25531) of Chapter 6.95, concerning acutely hazardous materials.

(6) The requirements of paragraph (c) of Section 80.103 of the Uniform Fire Code, as adopted by the State Fire Marshal pursuant to Section 13143.9 of the Health and Safety Code, concerning hazardous material management plans and inventories, and, to the extent determined to be appropriate by the State Fire Marshal, the requirements of paragraph (b) of Section 80.103 of the Uniform Fire Code related to permits for the handling, use, and storage of hazardous materials.

(d) To the maximum extent feasible within statutory constraints, the secretary shall consolidate, coordinate, and make consistent these requirements of the unified program with other requirements imposed by other federal, state, regional, or local agencies upon facilities regulated by the unified program.

SEC. 8. Section 25404.5 of the Health and Safety Code is amended to read:

25404.5. (a) (1) Each certified unified program agency shall institute a single fee system, which shall replace the fees levied pursuant to Section 25205.14 on hazardous waste generators conditionally authorized to conduct treatment pursuant to Section 25200.3, conditionally exempted pursuant to subdivision (a) or (c) of Section 25201.5, and facilities deemed to hold a permit-by-rule pursuant to the regulations adopted by the Department of Toxic Substances Control, and which shall also replace any fees levied by

a local agency pursuant to Sections 25143.10, 25287, 25513, and 25535.2, or any other fee levied by a local agency specifically to fund the implementation of the provisions specified in subdivision (c) of Section 25404. Notwithstanding Sections 25143.10, 25205.14, 25287, 25513, and 25535.2, a person who complies with the certified unified program agency's "single fee system" fee shall not be required to pay any fee levied pursuant to those sections.

(2) The governing body of the certified unified program agency shall establish the amount to be paid by each person regulated by the unified program under the single fee system at a level sufficient to pay the necessary and reasonable costs incurred by the certified unified program agency and by any participating agency pursuant to the requirements of paragraph (4) of subdivision (d) of Section 25404.3.

(3) The fee system may also be designed to recover the necessary and reasonable costs incurred by the certified unified program agency, or a participating agency pursuant to the requirements of paragraph (4) of subdivision (d) of Section 25404.3, in administering provisions other than those specified in subdivision (c) of Section 25404, if the implementation and enforcement of those provisions has been incorporated as part of the unified program by the certified unified program agency pursuant to subdivision (b) of Section 25404.2, and if the single fee system replaces any fees levied as of January 1, 1994, to fund the implementation of those additional provisions.

(4) The amount to be paid by a person regulated by the unified program may be adjusted to account for the differing costs of administering the unified program with respect to that person's regulated activities.

(b) The single fee system instituted by each certified unified program agency shall include an assessment on each person regulated by the unified program of a surcharge, the amount of which shall be determined by the secretary annually, to cover the necessary and reasonable costs of state agencies in carrying out their responsibilities under this chapter. The secretary may adjust the amount of the surcharge to be collected by different certified unified program agencies to reflect the different costs incurred by the state in supervising the implementation of the unified program in different jurisdictions. The certified unified program agency may itemize the amount of the surcharge on any bill, invoice, or return which the agency sends to a person regulated by the unified program. Each certified unified program agency shall transmit all surcharge revenues collected to the secretary within 45 days after receipt of the revenues pursuant to subdivision (a). The surcharge shall be deposited in the Unified Program Account, which is hereby created in the General Fund and which may be expended, upon appropriation by the Legislature, to any state agency for the purposes of implementing this chapter.

(c) Each certified unified program agency and the secretary shall,

before the institution of the single fee system and the assessment of the surcharge, implement a fee accountability program designed to encourage more efficient and cost-effective operation of the program for which the single fee and surcharge are assessed. The fee accountability programs shall include those elements of the requirements of the plan adopted pursuant to Section 25206 which the secretary determines are appropriate.

SEC. 9. Section 43152.15 of the Revenue and Taxation Code is repealed.

SEC. 10. The Legislature hereby finds that a general statute, within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution, cannot be made applicable to Section 25187.9 of the Health and Safety Code, as added by Section 2 of this act, because of the unique circumstances that exist with regard to the enforcement of hazardous waste regulations in San Diego County, and that, therefore, that special statute is necessary.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1152

An act to amend Sections 24011 and 57092 of, and to add Sections 6546.5 and 56131.5 to, the Government Code, and to add Sections 9504.5, 9600.5, and 9600.6 to the Health and Safety Code, relating to local government.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. This act shall be known and may be cited as the Omnibus Local Government Act of 1994.

The Legislature finds and declares that operating costs can be decreased by reducing the number of separate bills affecting related topics by consolidating these bills into a single measure. Therefore, in enacting this act, it is the intent of the Legislature to consolidate several minor, noncontroversial statutory changes relating to public agencies into a single measure.

SEC. 2. Section 6546.5 is added to the Government Code, to read:

6546.5. For purposes of an agency, commission, or board that is authorized pursuant to subdivision (g) of Section 6546 to issue revenue bonds for facilities for the production, storage, transmission, or treatment of water or waste water, that authority includes the authority to issue revenue bonds for facilities to remove hazardous substances, pollutants, or contaminants from that water.

SEC. 3. Section 24011 of the Government Code is amended to read:

24011. Notwithstanding the provisions of Section 24009:

(a) The boards of supervisors of Madera County, Mendocino County, Trinity County, and Lake County may, by ordinance, provide that the public administrator shall be appointed by the board.

(b) The boards of supervisors of Madera County, Mendocino County, Trinity County, and Lake County may appoint the same person to the offices of public administrator, veteran service officer, and public guardian.

(c) The boards of supervisors of Madera County, Mendocino County, Trinity County, and Lake County may separate the consolidated offices of district attorney and public administrator at any time in order to make the appointments permitted by this section. Upon approval by the board of supervisors, the officer elected to these offices at any time may resign, or decline to qualify for, the office of public administrator without resigning from, or declining to qualify for, the office of district attorney.

SEC. 4. Section 56131.5 is added to the Government Code, to read:

56131.5. Upon the filing of an application for the formation of, annexation to, consolidation of, or dissolution of a local hospital district created pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code or of an application for a reorganization including any of those changes of organization or the initiation by the commission of any of those changes of organization or any reorganization including any of those changes of organization, the commission shall notify all state agencies that have oversight or regulatory responsibility over, or a contractual relationship with, the local hospital district that is the subject of the proposed change of organization or reorganization, of its receipt of the application or the initiation by the commission of the proposed change of organization or reorganization and the proposal, including, but not limited to, the following:

(a) The State Department of Health Services, including, but not limited to, Licensing and Certification and the Medi-Cal Division.

(b) The Office of Statewide Health Planning and Development, including, but not limited to, the Cal-Mortgage Loan Insurance Division.

(c) The California Health Facilities Financing Authority.

(d) The California Medical Assistance Commission.

A state agency shall have 60 days from the date of receipt of

notification by the commission to comment on the proposal. The commission shall consider all comments received from any state agency in making its decision.

SEC. 5. Section 57092 of the Government Code is amended to read:

57092. (a) Notwithstanding Sections 57081, 57083, 57087, 57087.5, or 57089, for any proposal that was initiated by the commission pursuant to subdivision (a) of Section 56375, the conducting authority shall order the change of organization or reorganization subject to confirmation by the voters if the conducting authority finds either of the following:

(1) In the case of inhabited territory, that a petition requesting that the proposal be submitted to confirmation by the voters has been signed by either of the following:

(A) At least 10 percent of the number of landowners within any affected district within the affected territory who own at least 10 percent of the assessed value of land within the territory.

(B) At least 10 percent of the voters entitled to vote as a result of residing within, or owning land within, any affected district within the affected territory.

(2) In the case of a landowner-voter district, that the territory is uninhabited and a petition requesting that the proposal be submitted to confirmation by the voters has been signed by at least 10 percent of the number of landowners within any affected district within the affected territory, owning at least 10 percent of the assessed value of land within the territory.

(b) The petition shall be filed with the conducting authority within 30 days after the public hearing required pursuant to this chapter has been held. If a petition has been filed, the conducting authority shall approve the proposal subject to confirmation by the voters.

SEC. 6. Section 9504.5 is added to the Health and Safety Code, to read:

9504.5. "Private mausoleum or columbarium" shall be a freestanding structure which:

(a) Is constructed for use by the members of any one group, and not for the sale of space therein to any other person.

(b) Does not contain crypts for the interment of more than 12 uncremated human remains, and a columbarium, niches for the interment of not more than 20 cremated human remains.

(c) Is not constructed for occupancy by any person except in the course of making an interment.

SEC. 7. Section 9600.5 is added to the Health and Safety Code, to read:

9600.5. The Cemetery Board may, in addition to the construction methods and standards allowed in this chapter, adopt regulations for the construction of private mausoleums or private columbariums, which at a minimum, include the following:

(a) Standards for design and construction for seismic load

protection.

(b) Methods of construction, including solid granite construction.

(c) Methods of sealing to prevent leakage from crypts.

(d) Ventilation of crypts.

(e) Types of incombustible materials which may be used in construction.

SEC. 8. Section 9600.6 is added to the Health and Safety Code, to read:

9600.6. Private mausoleums or columbariums may be constructed in conformance with the methods and standards set forth in this chapter or in conformance with the construction methods and standards as adopted by the Cemetery Board.

SEC. 9. If any provision of this act or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

CHAPTER 1153

An act to amend Section 11123 of, and to add Section 11125.3 to, the Government Code, relating to open meetings.

[Approved by Governor September 29, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 11123 of the Government Code is amended to read:

11123. (a) All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article.

(b) (1) Nothing in this article shall be construed to prohibit a state body from holding an open or closed meeting by teleconference if the convening at one location of a quorum of the state body is difficult or impossible, subject to all of the following:

(A) The teleconferencing meeting shall comply with all requirements of this article applicable to other meetings.

(B) The portion of the teleconferenced meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting.

(C) Each teleconference location shall be identified in the notice of the meeting and shall be accessible to the public.

(D) All votes taken during a teleconferenced meeting shall be by rollcall.

(E) The portion of the teleconferenced meeting that is closed to the public may not include the consideration of any agenda item

being heard pursuant to Section 11125.5 of the Government Code.

(F) At least one member of the state body shall be physically present at the location specified in the notice of the meeting.

(2) For the purposes of this subdivision, "teleconference" means a conference of individuals in different locations, connected by electronic means, through either audio or video, or both.

(3) This subdivision shall not be operative and shall have no effect on and after January 1, 1998.

SEC. 2. Section 11125.3 is added to the Government Code, to read:

11125.3. (a) Notwithstanding Section 11125, a state body may take action on items of business not appearing on the posted agenda under any of the conditions stated below:

(1) Upon a determination by a majority vote of the state body that an emergency situation exists, as defined in Section 11125.5.

(2) Upon a determination by a two-thirds vote of the state body, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there exists a need to take immediate action and that the need for action came to the attention of the state body subsequent to the agenda being posted as specified in Section 11125.

(b) Notice of the additional item to be considered shall be provided to each member of the state body and to all parties that have requested notice of its meetings as soon as is practicable after a determination of the need to consider the item is made, but shall be delivered in a manner that allows it to be received by the members and by newspapers of general circulation and radio or television stations at least 48 hours before the time of the meeting specified in the notice. Notice shall be made available to newspapers of general circulation and radio or television stations by providing that notice to all national press wire services. Notice shall be provided to the general public by placing it on appropriate electronic bulletin boards or other appropriate mechanisms, whenever the state body has the electronic capability necessary to do so.

CHAPTER 1154

An act to amend Sections 25143.2, 25143.9, 25250.1, 25250.5, 25250.8, 25250.12, 25250.17, and 25250.19 of, and to add Section 25250.13 to, the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 25143.2 of the Health and Safety Code is amended to read:

25143.2. (a) Recyclable materials are subject to the requirements of this chapter and the regulations adopted by the department to implement this chapter which apply to hazardous wastes, unless the department issues a variance pursuant to Section 25143, or except as provided otherwise in subdivision (b), (c), or (d) or the regulations adopted by the department pursuant to Sections 25150 and 25151. For the purposes of this section, recyclable material does not include infectious waste.

(b) Except as otherwise provided in subdivisions (e), (f), and (g), recyclable material which is managed in accordance with Section 25143.9 and is or will be recycled by any of the following methods shall be excluded from classification as a waste:

(1) Used or reused as an ingredient in an industrial process to make a product, if the material is not being reclaimed.

(2) Used or reused as a safe and effective substitute for commercial products, if the material is not being reclaimed.

(3) Returned to the original process from which the material was generated, without first being reclaimed, if the material is returned as a substitute for raw material feedstock, and the process uses raw materials as principal feedstocks.

(c) Except as otherwise provided in subdivision (e), any recyclable material may be recycled at a facility which is not authorized by the department pursuant to the applicable hazardous waste facilities permit requirements of Article 9 (commencing with Section 25200) if either of the following requirements is met:

(1) The material is a petroleum refinery waste containing oil which is converted into petroleum coke at the same facility at which the waste was generated, unless the resulting coke product would be identified as a hazardous waste under this chapter. A waste subject to this paragraph is exempt from this chapter to the same extent the waste is exempt from subsections (q), (r), and (s) of Section 6924 of Title 42 of the United States Code.

(2) The material meets all of the following conditions:

(A) The material is recycled and used at the same facility at which the material was generated.

(B) The material is recycled within 90 days of its generation.

(C) The material is managed in accordance with all applicable requirements for generators of hazardous wastes under this chapter and regulations adopted by the department.

(d) Except as otherwise provided in subdivisions (e), (f), (g), and (h), recyclable material which meets the definition of a non-RCRA hazardous waste in Section 25117.9, is managed in accordance with Section 25143.9, and meets or will meet any of the following requirements is excluded from classification as a waste:

(1) The material can be shown to be recycled and used at the site

where the material was generated.

(2) The material qualifies as one or more of the following:

(A) The material is a product, which has been processed from a hazardous waste, or which has been handled, at a facility authorized by the department pursuant to the facility permit requirements of Article 9 (commencing with Section 25200) to process or handle the material, if the product meets both of the following conditions:

(i) The product does not contain constituents, other than those for which the material is being recycled which render the material hazardous under regulations adopted pursuant to Sections 25140 and 25141.

(ii) The product is used, or distributed or sold for use, in a manner for which the product is commonly used.

(B) The material is a petroleum refinery waste containing oil which is converted into petroleum coke at the same facility at which the waste was generated, unless the resulting coke product would be identified as a hazardous waste under this chapter.

(C) The material is oily waste, used oil, or spent nonhalogenated solvent which is managed by the owner or operator of a refinery which is processing primarily crude oil and which is not subject to permit requirements for recycling of used oil, or a public utility, or a corporate subsidiary, corporate parent, or subsidiary of the same corporate parent of the refinery or public utility, and which meets all of the following requirements:

(i) The material is either burned in an industrial boiler, an industrial furnace, an incinerator, or a utility boiler which complies with all applicable federal and state laws, or is recombined with normal process streams to produce a fuel.

(ii) The material is managed at the site where it was generated; managed at another site owned or operated by the generator, a corporate subsidiary of the generator, a subsidiary of the same entity of which the generator is a subsidiary, or the corporate parent of the generator; or, if the material is generated in the course of oil or gas exploration or production, managed by an unrelated refinery receiving the waste through a common pipeline.

(iii) The material does not contain constituents other than those for which the material is being recycled which render the material hazardous under regulations adopted pursuant to Sections 25140 and 25141, unless the material is an oily waste, other than used oil, and those constituents are to be removed at the refinery prior to the use of the material.

(D) The material is a fuel which is removed from a fuel tank, is either contaminated with water or by nonhazardous debris, of not more than 2 percent by weight, including, but not limited to, rust or sand, or a fuel unintentionally mixed with an unused petroleum product, and is transferred to, and processed into a fuel at, a refinery which processes primarily crude oil.

(3) The material is transported between locations operated by the same person who generated the material, if the material is recycled

at the last location operated by that person and all of the conditions of clauses (i) to (vi), inclusive, of subparagraph (A) of paragraph (4) are met. If requested by the department or by any law enforcement official, a person handling material subject to this paragraph shall, within 15 days of the request, supply documentation to show that the requirements of this paragraph have been satisfied.

(4) (A) The material is transferred between locations operated by the same person who generated the material, if the material is to be recycled at an authorized offsite hazardous waste facility and if all of the following conditions are met:

(i) The material is transferred by employees of that person in vehicles under the control of that person or by a registered hazardous waste hauler under contract to that person.

(ii) The material is not handled at any interim location.

(iii) The material is not held at any publicly accessible interim location for more than four hours unless required by other provisions of law.

(iv) The material is managed in compliance with the requirements of this chapter and the regulations adopted pursuant to this chapter prior to the initial transportation of the material and after the receipt of the material at the last location operated by that person. Upon receipt of the material at the last location operated by that person, the material shall be deemed to have been generated at that location.

(v) All of the following information is maintained in an operating log at the last location operated by that person:

(I) The name and address of each generator location contributing material to each shipment received.

(II) The quantity and type of material contributed by each generator to each shipment of material.

(III) The destination and intended disposition of all material shipped offsite or received.

(IV) The date of each shipment received or sent offsite.

The log shall be kept for at least three years after receipt of the material at that location.

(vi) If requested by the department, or by any law enforcement official, a person handling material subject to this paragraph shall, within 15 days of the request, supply documentation to show that the requirements of this paragraph have been satisfied.

(B) For purposes of paragraph (3) and subparagraph (A) of paragraph (4), "person" also includes corporate subsidiary, corporate parent, or subsidiary of the same corporate parent.

(C) Persons which are a corporate subsidiary, corporate parent, or subsidiary of the same corporate parent, and which manage recyclable materials under paragraph (3) or subparagraph (A) of paragraph (4), are jointly and severally liable for any activities excluded from regulation pursuant to this section.

(5) The material is used or reused as an ingredient in an industrial process to make a product, if the material is not being treated before

introduction to that process except by one or more of the following procedures, and if any discharges to air from the following procedures do not contain constituents which are hazardous wastes pursuant to the department's regulations and comply with applicable air pollution control laws:

- (A) Filtering.
- (B) Screening.
- (C) Sorting.
- (D) Sieving.
- (E) Grinding.

(F) Physical or gravity separation, without the addition of external heat or any chemicals.

- (G) pH adjustment.
- (H) Viscosity adjustment.

(6) The material is used or reused as a safe and effective substitute for commercial products, if the material is not being treated except by one or more of the following procedures, and if any discharges to air from the following procedures do not contain constituents which are hazardous wastes pursuant to the department's regulations and comply with applicable air pollution control laws:

- (A) Filtering.
- (B) Screening.
- (C) Sorting.
- (D) Sieving.
- (E) Grinding.

(F) Physical or gravity separation, without the addition of external heat or any chemicals.

- (G) pH adjustment.
- (H) Viscosity adjustment.

(7) The material is a chlorofluorocarbon or hydrochlorofluorocarbon compound or a combination of chlorofluorocarbon or hydrochlorofluorocarbon compounds, is being reused or recycled, and is used in heat transfer equipment, including, but not limited to, mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems, used in fire extinguishing products, or contained within foam products.

(e) Notwithstanding subdivisions (b), (c), and (d), all of the following recyclable materials are hazardous wastes and subject to full regulation under this chapter, even if the recycling involves use, reuse, or return to the original process as described in subdivision (b), or even if the recycling involves activities or materials described in subdivisions (c) and (d):

(1) Materials which are a RCRA hazardous waste, as defined in Section 25120.2, used in a manner constituting disposal, or used to produce products that are applied to the land including, but not limited to, materials used to produce a fertilizer, soil amendment, agricultural mineral, or an auxiliary soil and plant substance.

(2) Materials which are a non-RCRA hazardous waste, as defined

in Section 25117.9, and used in a manner constituting disposal or used to produce products that are applied to the land as a fertilizer, soil amendment, agricultural mineral, or an auxiliary soil and plant substance. The department may adopt regulations to exclude materials from regulation pursuant to this paragraph.

(3) Materials burned for energy recovery, used to produce a fuel, or contained in fuels, except materials exempted under paragraph (1) of subdivision (c) or excluded under subparagraph (B), (C), or (D) of paragraph (2) of subdivision (d).

(4) Materials accumulated speculatively.

(5) Materials determined to be inherently wastelike pursuant to regulations adopted by the department.

(6) Used or spent etchants, stripping solutions, and plating solutions, which are transported to an offsite facility operated by a person other than the generator and which are either of the following:

(A) The etchants or solutions are no longer fit for their originally purchased or manufactured purpose.

(B) If the etchants or solutions are reused, the generator and the user cannot document that they are used for their originally purchased or manufactured purpose without prior treatment.

(7) Used oil, as defined in subdivision (a) of Section 25250.1, unless one of the following applies:

(A) The used oil is excluded under subparagraph (B) or (C) of paragraph (2) of subdivision (d), paragraph (4) of subdivision (d), subdivision (e) of Section 25250.1, Section 25250.2, or Section 25250.3, and is managed in accordance with the applicable requirements of Part 279 (commencing with Section 279.1) of Title 40 of the Code of Federal Regulations.

(B) The used oil is used or reused on the site where it was generated or is excluded under paragraph (3) of subdivision (d), and is managed in accordance with the applicable requirements of Part 279 (commencing with Section 279.1) of Title 40 of the Code of Federal Regulations, and is not any of the following:

(i) Used in a manner constituting disposal or used to produce a product that is applied to land.

(ii) Burned for energy recovery or used to produce a fuel, unless the used oil is excluded under subparagraph (B) or (C) of paragraph (2) of subdivision (d).

(iii) Accumulated speculatively.

(iv) Determined to be inherently wastelike pursuant to regulations adopted by the department.

(f) (1) Any person who manages a recyclable material under a claim that the material qualifies for exclusion or exemption pursuant to this section shall provide, upon request, to the department, the Environmental Protection Agency, or any local agency or official authorized to bring an action as provided in Section 25180, all of the following information:

(A) The name, street and mailing address, and telephone number

of the owner or operator of any facility that manages the material.

(B) Any other information related to that person's management of the material requested by the department, the Environmental Protection Agency, or the authorized local agency or official.

(2) Any person claiming an exclusion or an exemption shall maintain adequate records to demonstrate to the satisfaction of the requesting agency or official that there is a known market or disposition for the material, and that the requirements of any exemption or exclusion pursuant to this section are met.

(3) For purposes of determining that the conditions for exclusion from classification as a waste pursuant to this section are met, any person, facility, site, or vehicle engaged in the management of a material under a claim that the material is excluded from classification as a waste pursuant to this section shall be subject to Section 25185.

(g) For purposes of Chapter 6.8 (commencing with Section 25300), recyclable materials excluded from classification as a waste pursuant to this section are not excluded from the definition of hazardous substances in subdivision (g) of Section 25316.

(h) Used oil that fails to qualify for exclusion pursuant to subdivision (d), solely because the used oil is a RCRA hazardous waste, may be managed pursuant to subdivision (d) if the used oil is also managed in accordance with the applicable requirements of Part 279 (commencing with Section 279.1) of Title 40 of the Code of Federal Regulations.

SEC. 2. Section 25143.9 of the Health and Safety Code is amended to read:

25143.9. A recyclable material shall not be excluded from classification as a waste pursuant to subdivision (b) or (d) of Section 25143.2, unless all of the following requirements are met:

(a) If the material is held in a container or tank, the container or tank is labeled, marked, and placarded in accordance with the department's hazardous waste labeling, marking, and placarding requirements which are applicable to generators, except that the container or tank shall be labeled or marked clearly with the words "Excluded Recyclable Material" instead of the words "Hazardous Waste," and manifest document numbers are not applicable. If the material is used oil, the containers, aboveground tanks, and fill pipes used to transfer oil into underground storage tanks shall also be labeled or clearly marked with the words "Used Oil".

(b) The owner or operator of the business location where the material is located has a business plan that meets the requirements of Section 25504, including, but not limited to, emergency response plans and procedures, as described in subdivision (b) of Section 25504, which specifically address the material or that meet the department's emergency response and contingency requirements which are applicable to generators of hazardous waste.

(c) The material shall be stored and handled in accordance with all local ordinances and codes, including, but not limited to, fire

codes, governing the storage and handling of the hazardous material. If a local jurisdiction does not have an ordinance or code regulating the storage of the material, including, but not limited to, an ordinance or code requiring secondary containment for hazardous material storage areas, the material shall be stored in tanks, waste piles, or containers meeting the department's interim status regulations establishing design standards applicable to tanks, waste piles, or containers storing hazardous waste.

(d) If the material is being exported to a foreign country, the person exporting the material shall meet the requirements of Section 25162.1.

SEC. 3. Section 25250.1 of the Health and Safety Code is amended to read:

25250.1. (a) As used in this article, the following terms have the following meaning:

(1) (A) "Used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used, and, as a result of use or as a consequence of extended storage, or spillage, has been contaminated with physical or chemical impurities. Examples of used oil are spent lubricating fluids which have been removed from an engine crankcase, transmission, gearbox, or differential of an automobile, bus, truck, vessel, plane, heavy equipment, or machinery powered by an internal combustion engine; industrial oils, including compressor, turbine, and bearing oil; hydraulic oil; metal-working oil; refrigeration oil; and railroad drainings.

(B) "Used oil" does not include any of the following:

(i) Oil which has a flashpoint below 100° F or which has been mixed with hazardous waste, other than minimal amounts of vehicle fuel.

(ii) Waste water, the discharge of which is subject to regulation under either Section 307 (b) or 402 of the Clean Water Act, including waste waters at facilities which have eliminated the discharge of waste water, contaminated with de minimis quantities of used oil. For purposes of this subparagraph, "de minimis quantities of used oil" are small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations, or small amounts of oil lost to the waste water treatment system during washing or draining operations. This exception shall not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases or to used oil recovered from waste waters.

(iii) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

(iv) Oil which contains polychlorinated biphenyls (PCBs) at a concentration of 5 ppm or greater.

(v) Oil containing more than 1000 ppm total halogens. That oil shall be presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in Subpart D (commencing with Section 261.30) of Part 261 of Title 40 of the Code of Federal

Regulations. Persons may rebut that presumption by demonstrating that the used oil does not contain hazardous waste.

(2) "Board" means the California Integrated Waste Management Board.

(3) (A) "Recycled oil" means any oil, produced from used oil, which has been prepared for reuse and which achieves minimum standards of purity, in liquid form, as established by the department. This subdivision does not apply to oil which is to be disposed or used in a manner constituting disposal. The following standards of purity are in effect for recycled oil unless the department, by regulation, establishes more stringent standards, and are the only allowed exceptions to the criteria adopted pursuant to Section 25141:

(i) Flashpoint: minimum standards set by the American Society for Testing and Materials for the recycled products. However, recycled oil to be burned for energy recovery shall have a minimum flashpoint of 100° F.

(ii) Total lead: 50 mg/kg or less.

(iii) Total arsenic: 5 mg/kg or less.

(iv) Total chromium: 10 mg/kg or less.

(v) Total cadmium: 2 mg/kg or less.

(vi) Total halogens: 3000 mg/kg or less. However, recycled oil shall be demonstrated by testing to contain not more than 1000 mg/kg total halogens listed in Appendix VIII of Part 261 (commencing with Section 261.1) of Title 40 of the Code of Federal Regulations.

(vii) Total polychlorinated biphenyls (PCBs): 2 mg/kg or less.

(B) Compliance with the specifications of subparagraph (A) shall not be met by blending or diluting used oil with crude or virgin oil and shall be determined in accordance with the procedures for identification and listing of hazardous waste adopted in regulations by the department. Persons authorized by the department to recycle oil shall maintain records of volumes and characteristics of incoming used oil and outgoing recycled oil and documentation concerning the recycling technology utilized to demonstrate to the satisfaction of the department or other enforcement agencies that the recycling has been achieved in compliance with this subdivision.

(4) "Used oil recycling facility" means a facility which reprocesses or rerefines used oil.

(5) "Used oil storage facility" means a storage facility, as defined in subdivision (a) of Section 25123.3, which stores used oil.

(6) "Used oil transfer facility" means a transfer facility, as defined in subdivision (c) of Section 25123.3, that either stores used oil for periods greater than 144 hours or that transfers used oil from one container to another.

(b) (1) Unless otherwise specified, used oil which meets all of the following conditions is not subject to regulation by the department:

(A) The used oil meets the standards set forth in paragraph (3) of subdivision (a).

(B) The used oil is not hazardous pursuant to the criteria adopted

pursuant to Section 25141 of constituents other than those listed in paragraph (3) of subdivision (a).

(C) The used oil is not mixed with any waste listed as a hazardous waste in Part 261 (commencing with Section 261.1) of Chapter 1 of Title 40 of the Code of Federal Regulations.

(2) Used oil recycling facilities that are the first to claim that the used oil meets the requirements specified in paragraph (1) shall maintain an operating log and copies of certification forms as specified in Section 25250.19. Any person who generates used oil, and who claims that the oil is exempt from regulation pursuant to this subdivision, shall notify the department, in writing, of that claim and shall comply with the testing and recordkeeping requirements of Section 25250.19 prior to its reuse. In any action to enforce this article, the burden is on the generator, transporter, or recycling facility, whichever first claimed that the used oil meets the standards and criteria, and on the user of the used oil to prove that the oil meets those standards and criteria.

SEC. 4. Section 25250.5 of the Health and Safety Code is amended to read:

25250.5. (a) The disposal of used oil by discharge to sewers, drainage systems, surface water or groundwater, watercourses, or marine waters; by incineration or burning as fuel; or by deposit on land, is prohibited, unless authorized under other provisions of law.

(b) The use of used oil or recycled oil as a dust suppressant or insect or weed control agent is prohibited unless allowed under another applicable law, but only to the extent that use as a dust suppressant or insect or weed control agent is consistent with the federal act.

SEC. 5. Section 25250.8 of the Health and Safety Code is amended to read:

25250.8. Used oil shall be manifested under either one of the following procedures:

(a) The procedures prescribed by Sections 25160 and 25161.

(b) The following modified manifesting procedure, which may be used only by a registered hazardous waste hauler and shall be used only with the consent of the generator:

(1) A separate manifest shall be completed by each vehicle driver, with respect to each transport vehicle operated by that driver for each date.

(2) The hauler shall complete both the generator's and the hauler's sections of the manifest using the hauler's name, Environmental Protection Agency identification number, terminal address, and phone number. The hauler's section shall be completed prior to commencing each day's used oil collections. The driver shall sign and date the generator's and hauler's sections of the manifest.

(3) The hauler shall attach to the front of the manifest legible receipts for each quantity of used oil that is received from a generator. The receipts shall be used to determine the total volume of used oil in the vehicle. After the used oil is delivered, the receipts

shall be affixed to the hauler's copy of the manifest. The hauler shall leave a copy of the receipt with the generator of the used oil. The generator shall retain each receipt for at least three years.

(4) All copies of each receipt shall contain all of the following information:

(A) The name, address, Environmental Protection Agency identification number, and telephone number of the generator, and the signature of the generator or the generator's representative.

(B) The date of the shipment.

(C) The state manifest number.

(D) The volume of the used oil received and its proper shipping description, including the hazardous class and identification number, if applicable.

(E) The name and the address of the permitted facility to which the used oil will be transported.

(F) The hauler's name, address, and Environmental Protection Agency identification number.

(G) The driver's signature.

(5) The hauler shall enter the total volume of used oil transported on the manifest at the change of each date, change of driver, change of transport vehicle, or upon the last delivery of used oil to the designated facility. The total volume shall be the cumulative amount of used oil collected from the generators listed on the individual receipts.

(6) The hauler shall submit the generator copy of the manifest to the department within 30 days of each shipment.

(7) The hauler shall retain a copy of the manifest and all receipts for each manifest for three years.

(8) The hauler shall submit all copies of the manifest to the designated facility. A representative of the designated facility which receives the used oil shall sign and date the manifest, return two copies to the hauler, retain one copy, and send the original to the department within 30 days.

(9) All other manifesting requirements of Sections 25160 and 25161 shall be complied with unless specifically exempted under this subdivision.

SEC. 6. Section 25250.12 of the Health and Safety Code is amended to read:

25250.12. Used oil generated during maintenance operations may be transferred from its point of generation to the maintenance person's place of business, other than a residence, for the purpose of consolidation in a tank or container, without meeting the requirements of Sections 25160, 25163, and 25201, if the material is to be recycled at an authorized offsite hazardous waste facility and if all the following conditions are met:

(a) The generator transports the used oil in a vehicle owned by the generator or owned by an employee of the generator.

(b) Not more than 55 gallons are transferred in the vehicle at any one time.

(c) The used oil is managed in accordance with all laws concerning storage and handling of hazardous wastes upon consolidation at the maintenance person's place of business.

(d) The used oil is deemed to be generated at the point of consolidation upon consolidation.

SEC. 7. Section 25250.13 is added to the Health and Safety Code, to read:

25250.13. Notwithstanding any provision of this chapter, a transfer facility that accepts used oil and holds the oil for more than 24 hours, but less than 144 hours, and does not handle the used oil, other than the transfer of packaged or containerized used oil from one vehicle to another, shall comply with the requirements for used oil transfer facilities that are specified in Subpart E (commencing with Section 279.40) of Part 279 of Title 40 of the Code of Federal Regulations.

SEC. 8. Section 25250.17 of the Health and Safety Code is amended to read:

25250.17. (a) Unless the facility meets the requirements of Section 25250.11, each used oil recycling, storage, or transfer facility shall submit a report, on or before March 1 of each even-numbered year, to the department, on a form provided by the department, containing all of the following information:

(1) The total volume of used oil possessed at the beginning and end of the preceding calendar year.

(2) The total volume of used oil received during the preceding calendar year.

(3) The total volume of used oil recycled during the preceding calendar year, itemized as follows:

(A) Prepared for reuse as a petroleum product.

(B) Consumed in the process of preparing for reuse, including wastes generated.

(C) Prepared for reuse other than as a petroleum product, specifying each type of other use.

(D) Not recycled but transported offsite.

(E) The manner in which the used oil is processed or re-refined, including the specific processes used, if applicable.

(4) Any other information which the department may require.

(b) The department may utilize reports collected by other governmental agencies to obtain the information required by this section.

SEC. 9. Section 25250.19 of the Health and Safety Code is amended to read:

25250.19. (a) A used oil recycler shall test all recycled oil, prior to transportation from the recycling facility, pursuant to applicable methods in the Environmental Protection Agency Document No. Solid Waste 846 or any equivalent alternative method approved or required by the department, and shall ensure and certify the oil as being in compliance with the standards specified in paragraph (3) of subdivision (a) of Section 25250.1. Records of tests performed and

a copy of each form completed pursuant to Section 25250.18 shall be maintained for three years and are subject to audit and verification by the department or the board. The department shall perform an audit and verification on a periodic basis. The department may charge a reasonable fee for this activity.

(b) A generator claiming that used oil is exempted from regulation pursuant to subdivision (b) of Section 25250.1 shall ensure that all used oil for which the exemption is claimed has been tested and certified as being in compliance with the standards specified in subdivision (b) of Section 25250.1, prior to transportation from the generator location. Records of tests performed and a copy of each form completed pursuant to Section 25250.18 shall be maintained for three years and are subject to audit and verification by the department or the board.

(c) Used oil recyclers identified in subdivision (a) and generators identified in subdivision (b) shall record in an operating log and retain for three years the information specified in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 25250.18 on each shipment of recycled or exempted oil.

(d) Operating logs required in subdivision (c) are subject to audit and verification by the department or the board.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1155

An act to amend Sections 29735, 29760, and 29763.8 of, and to add Section 29761.5 to, the Public Resources Code, relating to the Sacramento-San Joaquin Delta, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 29735 of the Public Resources Code is amended to read:

29735. There is hereby created the Delta Protection Commission consisting of 19 members as follows:

(a) One member of the board of supervisors of each of the five counties within the delta whose supervisorial district is within the primary zone shall be appointed by the board of supervisors of the county.

(b) Three elected city council members shall be selected and appointed by city selection committees, from regional and area councils of government, one in each of the following areas:

(1) One from the north delta, consisting of the Counties of Yolo and Sacramento.

(2) One from the south delta, consisting of the County of San Joaquin.

(3) One from the west delta, consisting of the Counties of Contra Costa and Solano.

(c) (1) One member each from the board of directors of five different reclamation districts which are located within the primary zone who are residents of the delta, and who are elected by the trustees of reclamations districts within the following areas:

(A) Two members from the area of the North Delta Water Agency as described in Section 9.1 of the North Delta Water Agency Act (Chapter 283 of the Statutes of 1973), provided at least one member is also a member of the Delta Citizens Municipal Advisory Council.

(B) One member from the west delta consisting of the area of Contra Costa County within the delta.

(C) One member from the area of the Central Delta Water Agency as described in Section 9.1 of the Central Delta Water Agency Act (Chapter 1133 of the Statutes of 1973).

(D) One member from the area of the South Delta Water Agency as described in Section 9.1 of the South Delta Water Agency Act (Chapter 1089 of the Statutes of 1973).

(2) Each reclamation district may nominate one director to be a member. The member from an area shall be selected from among the nominees by a majority vote of the reclamation districts in that area. For purposes of this section, each reclamation district shall have one vote. The north delta area shall conduct separate votes to select each of its two members.

(d) The Director of Parks and Recreation or the director's sole designee.

(e) The Director of Fish and Game or the director's sole designee.

(f) The Director of Food and Agriculture or the director's sole designee.

(g) The executive officer of the State Lands Commission or the executive officer's sole designee.

(h) The Director of Boating and Waterways or the director's sole designee.

(i) The Director of Water Resources or the director's sole designee.

SEC. 2. Section 29760 of the Public Resources Code is amended to read:

29760. (a) Not later than October 1, 1994, the commission shall prepare and adopt, by a majority vote of the membership of the commission, and thereafter review and maintain, a comprehensive long-term resource management plan for land uses within the primary zone of the delta. The regional plan shall consist of the map of the primary zone and text or texts setting forth a description of the needs and goals for the delta and a statement of the policies, standards, and elements of the regional plan.

(b) The regional plan shall meet the following requirements:

(1) Protect and preserve the cultural values and economic vitality that reflect the history, natural heritage, and human resources of the delta.

(2) Conserve and protect the quality of renewable resources.

(3) Preserve and protect agricultural viability.

(4) Restore, improve, and manage levee systems by promoting strategies, including, but not limited to, methods and procedures which advance the adoption and implementation of coordinated and uniform standards among governmental agencies for the maintenance, repair, and construction of both public and private levees.

(5) Preserve and protect delta dependent fisheries and their habitat.

(6) Preserve and protect riparian and wetlands habitat, and promote and encourage a net increase in both the acreage and values of those resources on public lands and through voluntary cooperative arrangements with private property owners.

(7) Preserve and protect the water quality of the delta, both for instream purposes and for human use and consumption.

(8) Preserve and protect open-space and outdoor recreational opportunities.

(9) Preserve and protect private property interests from trespassing and vandalism.

(10) Preserve and protect opportunities for controlled public access and use of public lands and waterways consistent with the protection of natural resources and private property interests.

(11) Preserve, protect, and maintain navigation.

(12) Protect the delta from any development that results in any significant loss of habitat or agricultural land.

(13) Promote strategies for the funding, acquisition, and maintenance of voluntary cooperative arrangements, such as conservation easements, between property owners and conservation groups that protect wildlife habitat and agricultural land, while not impairing the integrity of levees.

(14) Permit water reservoir and habitat development that is compatible with other uses.

(c) The regional plan shall not supersede the authority of local governments over areas within the secondary zone.

(d) In order to facilitate, in part, the requirements of paragraphs (8), (9), (10), and (11) of subdivision (b), the commission shall

include in the regional plan, in consultation with all law enforcement agencies having jurisdiction in the delta, a strategy for the implementation of a coordinated marine patrol system throughout the delta which will improve law enforcement and coordinate the use of resources by all jurisdictions to ensure an adequate level of public safety. The strategic plan shall identify resources to implement that coordination. The commission shall have no authority to abrogate the existing authority of any law enforcement agency.

(e) To the extent that any of the requirements specified in this section are in conflict, nothing in this division shall deny the right of the landowner to continue the agricultural use of the land.

SEC. 3. Section 29761.5 is added to the Public Resources Code, to read:

29761.5. Not later than January 7, 1995, the commission shall transmit copies of the regional plan to the Governor. Copies of the regional plan shall be made available, upon request, to Members of the Legislature.

SEC. 4. Section 29763.8 of the Public Resources Code is amended to read:

29763.8. A local government shall adopt its proposed general plan amendments within 120 days after their approval by the commission.

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

In order to allow sufficient time for the Delta Protection Commission to prepare and adopt, in the most thorough and effective manner possible, a comprehensive long-term resource management plan for land uses within the primary zone of the delta, it is necessary that this act take effect immediately.

CHAPTER 1156

An act to add Section 454.9 to the Public Utilities Code, relating to public utilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 454.9 is added to the Public Utilities Code, to read:

454.9. (a) The commission shall authorize public utilities to establish catastrophic event memorandum accounts and to record in those accounts the costs of the following:

- (1) Restoring utility services to customers.
- (2) Repairing, replacing, or restoring damaged utility facilities.
- (3) Complying with governmental agency orders in connection with events declared disasters by competent state or federal authorities.

(b) The costs, including capital costs, recorded in the accounts set forth in subdivision (a) shall be recoverable in rates following a request by the affected utility, a commission finding of their reasonableness, and approval by the commission. The commission shall hold expedited proceedings in response to utility applications to recover costs associated with catastrophic events.

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

In order to ensure that the Public Utilities Commission acts immediately to approve all reasonable utility requests to restore utility services impaired by the Northridge earthquake so as to protect the public health and welfare, it is necessary that this act take effect immediately.

CHAPTER 1157

An act to amend Sections 12655 and 12656 of the Business and Professions Code, relating to weights and measures.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 12655 of the Business and Professions Code is amended to read:

12655. It is the intent of the Legislature to encourage the unit pricing of all canned, bottled, and packaged foods, packaged produce, and bakery goods; paper, plastic, wood, and metal products packaged in counts greater than 10; rolled paper, plastic, and metal products; canned, bottled, and packaged domestic, laundry and household cleansing, finishing, waxing, and polishing products; drug and first aid products canned, packaged, or bottled in counts greater than 10; and frozen fruits and vegetables, offered by merchants in their places of business for sale at retail to the public. The Legislature finds that unit pricing, the price per ounce, per pound, per gallon, or the metric equivalent thereof, or per 100 square feet, or per 100 count, for which those items are offered for sale at retail, effectively informs the consumer of the comparative prices and values of commodities, and is thus useful for the formulation of intelligent consumer choices. Reconstituted fluid ounce is the preferred unit of

measure for unit pricing of powdered and concentrated infant formula.

SEC. 2. Section 12656 of the Business and Professions Code is amended to read:

12656. The department, in cooperation with the retail food industry, shall adopt a standardized format for unit pricing that shall be available to a retailer upon request. The format shall include, but not be limited to, an identification of the item, including the brand name, the total price of the item, the volume, weight, or number of units of which the item is composed, and the price per unit. For infant formula, unit price information may be expressed based on the reconstituted volume.

CHAPTER 1158

An act to amend Sections 51291, 51292, 51293, and 51295 of, and to add Section 51290.5 to, the Government Code, relating to land conservation.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 51290.5 is added to the Government Code, to read:

51290.5. As used in this chapter "public improvement" means facilities or interests in real property owned by a public agency or person as defined in subdivision (a) of Section 51291.

SEC. 2. Section 51291 of the Government Code is amended to read:

51291. (a) As used in this section, Section 51292, and Section 51295 "public agency" means the state, or any department or agency thereof, and any county, city, school district, or other local public district, agency, or entity; and "person" means any person authorized to acquire property by eminent domain.

(b) Whenever it appears that land within an agricultural preserve may be required by a public agency or person for a public use, the public agency or person shall advise the Director of Conservation and the local governing body responsible for the administration of the preserve of the intention to consider the location of a public improvement within the preserve. In accordance with Section 51290, the notice shall include an explanation of the preliminary consideration of Section 51292, and give a general description, in text or by diagram, of the agricultural preserve land proposed for acquisition, and a copy of any applicable contract created under this chapter. The Director of Conservation shall forward to the Director of Food and Agriculture a copy of any material received from the

public agency or person relating to the proposed acquisition.

Within 30 days thereafter the Director of Conservation and the local governing body shall forward to the public agency or person concerned their comments with respect to the effect of the location of the public improvement on the land within the agricultural preserve and those comments shall be considered by the public agency or person. In preparing those comments, the Director of Conservation shall consider issues related to agricultural land use, including, but not limited to, matters related to the effects of the proposal on the conversion of adjacent or nearby agricultural land to nonagricultural uses, and shall consult with, and incorporate the comments of, the Director of Food and Agriculture on any other matters related to agricultural operations. Failure of any public agency or person to comply with the requirements of this section shall not invalidate any action by the agency or person to locate a public improvement within an agricultural preserve. However, the failure by any person or any public agency other than a state agency to comply with the requirements of this section shall be admissible in evidence in any litigation for the acquisition of that land or involving the allocation of funds or the construction of the public improvement. This subdivision does not apply to the erection, construction, alteration, or maintenance of gas, electric, water, or communication utility facilities within an agricultural preserve if that preserve was established after submission of the location of those facilities to the city or county for review or approval.

(c) When land in an agricultural preserve is acquired by a public entity, within 10 working days the public entity shall notify the Director of Conservation. The notice shall include a general explanation of the decision, and the findings made pursuant to Section 51292. If different from that previously provided pursuant to subdivision (b), the notice shall also include a general description, in text or by diagram, of the agricultural preserve land acquired, and a copy of any applicable contract created under this chapter.

(d) If, after giving the notice required under subdivisions (b) and (c) and before the project is completed within an agricultural preserve, the public agency or person proposes any significant change in the public improvement, it shall give notice of the changes to the Director of Conservation and the local governing body responsible for the administration of the preserve. Within 30 days thereafter, the Director of Conservation and the local governing body may forward to the public agency or person their comments with respect to the effect of the change to the public improvement on the land within the preserve and the compliance of the changed public improvements with this article. Those comments shall be considered by the public agency or person, if available within the time limits set by this subdivision.

(e) If the notices and findings required by this section and Section 51292 are given and contained within documents prepared pursuant to the California Environmental Quality Act (Division 13

(commencing with Section 21000) of the Public Resources Code) those documents may be used to meet the notification and findings requirements of this section and Section 51292, as long as they are provided no later than the times set forth in this section.

Any action or proceeding regarding notices or findings required by this article filed by the Director of Conservation or the local governing body administering the agricultural preserve shall be governed by Section 51294.

SEC. 3. Section 51292 of the Government Code is amended to read:

51292. No public agency or person shall locate a public improvement within an agricultural preserve unless the following findings are made:

(a) The location is not based primarily on a consideration of the lower cost of acquiring land in an agricultural preserve.

(b) If the land is prime agricultural land covered under a contract pursuant to this chapter for any public improvement, that there is no other land within or outside the preserve on which it is reasonably feasible to locate the public improvement.

SEC. 4. Section 51293 of the Government Code is amended to read:

51293. Section 51292 shall not apply to:

(a) The location or construction of improvements where the board or council administering the agricultural preserve approves or agrees to the location thereof, except when the acquiring agency and administering agency are the same entity.

(b) The acquisition of easements within a preserve by the board or council administering the preserve.

(c) The location or construction of any public utility improvement which has been approved by the Public Utilities Commission.

(d) The acquisition of either (1) temporary construction easements for public utility improvements, or (2) an interest in real property for underground public utility improvements. This subdivision shall apply only where the surface of the land subject to the acquisition is returned to the condition and use that immediately predated the construction of the public improvement, and when the construction of the public utility improvement will not significantly impair agricultural use of the affected contracted parcel or parcels.

(e) The location or construction of the following types of improvements, which are hereby determined to be compatible with or to enhance land within an agricultural preserve:

(1) Flood control works, including channel rectification and alteration.

(2) Public works required for fish and wildlife enhancement and preservation.

(3) Improvements for the primary benefit of the lands within the preserve.

(f) Improvements for which the site or route has been specified

by the Legislature in a manner that makes it impossible to avoid the acquisition of land under contract.

(g) All state highways on routes as described in Sections 301 to 622, inclusive, of the Streets and Highways Code, as those sections read on October 1, 1965.

(h) All facilities which are part of the State Water Facilities as described in subdivision (d) of Section 12934 of the Water Code, except facilities under paragraph (6) of subdivision (d) of that section.

(i) Land upon which condemnation proceedings have been commenced prior to October 1, 1965.

(j) The acquisition of a fee interest or conservation easement for a term of at least 10 years, in order to restrict the land to agricultural or open space uses as defined by subdivisions (b) and (o) of Section 51201.

SEC. 5. Section 51295 of the Government Code is amended to read:

51295. When any action in eminent domain for the condemnation of the fee title of an entire parcel of land subject to a contract is filed or when that land is acquired in lieu of eminent domain for a public improvement by a public agency or person or whenever there is any action or acquisition by the federal government or any person, instrumentality or agency acting under authority or power of the federal government, the contract shall be deemed null and void as to the land actually being condemned or so acquired as of the date the action is filed and for the purposes of establishing the value of the land, the contract shall be deemed never to have existed.

Upon the termination of the proceeding, the contract shall be null and void for all land actually taken or acquired.

When an action to condemn or acquire less than all of a parcel of land subject to a contract is commenced, the contract shall be deemed null and void as to the land actually condemned or acquired and shall be disregarded in the valuation process only as to the land actually being taken, unless the remaining land subject to contract will be adversely affected by the condemnation, in which case the value of that damage shall be computed without regard to the contract.

When an action to condemn or acquire an interest which is less than the fee title of an entire parcel or any portion thereof, of land subject to a contract is commenced, the contract shall be deemed null and void as to that interest and for the purpose of establishing the value of that interest only shall be deemed never to have existed, unless the remaining interests in any of the land subject to the contract will be adversely affected, in which case the value of that damage shall be computed without regard to the contract.

The land actually taken shall be removed from the contract. Under no circumstances shall land be removed that is not actually taken for a public improvement, except that when only a portion of the land

or less than a fee interest in the land is taken or acquired, the contract may be canceled with respect to the remaining portion or interest upon petition of either party and pursuant to the provisions of Article 5 (commencing with Section 51280).

For the purposes of this section, a finding by the board or council that no authorized use may be made of the land if the contract is continued on the remaining portion or interest in the land may satisfy the requirements of subdivision (a) of Section 51282.

If, after acquisition, the acquiring public agency determines that it will not for any reason actually locate on that land or any part thereof, the public improvement for which the land was acquired, before returning the land to private ownership the public agency shall give written notice to the Director of Conservation and the local governing body responsible for the administration of the preserve and the land shall be reenrolled in a contract, or encumbered by an enforceable deed restriction with terms at least as restrictive as those provided by this chapter. The duration of the restriction shall be determined by subtracting the length of time the land was held by the acquiring public agency or person from the number of years that remained on the original contract at the time of acquisition.

CHAPTER 1159

An act to amend Sections 25201.6, 25205.2, 25205.4, 25205.7, and 25205.12 of the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 25201.6 of the Health and Safety Code is amended to read:

25201.6. (a) For purposes of this section and Section 25205.2, the following terms have the following meaning:

(1) "Series A standardized permit" means a permit issued to a facility that meets one of the following conditions:

(A) The total influent volume of liquid hazardous waste treated is greater than 50,000 gallons per calendar month.

(B) The total volume of solid hazardous waste treated is greater than 100,000 pounds per calendar month.

(C) Where both liquid and solid hazardous wastes are being treated, either the total volume of liquid waste treated exceeds the volume specified in subparagraph (A), or the total volume of solid hazardous waste treated exceeds the volume specified in subparagraph (B).

(D) The total facility storage design capacity is greater than

500,000 gallons for liquid hazardous waste.

(E) The total facility storage design capacity is greater than 500 tons for solid hazardous waste.

(F) Where both liquid and solid hazardous waste are being stored, the total volume of liquid waste stored exceeds the volume specified in subparagraph (D), or the total volume of solid hazardous waste stored exceeds the volume specified in subparagraph (E).

(G) A volume of liquid or solid hazardous waste is stored at the facility for more than one calendar year.

(2) "Series B standardized permit" means a permit issued to a facility that does not store liquid or solid hazardous waste of any period of more than one calendar year, and that meets one of the following conditions:

(A) The total influent volume of liquid hazardous waste treated is greater than 5,000 gallons but less than 50,000 gallons per calendar month.

(B) The total volume of solid hazardous waste treated is greater than 10,000 pounds but less than 100,000 pounds per calendar month.

(C) Where both liquid and solid hazardous wastes are being treated, the total volume of liquid hazardous waste treated does not exceed the volume specified in subparagraph (A), and the volume of solid hazardous waste treated does not exceed the volume specified in subparagraph (B).

(D) The total facility storage design capacity is greater than 50,000 gallons but less than 500,000 gallons for liquid hazardous waste.

(E) The total facility storage design capacity is greater than 100,000 pounds but less than 500 tons for solid hazardous waste.

(F) Where both liquid and solid hazardous wastes are being stored, the total volume of liquid hazardous waste stored does not exceed the volume specified in subparagraph (D), and the total volume of solid hazardous waste stored does not exceed the volume specified in subparagraph (E).

(3) "Series C standardized permit" means a permit issued to a facility that does not store liquid or solid hazardous waste for any period for more than one calendar year, that, except as provided in subparagraph (G), does not treat or store reactive, ignitable or extremely hazardous waste, that does not conduct thermal treatment of hazardous waste, with the exception of evaporation, and meets one of the following conditions:

(A) The total influent volume of liquid hazardous waste treated does not exceed 5,000 gallons per calendar month.

(B) The total volume of solid hazardous waste treated does not exceed 10,000 pounds per calendar month.

(C) Where both liquid and solid hazardous wastes are being treated, the total volume of liquid hazardous waste treated does not exceed the volume specified in subparagraph (A), and the total volume of solid hazardous wastes treated does not exceed the volume specified in subparagraph (B).

(D) The total facility storage design capacity does not exceed

50,000 gallons for liquid hazardous waste.

(E) The total facility storage design capacity does not exceed 100,000 pounds for solid hazardous waste.

(F) Where both liquid and solid hazardous wastes are being stored, the total volume of liquid hazardous waste stored does not exceed the volume specified in subparagraph (D) and the total volume of solid hazardous waste stored does not exceed the volume specified in subparagraph (E).

(G) Notwithstanding any other provision of this paragraph, a permanent household hazardous waste collection facility operating pursuant to a series C standardized permit may store and bulk reactive, ignitable, and extremely hazardous waste.

(b) The department shall adopt regulations specifying standardized hazardous waste facilities permit application forms that may be completed by an offsite non-RCRA series A, B, or C treatment, storage, or treatment and storage facility, in lieu of other hazardous waste facilities permit application procedures set forth in regulations. The department shall not issue permits under this section to specific classes of facilities unless the department finds that doing so will not create a competitive disadvantage to a member or members of that class which were in compliance with the permitting requirements which were in effect on September 1, 1992.

(c) The regulations adopted pursuant to subdivision (b) shall include all of the following:

(1) Require that the standardized permit notification be submitted to the department on or before October 1, 1993, for facilities existing on or before September 1, 1992, except for facilities specified in paragraph (2) of subdivision (g). The standardized permit notification shall include, at a minimum, the information required for a Part A application as described in Section 66270.13 of Title 22 of the California Code of Regulations.

(2) Require that the standardized permit application be submitted to the department within six months of the submittal of the standardized permit notification, except that a facility that submits a notification prior to October 1, 1993, may submit a permit application on or before April 1, 1994. The standardized permit application shall require, at a minimum, that the following information be submitted to the department for review prior to the final permit determination:

(A) A description of the treatment and storage activities to be covered by the permit, including the type and volumes of waste, the treatment process, equipment description, and design capacity.

(B) A copy of the closure plan as required by paragraph (13) of subdivision (b) of Section 66270.14 of Title 22 of the California Code of Regulations.

(C) A description of the corrective action program, as required by Section 25200.10.

(D) Financial responsibility documents specified in paragraph (17) of subdivision (b) of Section 66270.14 of Title 22 of the California

Code of Regulations.

(E) A copy of the topographical map as specified in paragraph (18) of subdivision (b) of Section 66270.14 of Title 22 of the California Code of Regulations.

(F) A description of the individual container, and tank and containment system, and of the engineer's certification, as specified in Sections 66270.15 and 66270.16 of Title 22 of the California Code of Regulations.

(G) Documentation of compliance, if applicable, with the requirements of Article 8.7 (commencing with Section 25199).

(3) Require that a facility operating pursuant to a standardized permit comply with the liability assurance requirements in Section 25200.1.

(4) Specify which of the remaining elements of the permit application as described in subdivision (b) of Section 66270.14 of the California Code of Regulations shall be the subject of a certification of compliance by the applicant.

(5) Establish a procedure for imposing an administrative penalty pursuant to Section 25187, in addition to any other penalties provided by this chapter, upon an owner or operator of an offsite non-RCRA treatment or storage facility who does not submit a standardized permit notification to the department on or before October 1, 1993, pursuant to paragraph (1), or, on or before March 1, 1995, for facilities subject to paragraph (2) of subdivision (g), and who continues to operate the facility without obtaining a hazardous waste facilities permit or other grant of authorization from the department after October 1, 1993. In determining the amount of the administrative penalty to be assessed, the regulations shall require the amount to be based upon the economic benefit gained by that owner or operator as a result of failing to comply with this section.

(6) Require that a facility operating pursuant to a standardized permit comply, at a minimum, with the interim status facility operating requirements specified in the regulations adopted by the department, except that the regulations adopted pursuant to this section may specify financial assurance amounts necessary to adequately respond to damage claims at levels that are less than those required for interim status facilities if the department determines that lower financial assurance levels are appropriate.

(d) (1) Any regulations adopted pursuant to this section may be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) On and before January 1, 1995, the adoption of the regulations pursuant to paragraph (1) is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare.

(e) The department shall take final action on each standardized permit application within 18 months after the application is

submitted to the department. The department may not grant a permit under this section unless the department has determined the adequacy of the material submitted with the application and has conducted an inspection of the facility and determined all of the following:

(1) The treatment process is an effective method of treating the waste, as described in the permit application.

(2) The corrective action plan is appropriate for the facility.

(3) The financial assurance is sufficient for the facility.

(f) Interim status shall not be granted to a facility which does not submit a standardized permit notification on or before October 1, 1993, unless the facility is subject to paragraph (2) of subdivision (g). Interim status shall be revoked if the permit application is not submitted within six months of the permit notification. Interim status granted to any facility pursuant to this section and Sections 25200.5 and 25200.9 shall terminate upon a final permit determination or October 1, 1995, whichever date is earlier. An offsite non-RCRA treatment, storage, or treatment and storage facility operating pursuant to interim status which applies for a permit pursuant to this section shall pay fees to the department in an amount equal to the fees established by subdivision (e) of Section 25205.4 for the same size and type of facility.

(g) (1) Except as provided in paragraph (2), a facility treating used oil or solvents, or which engages in incineration, thermal destruction, or any land disposal activity, is not eligible for a standardized permit pursuant to this section.

(2) (A) Notwithstanding paragraph (1), an offsite facility treating solvents is eligible for a standardized permit pursuant to this section if all of the following conditions are met:

(i) The facility exclusively treats solvent wastes, and is not required to obtain a permit pursuant to the federal act.

(ii) The solvent wastes that the facility treats are only the types of solvents generated from dry cleaning operations.

(iii) Ninety percent or more of the solvents that the facility receives are from dry cleaning operations.

(iv) Ninety percent or more of the solvents that the facility receives are recycled and sold by the facility, excluding recycling for energy recovery, provided that the facility does not produce more than 15,000 gallons per month of recycled solvents.

(B) A facility that is eligible for a standardized permit pursuant to this paragraph is also eligible for the fee exemption provided in subdivision (d) of Section 25205.12 for any year or reporting period prior to January 1, 1995, if the owner or operator complies with the notification and application requirements of this section on or before March 1, 1995.

(C) A facility treating solvents pursuant to this paragraph shall clearly label all recycled solvents as recycled prior to subsequent sale or distribution.

(D) Notwithstanding that a facility eligible for a standardized

permit pursuant to this paragraph meets the eligibility requirements for a Series C standardized permit specified in paragraph (3) of subdivision (a), the facility shall obtain and meet the requirements for a Series B standardized permit specified in paragraph (2) of subdivision (a).

(E) Notwithstanding any other provision of this chapter, for purposes of this paragraph, if the recycled material is to be used for dry cleaning, "recycled" means the removal of water and inhibitors from waste solvent and the production of dry cleaning solvent with an appropriate inhibitor for dry cleaning use. The removal of inhibitors is not required if all of the solvents received by the facility that are recycled for dry cleaning use are from dry cleaners.

(h) Offsite non-RCRA treatment facilities operating pursuant to this section shall comply with Article 4 (commencing with Section 66270.40) of Chapter 20 of Division 4.5 of Title 22 of the California Code of Regulations.

(i) (1) The department shall require an owner or operator applying for a standardized permit to complete and file a phase I environmental assessment with the application. However, if a RCRA facility assessment has been performed by the department, the assessment shall be deemed to satisfy the requirement of this subdivision to complete and file a phase I environmental assessment, and the facility shall not be required to submit a phase I environmental assessment with its application.

(2) (A) For purposes of this subdivision, the phase I environmental assessment shall include a preliminary site assessment, as described in subdivision (b) of Section 25200.14, except that the phase I environmental assessment shall also include a certification, signed, except as provided in subparagraph (B), by the owner, and also by the operator if the operator is not the owner, of the facility and an independent professional engineer, geologist, or environmental assessor registered in the state.

(B) Notwithstanding subparagraph (A), the certification for a permanent household waste collection facility may be signed by any professional engineer, geologist, or environmental assessor registered in the state, including, but not limited to, such a person employed by the governmental entity, but if the facility owner is not a governmental entity, the engineer, geologist, or assessor signing the certification shall not be employed by, or be an agent of, the facility owner.

(3) The certification specified in paragraph (2) shall state whether evidence of a release of hazardous waste or hazardous constituents has been found.

(4) If evidence of a release has been found, the facility shall complete a detailed site assessment to determine the nature and extent of any contamination resulting from the release and shall submit a corrective action plan to the department, within one year of submittal of the standardized permit application.

(j) The department shall establish an inspection program to

identify, inspect, and bring into compliance any non-RCRA treatment, storage, or treatment and storage facility which is operating without a permit or other grant of authorization from the department for that treatment or storage activity.

(k) An offsite non-RCRA treatment, storage, or treatment and storage facility authorized to operate pursuant to a hazardous waste facilities permit issued pursuant to Section 25200 may operate pursuant to a series A, B, or C standardized permit by completing the appropriate permit modification procedure specified in the regulations for such a modification.

(l) Notwithstanding any other provision of law, the permit modification fee imposed pursuant to subdivision (i) of Section 25205.7 for a modification made pursuant to subdivision (k) shall be the appropriate class 1, 2, or 3 standardized permit modification fee specified in subdivision (i) of Section 25205.7.

SEC. 2. Section 25205.2 of the Health and Safety Code is amended to read:

25205.2. (a) Except as provided in subdivisions (c) and (h), in addition to the fees specified in Section 25174.1, each operator of a facility shall pay a facility fee for each reporting period, or any portion thereof, to the board based on the size and type of the facility, as specified in Section 25205.4. On or before January 31 of each calendar year, the department annually shall notify the board of all known facility operators by facility type and size. The department shall also notify the board of any operator issued a permit or grant of interim status within 30 days after a permit or grant of interim status is issued to the operator. The fee specified in this section does not apply to facilities operating pursuant to a permit-by-rule, as specified in Section 25205.12.

(b) The board shall deposit all fees collected pursuant to subdivision (a) in the Hazardous Waste Control Account in the General Fund. The fees so deposited may be expended by the department, upon appropriation by the Legislature, for the purposes specified in subdivision (b) of Section 25174.

(c) Notwithstanding subdivision (a), a person who is issued a variance by the department from the requirement of obtaining a hazardous waste facilities permit or grant of interim status is not subject to the fee, for any reporting period following the reporting period in which the variance was granted by the department.

(d) Operators subject to facility fee liability pursuant to this section shall pay the following amounts:

(1) The operator shall pay the applicable facility fee for each reporting period in which the facility actually engaged in the treatment, storage, or disposal of hazardous waste.

(2) The operator shall pay the applicable facility fee for one additional reporting period immediately following the final reporting period in which the facility actually engaged in that treatment or storage. For the 1994 reporting period and thereafter, the facility's size for that additional reporting period shall be deemed

to be the largest size at which the facility has ever been subject to the fee. If the department previously approved a unit or portion of the facility for a variance, closure, or permit-by-rule, the facility's size for that reporting period shall be deemed to be its largest size since the department granted the approval.

(3) The operator of a disposal facility shall pay twice the applicable facility fee for one additional reporting period immediately following the final reporting period in which the facility actually engaged in disposal of hazardous waste.

(4) For the 1994 reporting period and thereafter, a facility shall not be deemed to have stopped treating, storing, or disposing of hazardous waste unless it has actually ceased that activity and has notified the department of its intent to close.

(5) If the reporting period which immediately followed the final reporting period in which a facility actually engaged in the treatment, storage, or disposal of the hazardous waste was the six-month period from July 1, 1991, through December 31, 1991, the operator shall be subject to twice the fee otherwise applicable to that operator for that reporting period under paragraphs (2) and (3).

(e) No facility shall be subject to a facility fee for treatment, storage, or disposal, if that activity took place before July 1, 1986, and if the fee for the activity was not paid prior to January 1, 1994.

(f) Notwithstanding any other provision of this section, a person who ceased actual treatment, storage, or disposal of hazardous waste, whether generated onsite or received from offsite, before July 1, 1986, and who paid facility fees for any reporting period after that date pursuant to a decision of the Board of Equalization and who filed a claim for refund of those fees on or before January 1, 1994, shall be entitled to a refund of those amounts.

(g) Facility operators who treated, stored, or disposed of hazardous waste on or after July 1, 1986, shall be subject to the provisions of this section which were in effect prior to January 1, 1994, as to payments which their operators made prior to January 1, 1994. The operators shall be subject to subdivision (d) as to any other liability for the facility fee.

(h) A treatment facility is not subject to the facility fee established pursuant to this section, if the facility engages in treatment exclusively to accomplish a removal or remedial action or a corrective action in accordance with an order issued by the Environmental Protection Agency pursuant to the federal act or in accordance with an order issued by the department pursuant to Section 25187, if the facility was put in operation solely for purposes of complying with that order. The department shall instead assess a fee for that facility for the actual time spent by the department for the inspection and oversight of that facility. The department shall base the fee on the department's work standards and shall assess the fee on an hourly basis.

(i) Notwithstanding subdivision (a), a facility operating pursuant to a standardized permit or a grant of interim status, as specified in

Section 25201.6, is exempt from the annual facility fee imposed by this section for a period of time equal to the number of years that the facility lawfully operated prior to September 21, 1993, pursuant to a hazardous waste facilities permit or other grant of authorization and paid facility fees for the operation of the facility pursuant to this section.

SEC. 3. Section 25205.4 of the Health and Safety Code is amended to read:

25205.4. (a) The base rate for the facility fee imposed by Section 25205.2 for the 1991-92 fiscal year is the base rate for the 1991 reporting period, as established pursuant to this section as it read on June 30, 1991. Commencing with the 1992 reporting period, and for each reporting period thereafter, the board shall adjust the base rate annually to reflect increases or decreases in the cost of living measured by the Consumer Price Index issued by the United States Department of Labor or by a successor agency of the federal government.

(b) The determination of the facility fee pursuant to this section, including the redetermination of the base rate, is exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) Except as provided in subdivision (e), in computing the facility fees, all of the following shall apply:

(1) The fee to be paid by a ministorage facility shall equal 25 percent of the base facility rate.

(2) The fee to be paid by a small storage facility shall equal the base facility rate.

(3) The fee to be paid by a large storage facility shall equal twice the base facility rate.

(4) The fee to be paid by a minitreatment facility shall equal 50 percent of the base facility rate.

(5) The fee to be paid by a small treatment facility shall equal twice the base facility rate.

(6) The fee to be paid by a large treatment facility shall equal three times the base facility rate.

(7) The fee to be paid by a disposal facility until closure is approved shall equal 10 times the base facility rate.

(8) The fee to be paid by a facility with a postclosure permit shall be seven thousand five hundred dollars (\$7,500) annually for a small facility, fifteen thousand dollars (\$15,000) annually for a medium facility, and twenty-two thousand five hundred dollars (\$22,500) for a large facility during the first five years of the postclosure period. The fee to be paid by a facility with a postclosure permit during the remaining years of the postclosure care period shall be four thousand dollars (\$4,000) annually for a small facility, eight thousand dollars (\$8,000) annually for a medium facility, and thirteen thousand five hundred dollars (\$13,500) annually for a large facility.

(d) If a facility falls into more than one category listed in either subdivision (c) or (e), or any combination thereof, or multiple

operations under a single hazardous waste facilities permit or grant of interim status fall into more than one category listed in either subdivision (c) or (e), or any combination thereof, the facility operator shall pay only the rate for the facility category which is the highest rate.

(e) Notwithstanding subdivision (c), the facility fee for a facility operating under a standardized permit shall be as follows:

(1) The fee to be paid for a facility operating pursuant to a series A standardized permit shall be fifteen thousand three hundred seventy-three dollars (\$15,373).

(2) The fee to be paid for a facility operating pursuant to a series B standardized permit shall be seven thousand two hundred five dollars (\$7,205).

(3) Except as specified in paragraph (4), the fee to be paid for a facility operating pursuant to a series C standardized permit shall be six thousand fifty-one dollars (\$6,051).

(4) The fee for a facility operating pursuant to a series C standardized permit is three thousand twenty-five dollars (\$3,025) if the facility meets all of the following conditions:

(A) The facility treats not more than 1,500 gallons of liquid hazardous waste and not more than 3,000 pounds of solid hazardous waste in any calendar month.

(B) The total facility storage capacity does not exceed 15,000 gallons of liquid hazardous waste and 30,000 pounds of solid hazardous waste.

(C) If the facility both treats and stores hazardous waste, the facility does not exceed the volume limitations specified in subparagraphs (A) and (B) for each individual activity.

(f) The fee imposed pursuant to this section shall be paid in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code.

SEC. 4. Section 25205.7 of the Health and Safety Code, as amended by Chapter 65 of the Statutes of 1994, is amended to read:

25205.7. (a) The board shall assess a fee for any application for a new hazardous waste facilities permit, a permit for a hazardous waste facility which would manage extremely hazardous waste, a variance, or a permit modification issued by the department pursuant to this chapter or the regulations adopted pursuant to this chapter. The fee shall be nonrefundable, even if the application is withdrawn or the permit, variance, or modification is denied. The department shall provide the board with any information which is necessary to assess fees pursuant to this section. The fee shall be collected in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code, and deposited into the Hazardous Waste Control Account. A person who submits a single application for a facility that falls within more than one fee category shall pay only the higher fee.

(b) (1) The amounts stated in this section shall be base rates for the 1989-90 fiscal year for all facilities, other than those operating

pursuant to a standardized permit, as specified in Section 25201.6. For all facilities operating pursuant to a standardized permit, the amounts stated in this section shall be the base rates for the 1993-94 fiscal year. Thereafter the fees shall be adjusted annually to reflect increases or decreases in the cost of living, as measured by the Consumer Price Index for the United States, as reported by the Department of Labor or a successor agency of the United States government.

(2) The board shall pay a refund of the portion of the fee that was paid for the 1993-94 fiscal year, in excess of the amounts specified in this section, to an owner or operator of a facility operating pursuant to a standardized permit pursuant to Section 25201.6 who paid fees in excess of the amounts specified in this section for that fiscal year.

(3) The fee shall be assessed upon application to the department. For a facility operating pursuant to interim status, the submittal of the application shall be the submittal of the Part B application in accordance with regulations adopted by the department. A person who submits an application for renewal of any existing permit shall pay an amount equal to the fee that would have been assessed had the person requested the same changes in a modification application, but not less than one-half the fee required for a new permit.

(c) A person submitting a hazardous waste facilities permit application for a land disposal facility shall pay eighty-three thousand dollars (\$83,000) for a small facility, one hundred seventy-seven thousand dollars (\$177,000) for a medium facility, and three hundred four thousand dollars (\$304,000) for a large facility.

(d) A person submitting a hazardous waste facilities permit application for any incinerator shall pay fifty thousand dollars (\$50,000) for a small facility, one hundred six thousand dollars (\$106,000) for a medium facility, and one hundred eighty-two thousand dollars (\$182,000) for a large facility.

(e) (1) Except as provided in paragraphs (2) and (3), a person submitting a hazardous waste facility permit application for a storage facility, a treatment facility, or a storage and treatment facility shall pay seventeen thousand dollars (\$17,000) for a small facility, thirty-one thousand dollars (\$31,000) for a medium facility, and sixty thousand dollars (\$60,000) for a large facility.

(2) A person submitting an application for a standardized permit for a storage facility, a treatment facility, or a storage and treatment facility, as specified in Section 25201.6, shall pay thirty thousand fifty-one dollars (\$30,051) for a series A standardized permit, eighteen thousand seven hundred sixty-two dollars (\$18,762) for a series B standardized permit, and five thousand dollars (\$5,000) for a series C standardized permit. The board shall assess these fees based upon the classifications specified in subdivision (a) of Section 25201.6.

(3) In addition to the fees specified in paragraph (2), the board shall assess a fee equal to the department's costs in reviewing and overseeing any corrective action program described in the

application for a standardized permit pursuant to subparagraph (C) of paragraph (2) of subdivision (c) of Section 25201.6, and in reviewing and overseeing any corrective action work undertaken at the facility pursuant to that corrective action program.

(f) A person submitting a hazardous waste facilities permit application for a transportable treatment unit shall pay thirteen thousand dollars (\$13,000) for a small unit, thirty thousand dollars (\$30,000) for a medium unit, and sixty thousand dollars (\$60,000) for a large unit.

(g) (1) (A) A person submitting a request for a variance shall pay three thousand dollars (\$3,000) for a variance from any hazardous waste storage requirements imposed by this chapter, three hundred dollars (\$300) for a variance issued pursuant to Section 25179.8, three hundred dollars (\$300) for a variance to allow the use of a test method or analytical method which is an alternative to the methods prescribed by regulation for use in classifying a waste, eight hundred dollars (\$800) for a variance from the requirements for hazardous waste haulers imposed by this chapter.

(B) A person submitting a request for a variance not listed in subparagraph (A) shall pay eight thousand dollars (\$8,000), unless the applicant is a small business and the department determines in its discretion that payment of this fee would cause financial or other unreasonable hardship to the applicant. If that finding is made, the department may assess the applicant up to 50 percent of the standard fee. For the purposes of this subparagraph, "small business" means a business which is independently owned and operated, has 25 employees or less, and has a gross annual income which does not exceed two million dollars (\$2,000,000).

(C) If the variance application requests a variance from more than one specific statute or regulation, a separate fee may be assessed for each statute or regulation from which the variance is requested.

(2) If the variance contains no significant changes from a variance previously issued to the same owner or operator, the fee shall be 25 percent of the amount otherwise provided for by this section. A change is a significant change if, had it been made to a permit, it would have been a class 2 or class 3 modification, as specified in subdivision (h).

(3) Any variance granted pursuant to Article 3 (commencing with Section 66260.21) of Chapter 10 of Division 4.5 of Title 22 of the California Code of Regulations is not subject to a fee under this section.

(h) (1) A person who applies for one or more class 1 permit modifications shall pay a fee of five hundred dollars (\$500) for each unit directly impacted by the modification, up to a maximum of one thousand five hundred dollars (\$1,500) for each application.

(2) A person who applies for one or more class 2 permit modifications shall pay a fee equal to 20 percent of the fee for a new permit for that facility for each unit directly impacted by the modifications, up to a maximum of 40 percent for each application,

except that each person who applies for one or more class 2 permit modifications for a land disposal facility or an incinerator shall pay a fee equal to 15 percent of the fee for a new permit for that facility for each unit directly impacted by the modifications, up to a maximum of 30 percent for each application.

(3) A person who applies for one or more class 3 permit modifications shall pay a fee equal to 40 percent of the fee for a new permit for that facility for each unit directly impacted by the modifications, up to a maximum of 80 percent for each application, except that a person who applies for one or more class 3 permit modifications for a land disposal facility shall pay a fee equal to 30 percent of the fee for a new permit for that facility for each unit directly impacted by the modifications, up to a maximum of 60 percent for each modification.

(4) No facility which is exempted from fees imposed by this article pursuant to subdivision (e) of Section 25205.3, nor any operator who is subject to paragraph (2) or (3) of subdivision (d) of Section 25205.2, shall be subject to any fee pursuant to this section for a permit modification resulting from a revision of the facility's or operator's closure plan.

(i) (1) Permits for postclosure shall be required for hazardous waste facilities if hazardous wastes remain after closure which will not be subject to the requirements of any other hazardous waste facilities permit issued by the department at the time of postclosure permit approval.

(2) A person submitting a hazardous waste facilities permit application for a postclosure permit shall pay a fee of eight thousand dollars (\$8,000) for a small facility, eighteen thousand dollars (\$18,000) for a medium facility, and thirty thousand dollars (\$30,000) for a large facility.

(3) For purposes of this subdivision and paragraph (8) of subdivision (c) of Section 25205.4, and notwithstanding subdivision (j), any facility or unit is "small" if 0.5 tons (1,000 pounds) or less of hazardous waste remain after closure, "medium" if more than 0.5 tons (1,000 pounds), but less than 1,000 tons of hazardous waste remain after closure, and "large" if 1,000 or more tons of hazardous waste remain after closure.

(j) For purposes of this section, and notwithstanding Section 25205.1, any facility or unit is "small" if it manages 0.5 tons (1,000 pounds) or less of hazardous waste during any one month of the state's current fiscal year, "medium" if it manages more than 0.5 tons (1,000 pounds), but less than 1,000 tons, of hazardous waste during any one month of the state's current fiscal year, and "large" if it manages 1,000 or more tons of hazardous waste during any one month of the state's current fiscal year.

(k) The fees assessed pursuant to this section do not apply to any permit or variance to operate a research, development, and demonstration facility, if the duration of the permit or variance is not longer than one year, unless the permit or variance is renewed

pursuant to the regulations adopted by the department. For purposes of this section, a "research, development, and demonstration facility" is a facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which regulations prescribing permit standards have not been adopted.

(l) The fees assessed pursuant to this section do not apply to any of the following:

(1) Any variance issued to a public agency to transport wastes for purposes of operating a household hazardous waste collection facility, or to transport waste from a household hazardous waste collection facility, which receives household hazardous waste or hazardous waste from conditionally exempted small quantity generators pursuant to Article 10.8 (commencing with Section 25218).

(2) A permanent household hazardous waste collection facility.

(3) Any variance issued to a public agency to conduct a collection program for agricultural wastes.

(m) Except as provided in paragraph (3) of subdivision (e), the department shall not assess any fees for the department's costs in reviewing and overseeing a corrective action taken in conjunction with a hazardous waste facility permit application.

(n) The fees assessed pursuant to subdivision (h) do not apply to any government agency for hazardous wastes which result when the government agency, or its contractor, investigates, removes, or remedies a release of hazardous waste caused by another person.

(o) Any person producing or transporting extremely hazardous waste shall pay a fee to the department of two hundred dollars (\$200) per calendar year, in addition to any other fee imposed by this section. The fee shall be collected by the department annually.

SEC. 5. Section 25205.12 of the Health and Safety Code is amended to read:

25205.12. (a) The owner of a hazardous waste facility authorized by the department to operate pursuant to a permit-by-rule, authorized under a grant of conditional authorization pursuant to Section 25200.3, exempted pursuant to subdivision (a) or (c) of Section 25201.5, or exempted pursuant to Section 25144.6 is exempt from the facility fee specified in Section 25205.2 for any activities authorized by the permit-by-rule, under a grant of conditional authorization pursuant to Section 25200.3, exempted pursuant to subdivision (a) or (c) of Section 25201.5, or exempted pursuant to Section 25144.6 at that facility for any year or reporting period during which the facility is operating.

(b) The retroactive portion of the facility fee exemption provided by subdivision (a) does not apply to any facility which was authorized by the department to operate on or before June 1, 1991, for any fees paid or billed prior to September 1, 1992.

(c) The operator of a hazardous waste facility authorized by the department to clean and recycle excavated underground storage

tanks is exempt from the facility fee specified in Section 25205.2 with regard to these activities conducted before January 1, 1994, and these activities conducted after that date, until the effective date of a regulation adopted by the department governing the statewide requirements for the issuance of a permit for tank cleaning and recycling facilities.

(d) The operator of a hazardous waste facility operating pursuant to a standardized permit or a grant of interim status, as specified in Section 25201.6, is exempt from the facility fee specified in Sections 25205.2 and 25205.4 for any year or reporting period prior to January 1, 1993, during which the facility operated, if the hazardous waste treatment or storage activity was conducted prior to January 1, 1993, and the owner or operator is in compliance with the notification and application requirements of Section 25201.6, as amended in the 1993-94 Regular Session of the Legislature, or as amended thereafter, and either of the following circumstances apply:

(1) The owner or operator was not authorized by the department before July 1, 1993, to conduct the eligible treatment or storage activity.

(2) The owner or operator did not pay a hazardous waste facility fee, as specified in Section 25205.2, for that year or reporting period prior to July 1, 1993, for the facility that is the subject of the standardized permit.

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

CHAPTER 1160

An act to amend Sections 25180 and 25185 of the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 25180 of the Health and Safety Code is amended to read:

25180. (a) The standards in this chapter and the regulations adopted by the department to implement this chapter shall be

enforced by the department, any local health officer, or any local public officer, as designated by the director.

(b) (1) In addition to the persons specified in subdivision (a), any traffic officer, as defined by Section 625 of the Vehicle Code, and any peace officer specified in Section 830.1 of the Penal Code, may enforce Section 25160, subdivisions (a) and (e) of Section 25163, subdivision (b) of Section 25169.1, and Sections 25250.8, 25250.18, 25250.19, and 25250.23. Traffic officers and peace officers are authorized representatives of the department for purposes of enforcing the provisions set forth in this subdivision.

(2) A peace officer specified in subdivision (a) of Section 830.37 of the Penal Code may, upon approval of the local district attorney, enforce the standards in this chapter and regulations adopted by the department to implement this chapter. A peace officer authorized to enforce those standards and regulations pursuant to this paragraph shall perform these duties in coordination with the appropriate local health officer or director of environmental health and shall complete a training program which is equivalent to that required by the department for local health officers or local public officers designated by the director pursuant to subdivision (a).

(c) Local health officers, or their representatives, or both, shall enforce the regulations adopted by the department pursuant to Section 25157.3.

(d) Notwithstanding any limitations in subdivision (b), a member of the California Highway Patrol may enforce Sections 25185, 25189, 25189.2, 25189.5, 25191, and 25195, and Article 6 (commencing with Section 25160) and Article 6.5 (commencing with Section 25167.1), as those provisions relate to the transportation of hazardous waste.

(e) In enforcing this chapter, including, but not limited to, the issuance of orders imposing administrative penalties, the referral of violations to prosecutors for civil or criminal prosecution, the settlement of cases, and the adoption of enforcement policies and standards related to those matters, the department shall exercise its enforcement authority in such a manner that generators, transporters, and operators of storage, treatment, transfer, and disposal facilities are treated equally and consistently with regard to the same types of violations.

SEC. 2. Section 25185 of the Health and Safety Code is amended to read:

25185. (a) In order to carry out the purposes of this chapter, any authorized representative of the department or of the local health officer may, at any reasonable hour of the day, or as authorized pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure, do any of the following:

(1) Enter and inspect a factory, plant, construction site, disposal site, transfer facility, or any establishment or any other place or environment where hazardous wastes are stored, handled, processed, disposed of, or being treated to recover resources.

(2) Carry out any sampling activities necessary to carry out this

chapter, including obtaining samples from any individual or taking samples from the property of any person or from any vehicle in which any authorized representative of the department or a local health officer reasonably believes has transported or is transporting hazardous waste. However, upon request, split samples shall be given to the person from whom, or from whose property or vehicle, the samples were obtained.

(3) Stop and inspect any vehicle reasonably suspected of transporting hazardous wastes when accompanied by a uniformed peace officer in a clearly marked vehicle.

(4) Inspect and copy any records, reports, test results, or other information required to carry out this chapter.

(5) Photograph any waste, waste container, waste container label, vehicle, waste treatment process, waste disposal site, or condition constituting a violation of law found during an inspection.

(b) During the inspection, the inspector shall comply with all reasonable security, safety, and sanitation measures. In addition, the inspector shall comply with reasonable precautionary measures specified by the operator.

(c) (1) At the conclusion of the inspection, the inspector shall deliver to the operator of the facility or site a written summary of all violations alleged by the inspector. The inspector shall, prior to leaving the facility or site, deliver the written summary to the operator and shall discuss any questions or observations that the operator might have concerning the inspection.

(2) (A) The inspector shall prepare an inspection report which shall fully detail all observations made at the facility or site, all alleged violations, the factual basis for alleging those violations, and any corrective actions that should be taken by the operator of the facility or site. The inspector shall provide a copy of the inspection report to the operator within five days from the date of the preparation of the inspection report, and, in any event, not later than 65 days from the date of the inspection. The inspection report shall include all pertinent information, including, but not limited to, documents, photographs, and sampling results concerning the alleged violations. The department shall provide this information to the operator with the inspection report, including all photographs taken by the department in the course of the inspection and all laboratory results obtained as a result of the inspection. If sampling or laboratory results are not available at the time that the inspection report is prepared, that fact shall be contained in the report. Those results shall be provided to the operator within 10 working days of their receipt by the department.

(B) The time period required by subparagraph (A) may be extended as a result of a natural disaster, inspector illness, or other circumstances beyond the control of the department, if the department so notifies the operator within 70 days from the date of the inspection and provides the inspection report to the operator in a timely manner after the reason for the delay is ended.

(C) Information from the inspection report, or the report itself, may be withheld by the department if necessary to a criminal investigation or other ongoing investigation in which the department determines, in writing, that disclosure of the information will result in a substantial probability of destruction of evidence, intimidation of witnesses, or other obstruction of justice.

(D) The department shall, at the operator's request, discuss the inspection report with the operator and shall, upon the request of the operator, review the inspection report and determine whether the operator's responses and documented or proposed corrective actions would be sufficient to comply with this chapter, or if any allegation of a violation is unwarranted.

(3) The operator of the site or facility which receives an inspection report pursuant to paragraph (2) shall submit a written response to the department within 60 days of receipt of the inspection report, or within a shorter time as the department may reasonably require, which shall include a statement documenting corrective actions taken by the operator or proposing corrective actions which will be taken by the operator, for purposes of compliance with this chapter, or disputing the existence of the violation. Upon receiving the written response from the operator, the department shall, upon the request of the operator, meet and confer with the operator regarding any questions, concerns, or comments that the operator may have concerning the inspection report. The department shall, within 30 working days from the date of receipt of a response which documents or proposes corrective action, or which disputes the existence of a violation, determine whether the corrective actions documented or proposed to be taken by the operator, if implemented as stated or proposed, will achieve compliance with this chapter, or whether a violation is still alleged, as applicable, and shall submit a written copy of that determination to the operator, in the form of a report of violation or other appropriate document. If the department fails to make the determination and submit a copy of the determination within 30 working days from the date of receipt of the operator's response, the department may not seek penalties for continuing violations or any alleged new violations caused by the corrective actions taken by the operator, until the department submits the determination to the operator and provides the operator with a reasonable time in which to make necessary operational modifications which differ from those proposed to the department.

(d) Whenever information, including, but not limited to, documents, photographs, and sampling results, has been gathered pursuant to subdivision (a), the department shall comply with all procedures established pursuant to Section 25173 and shall notify the person whose facility was inspected prior to public disclosure of the information, and, upon request of that person, shall submit a copy of any information to that person for the purpose of determining whether trade secret information, as defined in Section 25173, or

facility security would be revealed by the information. "Public disclosure," as used in this section, shall not include review of the information by a court of competent jurisdiction or an administrative law judge. That review may be conducted in camera at the discretion of the court or judge.

(e) "Local health officer," as used in this section, means county health officers, city health officers, and district health officers, as defined in this code.

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

CHAPTER 1161

An act to amend Section 4046 of the Business and Professions Code, relating to pharmacy.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 4046 of the Business and Professions Code is amended to read:

4046. (a) In recognition of and consistent with the decisions of the appellate courts of this state, the Legislature hereby declares the practice of pharmacy to be a profession.

(b) Pharmacy practice is a dynamic patient-oriented health service that applies a scientific body of knowledge to improve and promote patient health by means of appropriate drug use and drug-related therapy.

(c) Neither this chapter nor any other provision of law shall be construed to prohibit a registered pharmacist from:

(1) Furnishing to a prescriber a reasonable quantity of compounded medication for prescriber office use.

(2) Transmitting to another registered pharmacist a valid prescription.

(3) Administering, orally or topically, drugs and biologicals pursuant to a prescriber's order.

(4) Performing the following procedures or functions in a licensed health care facility in accordance with policies, procedures,

or protocols developed by health professionals, including physicians and surgeons, pharmacists, and registered nurses, with the concurrence of the facility administrator:

(A) Ordering or performing routine drug therapy related patient assessment procedures including temperature, pulse, and respiration.

(B) Ordering drug therapy related laboratory tests.

(C) Administering drugs and biologicals by injection pursuant to a prescriber's order (the administration of immunizations under the supervision of a prescriber may also be performed outside of a licensed health care facility).

(D) Initiating or adjusting the drug regimen of a patient pursuant to an order or authorization made by the patient's prescriber and in accordance with the policies, procedures, or protocols of the licensed health care facility.

As used in this paragraph, "licensed health care facility" means a facility licensed pursuant to Article 1 (commencing with Section 1250) of Chapter 2 of Division 2 of the Health and Safety Code or a facility, as defined in Section 1250 of the Health and Safety Code, operated by a health care service plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(5) (A) Performing the following procedures or functions as part of the care provided by a health care facility, a licensed clinic in which there is physician oversight, or a provider who contracts with a licensed health care service plan with regard to the care or services provided to the enrollees of that health care service plan, in accordance with policies, procedures, or protocols of that facility, licensed clinic, or health care service plan developed by health professionals, including physicians and surgeons, pharmacists, and registered nurses, that, at a minimum shall require that the medical records of the patient be available to both the patient's prescriber and the licensed pharmacist, and that the procedures to be performed by the licensed pharmacist relate to a condition for which the patient has first seen a physician and surgeon:

(i) Ordering or performing routine drug therapy related patient assessment procedures including temperature, pulse, and respiration.

(ii) Ordering drug therapy related laboratory tests.

(iii) Administering drugs and biologicals by injection pursuant to a prescriber's order (the administration of immunizations under the supervision of a prescriber may also be performed outside of a health care facility).

(iv) Adjusting the drug regimen of a patient pursuant to a specific written order or authorization made by the patient's prescriber for the individual patient, and in accordance with the policies, procedures, or protocols of the health care facility, licensed clinic, or health care service plan. Adjusting the drug regimen does not include substituting or selecting a different drug, except as

authorized by Section 4047.6.

(B) Notwithstanding this paragraph, a patient's prescriber may prohibit by written instruction, any adjustment or change in the patient's drug regimen by the pharmacist.

(C) As used in this paragraph only, "health care facility" means a facility, other than a facility licensed under Division 2 (commencing with Section 1200) of the Health and Safety Code, that is owned or operated by a health care service plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, or by an organization under common ownership or control of the health care service plan; and "licensed clinic" means a clinic licensed pursuant to Article 1 (commencing with Section 1200) of Chapter 1 of Division 2 of the Health and Safety Code.

(D) The policies, procedures, or protocols referred to in this paragraph shall require that the pharmacist function as part of a multidisciplinary group that includes physicians and surgeons and direct care registered nurses. The multidisciplinary group shall determine the appropriate participation of the pharmacist and the direct care registered nurse.

(6) Manufacturing, measuring, fitting to the patient, or selling and repairing, legend medical devices or furnishing instructions to the patient or the patient's representative concerning the use of those devices.

(d) Prior to performing any procedure authorized by paragraph (4) of subdivision (c), a registered pharmacist shall have received appropriate training as prescribed in the policies and procedures of the licensed health care facility. Prior to performing any procedure authorized by paragraph (5) of subdivision (c), a registered pharmacist shall have either (1) successfully completed clinical residency training or (2) demonstrated clinical experience in direct patient care delivery.

(e) Nothing contained in this section shall affect the requirements of existing law relating to maintaining the confidentiality of medical records.

(f) Nothing contained in this section shall affect the requirements of existing law relating to the licensing of a health care facility.

SEC. 2. Section 4046 of the Business and Professions Code is amended to read:

4046. (a) In recognition of and consistent with the decisions of the appellate courts of this state, the Legislature hereby declares the practice of pharmacy to be a profession.

(b) Pharmacy practice is a dynamic patient-oriented health service that applies a scientific body of knowledge to improve and promote patient health by means of appropriate drug use and drug-related therapy.

(c) Neither this chapter nor any other provision of law shall be construed to prohibit a registered pharmacist from:

(1) Furnishing to a prescriber a reasonable quantity of

compounded medication for prescriber office use.

(2) Transmitting to another registered pharmacist a valid prescription.

(3) Administering, orally or topically, drugs and biologicals pursuant to a prescriber's order.

(4) Performing the following procedures or functions in a licensed health care facility in accordance with policies, procedures, or protocols developed by health professionals, including physicians and surgeons, pharmacists, and registered nurses, with the concurrence of the facility administrator:

(A) Ordering or performing routine drug therapy related patient assessment procedures including temperature, pulse, and respiration.

(B) Ordering drug therapy related laboratory tests.

(C) Administering drugs and biologicals by injection pursuant to a prescriber's order (the administration of immunizations under the supervision of a prescriber may also be performed outside of a licensed health care facility).

(D) Initiating or adjusting the drug regimen of a patient pursuant to an order or authorization made by the patient's prescriber and in accordance with the policies, procedures, or protocols of the licensed health care facility.

As used in this paragraph, "licensed health care facility" means a facility licensed pursuant to Article 1 (commencing with Section 1250) of Chapter 2 of Division 2 of the Health and Safety Code or a facility, as defined in Section 1250 of the Health and Safety Code, operated by a health care service plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(5) (A) Performing the following procedures or functions as part of the care provided by a health care facility, a licensed clinic in which there is physician oversight, a home health agency, or a provider who contracts with a licensed health care service plan with regard to the care or services provided to the enrollees of that health care service plan, in accordance with policies, procedures, or protocols of that facility, licensed clinic, home health agency, or health care service plan developed by health professionals, including physicians and surgeons, pharmacists, and registered nurses, that, at a minimum shall require that the medical records of the patient be available to both the patient's prescriber and the licensed pharmacist, and that the procedures to be performed by the licensed pharmacist relate to a condition for which the patient has first seen a physician and surgeon:

(i) Ordering or performing routine drug therapy related patient assessment procedures including temperature, pulse, and respiration.

(ii) Ordering drug therapy related laboratory tests.

(iii) Administering drugs and biologicals by injection pursuant to a prescriber's order, except as part of the care provided by a home

health agency (the administration of immunizations under the supervision of a prescriber may also be performed outside of a health care facility).

(iv) Adjusting the drug regimen of a patient pursuant to a specific written order or authorization made by the patient's prescriber for the individual patient, and in accordance with the policies, procedures, or protocols of the health care facility, licensed clinic, home health agency, or health care service plan. Adjusting the drug regimen does not include substituting or selecting a different drug, except as authorized by Section 4047.6.

(B) Notwithstanding this paragraph, a patient's prescriber may prohibit by written instruction, any adjustment or change in the patient's drug regimen by the pharmacist.

(C) As used in this paragraph only, "health care facility" means a facility, other than a facility licensed under Division 2 (commencing with Section 1200) of the Health and Safety Code, that is owned or operated by a health care service plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, or by an organization under common ownership or control of the health care service plan; "licensed clinic" means a clinic licensed pursuant to Article 1 (commencing with Section 1200) of Chapter 1 of Division 2 of the Health and Safety Code; and "home health agency" means a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2 of the Health and Safety Code.

(D) The policies, procedures, or protocols referred to in this paragraph shall require that the pharmacist function as part of a multidisciplinary group that includes physicians and surgeons and direct care registered nurses. The multidisciplinary group shall determine the appropriate participation of the pharmacist and the direct care registered nurse.

(6) Manufacturing, measuring, fitting to the patient, or selling and repairing, legend medical devices or furnishing instructions to the patient or the patient's representative concerning the use of those devices.

(d) Prior to performing any procedure authorized by paragraph (4) of subdivision (c), a registered pharmacist shall have received appropriate training as prescribed in the policies and procedures of the licensed health care facility. Prior to performing any procedure authorized by paragraph (5) of subdivision (c), a registered pharmacist shall have either (1) successfully completed clinical residency training or (2) demonstrated clinical experience in direct patient care delivery.

(e) Nothing contained in this section shall affect the requirements of existing law relating to maintaining the confidentiality of medical records.

(f) Nothing contained in this section shall affect the requirements of existing law relating to the licensing of a health care facility.

SEC. 3. Section 2 of this bill incorporates amendments to Section

4046 of the Business and Professions Code proposed by both this bill and AB 3173. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 4046 of the Business and Professions Code, and (3) this bill is enacted after AB 3173, in which case Section 1 of this bill shall not become operative.

CHAPTER 1162

An act to amend Section 40913 of, and to add Section 40709.7 to, the Health and Safety Code, relating to air pollution.

[Approved by Governor September 29, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 40709.7 is added to the Health and Safety Code, to read:

40709.7. (a) For the purposes of this section, "military base" means a military base that is designated for closure or downward realignment pursuant to the Defense Base Closure and Realignment Act of 1988 (P.L. 100-526) or the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. Sec. 2687 et seq.).

(b) For the purposes of this section, "base reuse authority" means the authority recognized pursuant to Section 65050 of the Government Code, as added by Assembly Bill 3755 of the 1993-94 Regular Session. If Assembly Bill 3755 is not enacted or does not recognize the authority, "base reuse authority" means the entity which shall be designated for purposes of this section by the California Defense Conversion Council established pursuant to Section 15346.3 of the Government Code.

(c) An appropriate entity of the federal government may apply to the district for emission reduction credits that result from reduced emissions from a military base by June 1, 1995, or within 180 days of the reduction in emissions, whichever occurs later, if the federal government is eligible under district regulations to file and receive emission reduction credits on December 31, 1994.

(d) Not later than July 1, 1995, or six months from the date that the base closure or realignment decision becomes final, whichever occurs last, the district shall request and attempt to obtain all records maintained by a military base that are necessary to quantify emission reductions, including, but not limited to, records on the operation of any equipment which emits air contaminants, provided that the district either waives the payment of direct costs to obtain the records or enters into an agreement with the appropriate entity of the federal government or the base reuse authority for the payment of the direct costs to obtain the records. The district shall maintain

these records.

(e) (1) A base reuse authority may apply to a district, under the emission reductions banking system established pursuant to Section 40709, for any reductions in emissions related to the termination or reduction of operations at the military base under its jurisdiction.

(2) The district shall quantify and bank the emission reductions for a closing or realigning military base within 180 days of a request by a base reuse authority and payment of any applicable fees, if one of the following events has occurred:

(A) The federal government agrees in writing to allow the base reuse authority to apply for and receive the emission reduction credits.

(B) The time period for the federal government to apply for emission reduction credits pursuant to subdivision (c) has expired and the federal government has not applied for the credits.

(C) The base reuse authority has, pursuant to other legal means, obtained the authority to acquire the emission reduction credits.

(f) The district shall permanently retire the emission reduction credits obtained pursuant to this section by 5 percent to improve air quality.

(g) The baseline for quantifying emission reductions shall be the date that the base closure or realignment decision becomes final. The two-year period ending on the date that the base closure or realignment decision was made shall be used to determine average emissions from the military base unless this two-year period is not representative of normal operations, in which case an alternative, consecutive, two-year period which is within the five years prior to the baseline date may be used, as determined by the district.

(h) After registration, certification, or other approval of the emission reductions by a district air pollution control officer pursuant to subdivision (a) of Section 40709 and this section, the base reuse authority shall be deemed the owner of the emissions source for purposes of the issuance of a certificate pursuant to Section 40710. Upon receipt of the certificate, or other approval, the base reuse authority may use, sell, or otherwise dispose of the emission reduction credits as determined by the base reuse authority, provided that the credits may only be used for base reuse within the jurisdiction of the district.

SEC. 2. Section 40913 of the Health and Safety Code is amended to read:

40913. (a) Each district plan shall be designed to achieve and maintain the state standards by the earliest practicable date, as determined by the district and subject to the approval of the state board, and in consideration of all relevant factors, including, but not limited to, the following:

(1) Present and projected maximum ambient pollutant concentration.

(2) Distribution and frequency of violations.

(3) Transport contributions.

(4) Projected emission increases based on industrial, vehicular, or population growth.

(5) Emission inventory characteristics.

(6) Anticipated effectiveness of available and potential control measures.

(7) Emission reductions occurring in, or expected to occur in, the district.

(8) In districts where military bases have closed or are scheduled for closure, the reuse plans for the closing base.

(b) Each district plan shall be based upon a determination by the district board that the plan is a cost-effective strategy to achieve attainment of the state standards by the earliest practicable date.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1163

An act to amend Sections 44559, 44559.1, 44559.2, and 44559.4 of the Health and Safety Code, relating to the California Pollution Control Financing Authority Act.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 44559 of the Health and Safety Code is amended to read:

44559. (a) The Legislature finds and declares that small businesses engaged in manufacturing or other operations are responsible for a significant amount of environmental emissions in the state, but are less able than larger businesses to afford the investment in new equipment or process modifications needed to comply with environmental regulations, both with regard to controlling emissions and preventing the creation of pollutants, contaminants, or waste products. Additionally, small businesses faced with financial pressures will be likely to reduce expenditures to achieve environmental compliance. Better access to capital will allow small businesses to more easily comply with environmental mandates, to the benefit of all the residents of the state.

(b) The Legislature also finds and declares that it is in the best interest of the state to expand the Capital Access Loan Program for

small business. Small businesses have difficulty gaining access to capital for startup and expansion purposes. Small businesses owned by minorities and women have special capital access difficulties. In addition, small businesses operating in areas affected by military base closures are disadvantaged by limited access to capital. The Legislature finds that improving access to capital for these small businesses will spur investment, create jobs, expand economic opportunities, assist in the recovery of communities affected by defense and aerospace losses, and help sustain and strengthen economic recovery in California.

SEC. 2. Section 44559.1 of the Health and Safety Code is amended to read:

44559.1. As used in this article, unless the context requires otherwise:

(a) "Authority" means the California Pollution Control Financing Authority.

(b) "California Capital Access Fund" means a fund created within the authority to be used for purposes of the program.

(c) "Executive director" means the Executive Director of the California Pollution Control Financing Authority.

(d) "Financial institution" means a federal or state-chartered bank, savings association, credit union, or a consortium of these entities.

(e) "Loss reserve account" means an account in the State Treasury or any financial institution that is established and maintained by the authority for the benefit of a financial institution participating in the Capital Access Loan Program established pursuant to this article for the purpose of the following:

(1) Depositing all required fees paid by the participating financial institution and the qualified business.

(2) Depositing contributions made by the state and, if applicable, the federal government or other sources.

(3) Covering losses on enrolled qualified loans sustained by the participating financial institution by disbursing funds accumulated in the loss reserve account.

(f) "Participating financial institution" means a financial institution that has been approved by the authority to enroll qualified loans in the program and has agreed to all terms and conditions set forth in this article and as may be required by any applicable federal law providing matching funding.

(g) "Passive real estate ownership" means ownership of real estate for the purpose of deriving income from speculation, trade, or rental, but does not include any of the following:

(1) The ownership of that portion of real estate being used or intended to be used for the operation of the business of the owner of the real estate.

(2) The ownership of real estate for the purpose of construction or renovation, until the completion of the construction or renovation phase.

(h) "Program" means the Capital Access Loan Program created pursuant to this article.

(i) "Qualified business" means a small business concern that meets both of the following criteria:

(1) It is a corporation, partnership, cooperative, or other entity, whether that entity is a nonprofit entity or an entity established for profit, that is authorized to conduct business in the state.

(2) It has its primary business location within the boundaries of the state.

(j) "Qualified loan" means a loan or a portion of a loan made by a participating financial institution to a qualified business for any business activity that has its primary economic effect in California. A qualified loan may be made in the form of a line of credit, in which case the amount of the loan enrolled shall be considered to be the maximum amount that can be drawn against the line of credit. A qualified loan made under the program may be made with such interest rates, fees, and other terms and conditions as agreed upon by the participating financial institution and the borrower. "Qualified loan" does not include any of the following:

(1) A loan for the construction or purchase of residential housing.

(2) A loan to finance passive real estate ownership.

(3) A loan for the refinancing of an existing loan when and to the extent that the outstanding balance is not increased.

(4) A loan, the proceeds of which will be used in any manner that could cause the interest on any bonds previously issued by the authority to become subject to federal income tax.

(k) "Severely affected community" means any area classified as an enterprise zone pursuant to the Enterprise Zone Act (Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code), any area, as designated by the executive director, contiguous to the boundaries of a military base designated for closure pursuant to Public Law 101-150, as amended, and any other comparable economically distressed geographic area so designated by the executive director from time to time.

(l) "Small Business Assistance Fund" means a fund created within the authority that may only be used to pay the authority's contribution to a loss reserve account for a qualified small business that has operations that affect the environment.

(m) "Small business concern" has the same meaning as in Section 3 of the Small Business Act (15 U.S.C. Sec. 631 et seq.), or as otherwise provided in regulations of the authority.

SEC. 3. Section 44559.2 of the Health and Safety Code is amended to read:

44559.2. (a) The authority may contract with any financial institution for the purpose of allowing the financial institution to participate in the Capital Access Loan Program established by this article.

(b) For purposes of this section, the authority may contract with participating financial institutions and shall utilize a standard form

of contract that is reviewed and approved by the Department of General Services. The standard form of contract shall provide for all of the following:

(1) The creation of a loss reserve account by the authority for the benefit of the financial institution.

(2) The financial institution, qualified business, and the authority will deposit moneys to the credit of the institution's loss reserve account when the financial institution makes a qualified loan to a qualified business.

(3) The liability of the state and the authority to the financial institution under the contract is limited to the amount of money credited to the loss reserve account of the institution.

(4) The financial institution shall provide the information that the authority may require, including financial information that is identifiable with, or identifiable from the financial records of a particular customer who is the recipient of a qualified loan. In addition to any other information that the authority may require, the financial institution shall provide the complete Standard Industrial Classification (SIC) code for the qualified business and information that provides the precise geographic location of both the qualified business and the borrower, if different.

(5) The financial institution will file a report with the executive director setting out a full description of the board of directors, including size, race, ethnicity, and gender.

(6) The participating financial institution will require each borrower, prior to receiving a loan under the program, to sign a written representation to the participating financial institution that the borrower has no legal, beneficial, or equitable interest in the nonrefundable premium charges or any other funds credited to the loss reserve account established by the authority for the participating financial institution.

(7) Other terms that the authority may require for purposes of this article.

(8) Any qualified business loan under the program that receives matching contributions from the Small Business Assistance Fund shall be to a business that has operations that affect the environment of the state by producing air, water, solid waste, or hazardous waste products or emissions, or otherwise affects the environment.

(c) A financial institution is not subject to laws restricting the disclosure of financial information when the financial institution provides information to the authority as required by paragraph (4) of subdivision (b).

(d) A credit union operating pursuant to a certificate issued under the California Credit Union Law (Division 5 (commencing with Section 14000) of the Financial Code) may participate in the Capital Access Loan Program established pursuant to this article only to the extent participation is in compliance with the California Credit Union Law. Nothing in this article shall be construed to limit the authority of the Commissioner of Corporations to regulate credit

unions subject to the commissioner's jurisdiction under the California Credit Union Law.

(e) Any individual, company, corporation, institution, utility, government agency, or other entity, including any consortium of these persons or entities, whether public or private, may participate in the Capital Access Loan Program established pursuant to this article by depositing funds in the California Capital Access Fund under those terms and conditions as may be deemed appropriate by the authority.

SEC. 4. Section 44559.4 of the Health and Safety Code is amended to read:

44559.4. (a) When a financial institution participates in the Capital Access Loan Program established pursuant to this article, if the financial institution decides to enroll a qualified loan under the program in order to obtain the protection against loss provided by its loss reserve account, the financial institution shall notify the authority in writing on a form prescribed by the authority, within 10 days after the date on which the loan is made, of all of the following:

- (1) The disbursement of the loan.
- (2) The dollar amount of the loan enrolled.
- (3) The interest rate applicable to and the term of the loan.
- (4) The amount of the agreed upon premium.

(b) The financial institution may make a qualified loan to be enrolled under the program to an individual, or to a partnership or trust wholly owned or controlled by an individual, for the purpose of financing property that will be leased to a qualified business that is wholly owned by that individual. In that case, the property shall be treated as meeting the requirements of paragraph (1) of subdivision (f) of Section 44559.1.

(c) When making a qualified loan that will be enrolled under the program, the participating financial institution shall require the qualified business to which the loan is made to pay a fee of not less than 2 percent of the principal amount of the loan, but not more than 3½ percent of such principal amount. The financial institution shall also pay a fee in an amount equal to the fee paid by the borrower. The financial institution shall deliver the fees collected under this subdivision to the authority for deposit in the loss reserve account for the institution. The financial institution may recover from the borrower the cost of its payments to the loss reserve account through the financing of the loan, upon the agreement of the financial institution and the borrower.

(d) When depositing fees collected under subdivision (c) to the credit of the loss reserve account for a participating financial institution, the authority shall do the following:

(1) If no matching funds are available under a federal capital access program or other source, the authority shall transfer to the loss reserve account an amount that is not less than the total amount of the combined fees paid by the borrower and the participating financial institution. However, if the qualified business is located

within a severely affected community, the authority shall transfer to the loss reserve account an amount equal to 150 percent of the total amount of the fees paid by the borrower and the participating financial institution.

(2) If matching funds are available under a federal capital access program or other source, the authority shall transfer, on an immediate or deferred basis, to the loss reserve account the amount required by that federal program or other source. However, the total amount deposited into the loss reserve account shall not be less than the amount which would have been deposited in the absence of matching funds.

CHAPTER 1164

An act to amend Sections 50199.10, 50199.12, 50199.13, 50199.14, 50199.15, 50199.18, 50199.20, and 50199.22 of, to amend and renumber Sections 50176, 50185, 50195, 50199.5, 50199.6, 50199.7, 50199.8, and 50199.9 of, to amend and renumber the heading of Article 2 (commencing with Section 50175) of Chapter 3.5 of Part 1 of Division 31 of, to amend and renumber the heading of Article 4 (commencing with Section 50197) of Chapter 3.5 of Part 1 of Division 31 of, to add Section 50900.1 to, to repeal Sections 50177, 50186, 50187, 50188, 50189, 50190, 50190.1, 50191, 50191.5, 50192, 50193, 50193.5, 50194, 50196, 50197, and 50199.19 of, to repeal Article 1 (commencing with Section 50171) of Chapter 3.5 of Part 1 of Division 31 of, and to repeal the heading of Article 3 (commencing with Section 50185) of Chapter 3.5 of Part 1 of Division 31 of, the Health and Safety Code, and to amend Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code, relating to housing.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Article 1 (commencing with Section 50171) of Chapter 3.5 of Part 1 of Division 31 of the Health and Safety Code is repealed.

SEC. 2. The heading of Article 2 (commencing with Section 50175) of Chapter 3.5 of Part 1 of Division 31 of the Health and Safety Code is amended and renumbered to read:

Article 1. Definitions and General Provisions

SEC. 3. Section 50176 of the Health and Safety Code is amended and renumbered to read:

50172. As used in this chapter, the following terms have the following meanings:

(a) "Certificate credit rate" means the rate of the credit allowed by this chapter which is specified in the mortgage credit certificate.

(b) "Certified indebtedness amount" means the amount of indebtedness which meets both of the following criteria:

(1) Is incurred by the taxpayer for any of the following purposes:

(A) To acquire the principal residence of the taxpayer.

(B) As a qualified home improvement loan, as defined by Section 103A(l)(6) of Title 26 of the United States Code, on that residence.

(C) As a qualified rehabilitation loan, as defined by Section 103A(l)(7) of Title 26 of the United States Code.

(2) Is specified in the mortgage credit certificate.

(c) "Committee" means the California Debt Limit Allocation Committee established pursuant to Section 50199.8.

(d) "Federal act" means, for purposes of mortgage credit certificates, Section 612 of the Tax Reform Act of 1984 (Public Law 98-369).

(e) "Issuer" means a state agency or local agency and includes a redevelopment agency, housing authority or other local entity, authorized by state law to issue qualified mortgage bonds, to which the committee has assigned an allocation under this chapter.

(f) "Mortgage credit certificate" means any certificate which does all of the following:

(1) Is issued under a qualified mortgage credit certificate program by a state or local agency that has authority to issue qualified mortgage bonds to provide financing on the principal residence of a taxpayer.

(2) Is issued to a taxpayer by a state or local agency in connection with the acquisition, qualified rehabilitation, or qualified home improvement of the taxpayer's principal residence.

(3) Specifies the certificate credit rate and the certified indebtedness amount.

(g) "Mortgage credit certificate program" means any program established by the state or a local agency for any calendar year in which the state or a local agency is authorized to issue qualified mortgage bonds and under which the issuing agency elects not to issue an amount of qualified mortgage bonds it may otherwise issue during the calendar year.

SEC. 4. Section 50177 of the Health and Safety Code is repealed.

SEC. 5. The heading of Article 3 (commencing with Section 50185) of Chapter 3.5 of Part 1 of Division 31 of the Health and Safety Code is repealed.

SEC. 6. Section 50185 of the Health and Safety Code is amended and renumbered to read:

50199.8. The committee is composed of the Governor, or in the Governor's absence, the Director of Finance, the Controller, and the Treasurer. The Director of Housing and Community Development, the Executive Director of the California Housing Finance Agency, and two representatives of local government, one representative of the counties appointed by the Senate Rules Committee, and one

representative of the cities appointed by the Speaker of the Assembly shall serve as *ex officio*, nonvoting members. The Treasurer shall be the chairperson of the committee. The members of the committee shall serve without compensation. A majority of voting members shall be empowered to act for the committee. The committee may employ an executive director to carry out its duties under this chapter. The committee may delegate to the executive director the authority to enter contracts on behalf of the committee.

SEC. 7. Section 50186 of the Health and Safety Code is repealed.

SEC. 8. Section 50187 of the Health and Safety Code is repealed.

SEC. 9. Section 50188 of the Health and Safety Code is repealed.

SEC. 10. Section 50189 of the Health and Safety Code is repealed.

SEC. 11. Section 50190 of the Health and Safety Code is repealed.

SEC. 12. Section 50190.1 of the Health and Safety Code is repealed.

SEC. 13. Section 50191 of the Health and Safety Code is repealed.

SEC. 14. Section 50191.5 of the Health and Safety Code is repealed.

SEC. 15. Section 50192 of the Health and Safety Code is repealed.

SEC. 16. Section 50193 of the Health and Safety Code is repealed.

SEC. 17. Section 50193.5 of the Health and Safety Code is repealed.

SEC. 18. Section 50194 of the Health and Safety Code is repealed.

SEC. 19. Section 50195 of the Health and Safety Code is amended and renumbered to read:

50199.9. (a) The committee shall establish and charge fees which it determines are reasonably sufficient to cover all of the costs of the committee in carrying out its responsibilities under this chapter and Chapter 3.6 (commencing with Section 50199.4). The Mortgage Bond and Tax Credit Allocation Fee Account in the General Fund is hereby renamed the Tax Credit Allocation Fee Account. The fees shall be deposited by the committee in the Tax Credit Allocation Fee Account and shall be available, upon appropriation by the Legislature, to the committee for the purpose of covering all of those costs, except that fees may be shared, in an amount determined by the committee, with any state or local agency that assists the committee in performing its duties.

(b) Funds deposited in the Tax Credit Allocation Fee Account are continuously appropriated without regard to fiscal year for purposes of sharing with state and local agencies pursuant to subdivision (a).

(c) Until the time that sufficient fee revenue is received by the committee, the committee may borrow any money as may be required for the purpose of meeting necessary expenses of the operation of the committee, not to exceed the amount appropriated. Any loan made to the committee pursuant to this subdivision shall be repayable solely from moneys appropriated to the committee from the Tax Credit Allocation Fee Account and shall not constitute a general obligation for which the faith and credit of the state are pledged.

(d) There shall be established a subaccount within the Tax Credit Allocation Fee Account named the Occupancy Compliance Monitoring Account.

(e) Fees collected for the purpose of paying the costs of monitoring projects with allocations of tax credits for compliance with federal and state law, as required by Section 42(m) of the federal Internal Revenue Code, and Section 50199.15, shall be deposited in the Occupancy Compliance Monitoring Account to be used solely for this purpose. Any performance deposits forfeited to the committee shall be deposited in the Occupancy Compliance Monitoring Account.

SEC. 20. Section 50196 of the Health and Safety Code is repealed.

SEC. 21. The heading of Article 4 (commencing with Section 50197) of Chapter 3.5 of Part 1 of Division 31 of the Health and Safety Code is amended and renumbered to read:

Article 2. Mortgage Credit Certificates

SEC. 22. Section 50197 of the Health and Safety Code is repealed.

SEC. 23. Section 50199.5 of the Health and Safety Code is amended and renumbered to read:

50199.2. Any issuer that establishes a mortgage credit certificate program may charge a fee which is reasonably sufficient to cover the costs of administering that program.

SEC. 24. Section 50199.6 of the Health and Safety Code is amended and renumbered to read:

50199.4. The Legislature hereby finds and declares all of the following:

(a) The federal Tax Reform Act of 1986 (Public Law 99-514) and subsequent amendments to the Internal Revenue Code, including, but not limited to, the federal Revenue Reconciliation Act of 1989, establishes a low-income housing tax credit to stimulate the production and rehabilitation of shelter for lower income individuals and families.

(b) The federal law allows credit of approximately 9 percent each year over a 10-year or 15-year period for expenses for new construction and rehabilitation of each qualifying low-income unit. A credit of approximately 4 percent each year over a 10-year or 15-year period is provided for the expenses of the acquisition of an existing building generally not placed in service within the last 10 years, and the construction and rehabilitation of each qualifying low-income unit financed with tax-exempt bonds or certain other federal subsidies.

(c) The federal law limits the low-income housing tax credits that can be annually allocated by each state. This credit authorization is to be allocated by the state housing credit agency. Not less than 10 percent of that amount is required to be set aside for projects involving nonprofit organizations.

(d) Federal law requires a plan for allocation of credit among

projects, including selection criteria to be used to determine housing priorities that are appropriate to local conditions.

(e) Federal law requires that the credit dollar amount allocated to a project not exceed the amount necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period. This analysis shall include a determination of the reasonableness of developmental and operational costs.

(f) The credit agency is required to perform certain other functions under federal tax law to ensure the availability of the credits and to ensure compliance with federal tax law.

(g) It is necessary to designate the state housing credit agency and to establish an allocation system for the low-income housing credit.

SEC. 25. Section 50199.7 of the Health and Safety Code is amended and renumbered to read:

50199.5. The Legislature hereby finds and declares all of the following:

(a) Section 42 of the Internal Revenue Code has been modified by the federal Revenue Reconciliation Act of 1989 to require that the housing credit agency establish a qualified allocation plan which sets forth selection criteria to be used to determine housing priorities that are appropriate to local conditions, and which gives preference in allocating housing credit dollar amounts to projects serving the lowest income tenants and projects obligated to serve low-income tenants for the longest periods.

(b) The qualified allocation plan shall encompass and incorporate the criteria and requirements set forth in Section 50199.14.

(c) Certain provisions of the California Tax Credit should be modified to conform to the changes to the federal low-income housing tax credit.

(d) The Tax Credit Allocation Committee should, to the extent possible, allocate the California low-income housing tax credit using the same criteria and requirements used in allocating the federal tax credit.

(e) The public interest is best served by the dissemination of information regarding the low-income housing tax credit program to all areas of the state, with special efforts in rural areas, to ensure greater knowledge and participation in the program.

SEC. 26. Section 50199.8 of the Health and Safety Code is amended and renumbered to read:

50199.6. (a) This chapter is enacted to implement the low-income housing tax credit established by Section 42 of the Internal Revenue Code (26 U.S.C. Sec. 42) as it may be amended from time to time.

(b) To the extent that any provision of this chapter is held to be inconsistent with, or repugnant to, federal law, the provision shall be given effect in accordance with its terms to the greatest extent possible and consistent with the federal law and inconsistency shall have no effect on the remaining provisions of this chapter.

SEC. 27. Section 50199.9 of the Health and Safety Code is amended and renumbered to read:

50199.7. As used in this chapter:

(a) "Committee" means the Mortgage Bond and Tax Credit Allocation Committee, which is renamed the California Tax Credit Allocation Committee. All references to "committee" shall mean the California Tax Credit Allocation Committee.

(b) "Housing credit" means the tax credit for low-income rental housing provided under Section 42 of the federal Internal Revenue Code (26 U.S.C. Sec. 42).

(c) "Housing credit applicant" means any owner, sponsor, or developer of a qualifying low-income building or project who applies to the committee for either of the following:

(1) An allocation of a portion of the current state housing credit ceiling.

(2) A reservation of a portion of the anticipated state housing credit ceiling of a subsequent year.

(d) "Housing credit ceiling" means the amount specified in Section 42(h)(3)(C) of the federal Internal Revenue Code. (26 U.S.C. Sec. 42(h)(3)(C)).

(e) "Qualified low-income building" or "project" has the meaning specified in Section 42(c)(2) of the federal Internal Revenue Code (26 U.S.C. Sec. 42(c)(2)).

SEC. 28. Section 50199.10 of the Health and Safety Code is amended to read:

50199.10. (a) For purposes of allocating low-income housing credits, the committee is hereby designated as this state's only housing credit agency for purposes of Section 42(h) of the federal Internal Revenue Code (26 U.S.C. Sec. 42(h)). The committee shall annually determine and shall allocate the state ceiling in accordance with this chapter and in conformity with federal law. The committee shall determine the housing credit ceiling as soon as possible following the effective date of this chapter and thereafter following the commencement of each calendar year. The committee shall undertake any and all responsibilities of housing credit agencies under Section 42 of Title 26 of the United States Code, including entering into regulatory agreements relating to projects that are granted awards.

(b) The committee shall develop and provide application forms for use by housing credit applicants. The committee shall adopt uniform procedures for submission and review of applications of housing credit applicants, including fees to defray the committee's costs in administering this chapter. In the committee's discretion, the fees shall be charged to a housing credit applicant as a condition of submitting an application or as a condition of receiving an allocation or reservation of the state's current or anticipated housing credit ceiling, or both.

(c) In addition to allocating the current housing credit ceiling, the committee may reserve a portion of the state's anticipated housing

credit ceiling for a subsequent year for a housing credit applicant.

(d) As a condition to making an allocation of the housing credit ceiling or a reservation of the anticipated housing credit ceiling for a subsequent year, the committee may require the housing credit applicant receiving the allocation or reservation to deposit with the committee an amount of money as a good-faith undertaking. The committee shall adopt policies for determining when deposits will be required, prescribing procedures for return of deposits, and specifying the circumstances under which the deposits will be forfeited in whole or in part for failure to timely utilize the allocation or reservation provided to the housing credit applicant.

(e) (1) The committee may make any allocation or reservation of the state's housing credit ceiling to a housing credit applicant subject to terms and conditions in furtherance of the purposes of this part. The committee may condition an allocation or reservation on the execution of a contract between the housing credit applicant and the committee requiring the housing credit applicant to comply with all the terms of Section 42 of the federal Internal Revenue Code, any applicable state laws, and any additional requirements the committee deems necessary or appropriate to serve the purposes of this chapter, and providing for legal action to obtain specific performance or monetary damages for breach of contract.

(2) No allocations or reservations shall be made pursuant to this subdivision with respect to projects that do not meet the requirements of the qualified allocation plan, and no allocations or reservations shall be made in amounts that do not meet the requirements of paragraph (2) of subsection (m) of Section 42 of Title 26 of the United States Code.

SEC. 29. Section 50199.12 of the Health and Safety Code is amended to read:

50199.12. The committee shall adopt and supply forms for eliciting information for purposes of this chapter from housing credit applicants. Housing credit applicants shall provide the committee with any information requested by the committee in performing its duties and responsibilities under this chapter.

SEC. 30. Section 50199.13 of the Health and Safety Code is amended to read:

50199.13. Except as specified in the application and as approved by the committee at initial reservation, no allocation or reservation of the housing credit ceiling under this chapter may be transferred by the housing credit applicant, unless the specific, written approval of the committee is obtained prior to the proposed transfer. Any transfer of an allocation or reservation shall be in writing and shall be subject to terms and conditions established by the committee.

SEC. 31. Section 50199.14 of the Health and Safety Code is amended to read:

50199.14. (a) The committee shall allocate the housing credit on a regular basis consisting of two or more periods in each calendar year during which applications may be filed and considered. The

committee shall establish application filing deadlines, the maximum percentage of federal and state low-income housing tax credit ceiling that may be allocated by the committee in that period, and the approximate date on which allocations shall be made. If the enactment of federal or state law, or the adoption of rules or regulations, or other similar events prevent the use of two allocation periods, the committee may reduce the number of periods and adjust the filing deadlines, maximum percentage of credit allocated, and the allocation dates.

(b) The committee shall adopt a qualified allocation plan, as provided in paragraph (1) of subsection (m) of Section 42 of Title 26 of the United States Code. In adopting this plan, the committee shall comply with the provisions of subparagraphs (B) and (C) of paragraph (1) of subsection (m) of Section 42 of Title 26 of the United States Code.

(c) In order to promote the provision of affordable low-income housing within and throughout the state, the committee shall allocate housing credits in accordance with the qualified allocation plan and regulations, which shall include the following provisions:

(1) All housing credit applicants shall demonstrate at the time the application is filed with the committee, that the project meets the following threshold requirements:

(A) The housing credit applicant shall demonstrate there is a need and demand for low-income housing in the community or region for which it is proposed.

(B) The project's proposed financing, including tax credit proceeds, shall be sufficient to complete the project and that the proposed operating income shall be adequate to operate the project for the extended use period.

(C) The project shall have enforceable financing commitments, either construction or permanent financing, for at least 50 percent of the total estimated financing of the project.

(D) The housing credit applicant shall have and maintain control of the site for the project.

(E) The housing sponsor shall demonstrate that the project complies with all applicable local land use and zoning ordinances.

(F) The housing credit applicant shall demonstrate that the project development team has the experience and the financial capacity to ensure project completion and operation for the extended use period.

(G) The housing credit applicant shall demonstrate the amount of tax credit that is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the extended use period, taking into account operating expenses, supportable debt service, reserves, funds set aside for rental subsidies, and required equity, and a development fee that does not exceed a specified percentage of the eligible basis of the project prior to inclusion of the development fee in the basis, as determined by the committee.

(2) The committee shall give a preference to those projects satisfying all of the threshold requirements of paragraph (1) if:

(A) The project serves the lowest income tenants at rents affordable to those tenants; and

(B) The project is obligated to serve qualified tenants for the longest period.

(3) In addition to the provisions of paragraphs (1) and (2) of subdivision (c), the committee shall use the following criteria in allocating housing credits:

(A) Projects serving large families in which a substantial number, as defined by the committee, of all residential units are comprised of low-income units with three and more bedrooms.

(B) Projects providing single room occupancy units serving very low income tenants.

(C) Existing projects that are "at risk of conversion," as defined by paragraph (4) of subdivision (c) of Section 17058 of the Revenue and Taxation Code.

(D) Projects for which a public agency provides direct or indirect long-term financial support for at least 15 percent of the total project development costs or projects for which the owner's equity constitutes at least 30 percent of the total project development costs.

(E) Projects that provide tenant amenities not generally available to residents of low-income housing projects.

(d) For purposes of allocating credits pursuant to this section, the committee shall not give preference to any project by virtue of the date of submission of its application, except to break a tie when two or more of the projects have the same rating.

(e) The committee shall allocate credits to a project under this section prior to allocating credit to that project under Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code.

(f) The committee shall allocate credits to a project only if the housing sponsor enters into a regulatory agreement that provides for an "extended use period" as defined in subparagraph (D) of paragraph (6) of subsection (h) of Section 42 of the Internal Revenue Code, which shall terminate on the date specified in the regulatory agreement or the date the project is acquired in foreclosure, including any instrument in lieu of foreclosure, whichever occurs first, and subclause (II) of subparagraph (E) of clause (i) of paragraph (6) of subsection (h) of Section 42 shall not apply.

SEC. 32. Section 50199.15 of the Health and Safety Code is amended to read:

50199.15. (a) The committee shall annually submit to the Legislature by April 1 of each year a report specifying, with respect to its activities under this chapter during the previous calendar year, (1) the total amount of low-income housing credits allocated by the committee, (2) the total number of units assisted by the credit that are, or are to be, occupied by households whose income is 60 percent or less of area median gross income, (3) the amount of the credit allocated to each project, the other financing available to the project,

and the number of units that are, or are to be, therein occupied by households whose income is 60 percent or less of area median gross income, and (4) sufficient information to identify the project.

(b) The committee shall also include in its annual report to the Legislature, an aggregation of the information which shall be submitted annually by housing sponsors for all projects which have received an allocation in previous years, specifying all of the following:

- (1) Information sufficient to identify the project.
- (2) The total number of units in the project.
- (3) The total number of units assisted by the credit that are required to be occupied by households whose income is 60 percent or less of the area median gross income as a condition of receiving a tax credit.
- (4) The total number of units assisted by the credit that are occupied by households whose income is 60 percent or less of the area median gross income.

(c) The committee shall also include in its annual report to the Legislature, any recommendations for improvement in the low-income housing tax credit.

SEC. 33. Section 50199.18 of the Health and Safety Code is amended to read:

50199.18. This chapter shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date. However, repeal of this chapter shall not invalidate or in any way affect the duration of any previously allocated low-income tax credits.

SEC. 34. Section 50199.19 of the Health and Safety Code is repealed.

SEC. 35. Section 50199.20 of the Health and Safety Code is amended to read:

50199.20. (a) Not less than 20 percent of the federal ceiling on low-income housing tax credits shall be set aside for allocation to rural areas as defined in Section 50199.21. Any amount of credit set aside for rural areas remaining after the ranking of credits in the final cycle of any calendar year shall be available for allocation to any eligible project.

(b) Up to 2 percent of the low-income housing tax credit available under this chapter and Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code may be set aside for small developments as determined by the committee. Any amount of credit set aside for small developments remaining after the ranking of projects in the final cycle of any calendar year shall be available for allocation to any eligible project.

SEC. 36. Section 50199.22 of the Health and Safety Code is amended to read:

50199.22. (a) Upon being informed that information, supplied by a housing credit applicant, or any person acting on behalf of a

housing credit applicant, pursuant to this chapter or Section 12206, 17058, or 23610.5 of the Revenue and Taxation Code, is false or is no longer true, upon finding that false information has been submitted or the information submitted is no longer true.

(b) Appropriate action, which the committee may pursue upon finding that false information or information that is no longer true is submitted in connection with a housing credit application, includes the following:

(1) Requiring the submission of certified, notarized, or third-party documents in support of the application.

(2) Rejecting the application.

(3) Cancelling a reservation of housing credits.

(4) Bringing a judicial action to enjoin the use of the federal housing credit and the state tax credit authorized by Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code.

(5) Disqualifying the housing credit applicant, its principals, and any person acting on behalf of the housing credit applicant from filing applications with the committee for a one-year period.

(6) Reporting promptly, in writing, to the Internal Revenue Service and the Franchise Tax Board, any noncompliance with federal and state requirements or misrepresentations the committee finds were made by the housing credit applicant or any person acting on behalf of a housing credit applicant, pursuant to subdivision (a).

SEC. 37. Section 50900.1 is added to the Health and Safety Code, to read:

50900.1. All statutory references to the California Housing Finance Agency are hereby deemed to refer to the California Housing and Infrastructure Finance Agency.

SEC. 38. Section 12206 of the Revenue and Taxation Code is amended to read:

12206. (a) (1) There shall be allowed as a credit against the "tax" (as defined by Section 12201) a state low-income housing tax credit in an amount equal to the amount determined in subdivision (c), computed in accordance with Section 42 of the Internal Revenue Code, except as otherwise provided in this section.

(2) "Taxpayer," for purposes of this section, means the sole owner in the case of a C corporation, the partners in the case of a partnership, and the shareholders in the case of an S corporation.

(3) "Housing sponsor," for purposes of this section, means the sole owner in the case of a C corporation, the partnership in the case of a partnership, and the S corporation in the case of an S corporation.

(b) (1) The amount of the credit allocated to any housing sponsor shall be authorized by the California Tax Credit Allocation Committee, or any successor thereof, based on a project's need for the credit for economic feasibility in accordance with the requirements of this section.

(A) The low-income housing project shall be located in California and shall meet either of the following requirements:

(i) The project's housing sponsor shall have been allocated by the

California Tax Credit Allocation Committee a credit for federal income tax purposes under Section 42 of the Internal Revenue Code.

(ii) It shall qualify for a credit under Section 42(h) (4) (B) of the Internal Revenue Code.

(B) The California Tax Credit Allocation Committee shall not require fees for the credit under this section in addition to those fees required for applications for the tax credit pursuant to Section 42 of the Internal Revenue Code. The committee may require a fee if the application for the credit under this section is submitted in a calendar year after the year the application is submitted for the federal tax credit.

(2) (A) The California Tax Credit Allocation Committee shall certify to the housing sponsor the amount of tax credit under this section allocated to the housing sponsor for each credit period.

(B) In the case of a partnership or an S corporation, the housing sponsor shall provide a copy of the California Tax Credit Allocation Committee certification to the taxpayer.

(C) The taxpayer shall attach a copy of the certification to any return upon which a tax credit is claimed under this section.

(D) In the case of a failure to attach a copy of the certification for the year to the return in which a tax credit is claimed under this section, no credit under this section shall be allowed for that year until a copy of that certification is provided.

(E) All elections made by the taxpayer pursuant to Section 42 of the Internal Revenue Code shall apply to this section.

(F) No credit shall be allocated under this section to buildings located in a difficult development area or a qualified census tract as defined in Section 42 of the Internal Revenue Code for which the eligible basis of a new building or the rehabilitation expenditure of an existing building is 130 percent of that amount pursuant to Section 42(d) (5) (C) of the Internal Revenue Code, unless the committee reduces the amount of federal credit, with the approval of the applicant, so that the combined amount of federal and state credit shall not exceed the total credit allowable pursuant to this section and Section 42(b) of the Internal Revenue Code, computed without regard to Section 42(d) (5) (C) of the Internal Revenue Code.

(c) Section 42(b) of the Internal Revenue Code shall be modified as follows:

(1) In the case of any qualified low-income building that receives an allocation after 1989 and is a new building not federally subsidized, the term "applicable percentage" means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are not federally subsidized for the taxable year, determined in accordance with the requirements of Section 42(b) (2) of the Internal Revenue Code, in lieu of the percentage prescribed in Section 42(b) (1) (A) of the Internal Revenue Code.

(B) For the fourth year, the difference between 30 percent and the sum of the applicable percentages for the first three years.

(2) In the case of any qualified low-income building that receives an allocation after 1989 and that is a new building that is federally subsidized or that is an existing building that is "at risk of conversion," the term "applicable percentage" means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are federally subsidized for the taxable year.

(B) For the fourth year, the difference between 13 percent and the sum of the applicable percentages for the first three years.

(3) For purposes of this section, the term "at risk of conversion," with respect to an existing building means a building that satisfies all of the following criteria:

(A) The building is presently owned by a housing sponsor other than a qualified nonprofit organization.

(B) The building is a federally assisted building for which the low-income use restrictions will terminate or the mortgage on the building is eligible for incentives under Subtitle 13 of the Emergency Low Income Housing Assistance Act of 1987 or under Section 502(c) of the Housing Act of 1949, anytime in the two calendar years after the year of application to the California Tax Credit Allocation Committee, and the purchaser has received preliminary approval from the applicable federal agency for a maximum level of incentives through a plan of action.

(C) The person acquiring the building enters into a regulatory agreement that requires the building to be operated in accordance with the requirements of this section for a period equal to the greater of 55 years or the life of the building.

(D) The building satisfies the requirements of Section 42(e) of the Internal Revenue Code regarding rehabilitation expenditures, except that the provisions of Section 42(e) (3) (A) (ii) (I) shall not apply.

(d) The term "qualified low-income housing project" as defined in Section 42(c) (2) of the Internal Revenue Code is modified by adding the following requirements:

(1) The taxpayer shall be entitled to receive a cash distribution from the operations of the project, after funding required reserves, which, at the election of the taxpayer, is equal to:

(A) An amount not to exceed 8 percent of the lesser of:

(i) The owner equity which shall include the amount of the capital contributions actually paid to the housing sponsor and shall not include any amounts until they are paid on an investor note; or

(ii) Twenty percent of the adjusted basis of the building as of the close of the first income year of the credit period; or

(B) The amount of the cash-flow from those units in the building that are not low-income units. For purposes of computing cash-flow under this subparagraph, operating costs shall be allocated to the low-income units using the "floor space fraction," as defined in Section 42 of the Internal Revenue Code.

(C) Any amount allowed to be distributed under subparagraph

(A) that is not available for distribution during the first five years of the compliance period may accumulate and be distributed any time during the first 15 years of the compliance period but not thereafter.

(2) The limitation on return shall apply in the aggregate to the partners if the housing sponsor is a partnership and in the aggregate to the shareholders if the housing sponsor is an S corporation.

(3) The housing sponsor shall apply any cash available for distribution in excess of the amount eligible to be distributed under paragraph (1) to reduce the rent on rent-restricted units or to increase the number of rent-restricted units subject to the tests of Section 42(g) (1) of the Internal Revenue Code.

(e) The provisions of Section 42(f) of the Internal Revenue Code shall be modified as follows:

(1) The term "credit period" as defined in Section 42(f) (1) of the Internal Revenue Code is modified by substituting "four income years" for "10 taxable years."

(2) The special rule for the first taxable year of the credit period under Section 42(f) (2) of the Internal Revenue Code shall not apply to the tax credit under this section.

(3) Section 42(f) (3) of the Internal Revenue Code is modified to read:

If, as of the close of any income year in the compliance period, after the first year of the credit period, the qualified basis of any building exceeds the qualified basis of that building as of the close of the first year of the credit period, the housing sponsor, to the extent of its tax credit allocation, shall be eligible for a credit on the excess in an amount equal to the applicable percentage determined pursuant to subdivision (c) for the four-year period beginning with the later of the income years in which the increase in qualified basis occurs.

(f) The provisions of Section 42(h) of the Internal Revenue Code shall be modified as follows:

(1) Section 42(h) (2) of the Internal Revenue Code shall not be applicable and instead the following provisions shall be applicable:

The total amount for the four-year credit period of the housing credit dollars allocated in a calendar year to any building shall reduce the aggregate housing credit dollar amount of the California Tax Credit Allocation Committee for the calendar year in which the allocation is made.

(2) Paragraphs (3), (4), (5), (6) (E) (i) (II), (6) (F), (6) (G), (6) (I), (7), and (8) of Section 42(h) of the Internal Revenue Code shall not be applicable.

(g) The aggregate housing credit dollar amount that may be allocated annually by the California Tax Credit Allocation Committee pursuant to this section, Section 17058, and Section 23610.5 shall be an amount equal to the sum of the following:

- (1) Thirty-five million dollars (\$35,000,000).
- (2) The unused housing credit ceiling, if any, for the preceding calendar years; and
- (3) The amount of housing credit ceiling returned in the calendar

year. For purposes of this paragraph, the amount of housing credit dollar amount returned in the calendar year equals the housing credit dollar amount previously allocated to any project that does not become a qualified low-income housing project within the period required by this section or to any project with respect to which an allocation is canceled by mutual consent of the California Tax Credit Allocation Committee and the allocation recipient.

(h) The term "compliance period" as defined in Section 42(i) (1) of the Internal Revenue Code is modified to mean, with respect to any building, the period of 30-consecutive income years beginning with the first income year of the credit period with respect thereto.

(i) (1) Section 42(j) of the Internal Revenue Code shall not be applicable and the provisions in paragraph (2) shall be substituted in its place.

(2) The requirements of this section shall be set forth in a regulatory agreement between the California Tax Credit Allocation Committee and the housing sponsor, which agreement shall be subordinated, when required, to any lien or encumbrance of any banks or other institutional lenders to the project. The regulatory agreement entered into pursuant to subdivision (f) of Section 50199.14 of the Health and Safety Code, shall apply, providing the agreement includes all of the following provisions:

(A) A term not less than the compliance period.

(B) A requirement that the agreement be filed in the official records of the county in which the qualified low-income housing project is located.

(C) A provision stating which state and local agencies can enforce the regulatory agreement in the event the housing sponsor fails to satisfy any of the requirements of this section.

(D) A provision that the regulatory agreement shall be deemed a contract enforceable by tenants as third-party beneficiaries thereto and which allows individuals, whether prospective, present, or former occupants of the building, who meet the income limitation applicable to the building, the right to enforce the regulatory agreement in any state court.

(E) A provision incorporating the requirements of Section 42 of the Internal Revenue Code as modified by this section.

(F) A requirement that the housing sponsor notify the California Tax Credit Allocation Committee or its designee and the local agency that can enforce the regulatory agreement if there is a determination by the Internal Revenue Service that the project is not in compliance with Section 42(g) of the Internal Revenue Code.

(G) A requirement that the housing sponsor, as security for the performance of the housing sponsor's obligations under the regulatory agreement, assign the housing sponsor's interest in rents that it receives from the project, provided that until there is a default under the regulatory agreement, the housing sponsor is entitled to collect and retain the rents.

(H) The remedies available in the event of a default under the

regulatory agreement that is not cured within a reasonable cure period, include, but are not limited to, allowing any of the parties designated to enforce the regulatory agreement to collect all rents with respect to the project; taking possession of the project and operating the project in accordance with the regulatory agreement until the enforcer determines the housing sponsor is in a position to operate the project in accordance with the regulatory agreement; applying to any court for specific performance; securing the appointment of a receiver to operate the project; or any other relief as may be appropriate.

(j) (1) The committee shall allocate the housing credit on a regular basis consisting of two or more periods in each calendar year during which applications may be filed and considered. The committee shall establish application filing deadlines, the maximum percentage of federal and state low-income housing tax credit ceiling which may be allocated by the committee in that period, and the approximate date on which allocations shall be made. If the enactment of federal or state law, the adoption of rules or regulations, or other similar events prevent the use of two allocation periods, the committee may reduce the number of periods and adjust the filing deadlines, maximum percentage of credit allocated, and the allocation dates.

(2) The committee shall adopt a qualified allocation plan, as provided in Section 42(m)(1) of the Internal Revenue Code. In adopting this plan, the committee shall comply with the provisions of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue Code.

(3) Notwithstanding Section 42(m) of the Internal Revenue Code, the California Tax Credit Allocation Committee shall allocate housing credits in accordance with the qualified allocation plan and regulations, which shall include the following provisions:

(A) All housing sponsors, as defined by paragraph (3) of subdivision (a), shall demonstrate at the time the application is filed with the committee that the project meets the following threshold requirements:

(i) The housing sponsor shall demonstrate there is a need and demand for low-income housing in the community or region for which it is proposed.

(ii) The project's proposed financing, including tax credit proceeds, shall be sufficient to complete the project and that the proposed operating income shall be adequate to operate the project for the extended use period.

(iii) The project shall have enforceable financing commitments, either construction or permanent financing, for at least 50 percent of the total estimated financing of the project.

(iv) The housing sponsor shall have and maintain control of the site for the project.

(v) The housing sponsor shall demonstrate that the project complies with all applicable local land use and zoning ordinances.

(vi) The housing sponsor shall demonstrate that the project development team has the experience and the financial capacity to ensure project completion and operation for the extended use period.

(vii) The housing sponsor shall demonstrate the amount of tax credit that is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the extended use period, taking into account operating expenses, a supportable debt service, reserves, funds set aside for rental subsidies, and required equity, and a development fee that does not exceed a specified percentage of the eligible basis of the project prior to inclusion of the development fee in the eligible basis, as determined by the committee.

(B) The committee shall give a preference to those projects satisfying all of the threshold requirements of subparagraph (A) if:

(i) The project serves the lowest income tenants at rents affordable to those tenants; and

(ii) The project is obligated to serve qualified tenants for the longest period.

(C) In addition to the provisions of subparagraphs (A) and (B), the committee shall use the following criteria in allocating housing credits:

(i) Projects serving large families in which a substantial number, as defined by the committee, of all residential units is comprised of low-income units with three and more bedrooms.

(ii) Projects providing single room occupancy units serving very low income tenants.

(iii) Existing projects that are "at risk of conversion," as defined by paragraph (4) of subdivision (c).

(iv) Projects for which a public agency provides direct or indirect long-term financial support for at least 15 percent of the total project development costs or projects for which the owner's equity constitutes at least 30 percent of the total project development costs.

(v) Projects that provide tenant amenities not generally available to residents of low-income housing projects.

(4) For purposes of allocating credits pursuant to this section, the committee shall not give preference to any project by virtue of the date of submission of its application except to break a tie when two or more of the projects have an equal rating.

(k) Section 42(l) of the Internal Revenue Code shall be modified as follows:

The term "secretary" shall be replaced by the term "California Franchise Tax Board."

(l) In the case where the state credit allowed under this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(m) The provisions of Section 11407(a) of Public Law 101-508, relating to the effective date of the extension of the low-income

housing credit, shall apply to calendar years after 1993.

(n) The provisions of Section 11407(c) of Public Law 101-508, relating to election to accelerate credit, shall not apply.

(o) This section shall remain in effect for as long as Section 42 of the Internal Revenue Code, relating to low-income housing credits, remains in effect.

SEC. 39. Section 17058 of the Revenue and Taxation Code is amended to read:

17058. (a) (1) There shall be allowed as a credit against the amount of net tax (as defined in Section 17039) a state low-income housing credit in an amount equal to the amount determined in subdivision (c), computed in accordance with the provisions of Section 42 of the Internal Revenue Code, except as otherwise provided in this section.

(2) "Taxpayer" for purposes of this section means the sole owner in the case of an individual, the partners in the case of a partnership, and the shareholders in the case of an S corporation.

(3) "Housing sponsor" for purposes of this section means the sole owner in the case of an individual, the partnership in the case of a partnership, and the S corporation in the case of an S corporation.

(b) (1) The amount of the credit allocated to any housing sponsor shall be authorized by the California Tax Credit Allocation Committee, or any successor thereof, based on a project's need for the credit for economic feasibility in accordance with the requirements of this section.

(A) The low-income housing project shall be located in California and shall meet either of the following requirements:

(i) The project's housing sponsor shall have been allocated by the California Tax Credit Allocation Committee a credit for federal income tax purposes under Section 42 of the Internal Revenue Code.

(ii) It shall qualify for a credit under Section 42(h)(4)(B) of the Internal Revenue Code.

(B) The California Tax Credit Allocation Committee shall not require fees for the credit under this section in addition to those fees required for applications for the tax credit pursuant to Section 42 of the Internal Revenue Code. The committee may require a fee if the application for the credit under this section is submitted in a calendar year after the year the application is submitted for the federal tax credit.

(2) (A) The California Tax Credit Allocation Committee shall certify to the housing sponsor the amount of tax credit under this section allocated to the housing sponsor for each credit period.

(B) In the case of a partnership or an S corporation, the housing sponsor shall provide a copy of the California Tax Credit Allocation Committee certification to the taxpayer.

(C) The taxpayer shall, upon request, provide a copy of the certification to the Franchise Tax Board.

(D) All elections made by the taxpayer pursuant to Section 42 of the Internal Revenue Code shall apply to this section.

(E) For buildings located in designated difficult development areas or qualified census tracts as defined in Section 42(d)(5)(C) of the Internal Revenue Code, credits may be allocated under this section in the amounts prescribed in subdivision (c), provided that the amount of credit allocated under Section 42 of the Internal Revenue Code is computed on 100 percent of the qualified basis of the building.

(c) Section 42(b) of the Internal Revenue Code shall be modified as follows:

(1) In the case of any qualified low-income building placed in service by the housing sponsor during 1987, the term "applicable percentage" means 9 percent for each of the first three years and 3 percent for the fourth year for new buildings (whether or not the building is federally subsidized) and for existing buildings.

(2) In the case of any qualified low-income building that receives an allocation after 1989 and is a new building not federally subsidized, the term "applicable percentage" means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are not federally subsidized for the taxable year, determined in accordance with the requirements of Section 42(b)(2) of the Internal Revenue Code, in lieu of the percentage prescribed in Section 42(b)(1)(A) of the Internal Revenue Code.

(B) For the fourth year, the difference between 30 percent and the sum of the applicable percentages for the first three years.

(3) In the case of any qualified low-income building that receives an allocation after 1989 and that is a new building that is federally subsidized or that is an existing building that is "at risk of conversion," the term "applicable percentage" means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are federally subsidized for the taxable year.

(B) For the fourth year, the difference between 13 percent and the sum of the applicable percentages for the first three years.

(4) For purposes of this section, the term "at risk of conversion," with respect to an existing building means a building that satisfies all of the following criteria:

(A) The building is presently owned by a housing sponsor other than a qualified nonprofit organization.

(B) The building is a federally assisted building for which the low-income use restrictions will terminate or the building is eligible for incentives under Subtitle 13 of the Emergency Low Income Housing Preservation Act of 1987 or under Section 502(c) of the Housing Act of 1949, anytime in the two calendar years after the year of application to the California Tax Credit Allocation Committee, and the purchaser has received preliminary approval from the applicable federal agency for a maximum level of incentives through a plan of action.

(C) The person acquiring the building enters into a regulatory

agreement that requires the building to be operated in accordance with the requirements of this section for a period equal to the greater of 55 years or the life of the building.

(D) The building satisfies the requirements of Section 42(e) of the Internal Revenue Code regarding rehabilitation expenditures, except that the provisions of Section 42(e) (3) (A) (ii) (I) shall not apply.

(d) The term "qualified low-income housing project" as defined in Section 42(c) (2) of the Internal Revenue Code is modified by adding the following requirements:

(1) The taxpayer shall be entitled to receive a cash distribution from the operations of the project, after funding required reserves, that, at the election of the taxpayer, is equal to:

(A) An amount not to exceed 8 percent of the lesser of:

(i) The owner equity that shall include the amount of the capital contributions actually paid to the housing sponsor and shall not include any amounts until they are paid on an investor note; or

(ii) Twenty percent of the adjusted basis of the building as of the close of the first taxable year of the credit period; or

(B) The amount of the cash-flow from those units in the building that are not low-income units. For purposes of computing cash-flow under this subparagraph, operating costs shall be allocated to the low-income units using the "floor space fraction," as defined in Section 42 of the Internal Revenue Code.

(C) Any amount allowed to be distributed under subparagraph (A) that is not available for distribution during the first five years of the compliance period may be accumulated and distributed any time during the first 15 years of the compliance period but not thereafter.

(2) The limitation on return shall apply in the aggregate to the partners if the housing sponsor is a partnership and in the aggregate to the shareholders if the housing sponsor is an S corporation.

(3) The housing sponsor shall apply any cash available for distribution in excess of the amount eligible to be distributed under paragraph (1) to reduce the rent on rent-restricted units or to increase the number of rent-restricted units subject to the tests of Section 42(g) (1) of the Internal Revenue Code.

(e) The provisions of Section 42(f) of the Internal Revenue Code shall be modified as follows:

(1) The term "credit period" as defined in Section 42(f) (1) of the Internal Revenue Code is modified by substituting "four taxable years" for "10 taxable years."

(2) The special rule for the first taxable year of the credit period under Section 42(f) (2) of the Internal Revenue Code shall not apply to the tax credit under this section.

(3) Section 42(f) (3) of the Internal Revenue Code is modified to read:

If, as of the close of any taxable year in the compliance period, after the first year of the credit period, the qualified basis of any building exceeds the qualified basis of that building as of the close of the first

year of the credit period, the housing sponsor, to the extent of its tax credit allocation, shall be eligible for a credit on the excess in an amount equal to the applicable percentage determined pursuant to subdivision (c) for the four-year period beginning with the taxable year in which the increase in qualified basis occurs.

(f) The provisions of Section 42(h) of the Internal Revenue Code shall be modified as follows:

(1) Section 42(h)(2) of the Internal Revenue Code shall not be applicable and instead the following provisions shall be applicable:

The total amount for the four-year period of the housing credit dollars allocated in a calendar year to any building shall reduce the aggregate housing credit dollar amount of the California Tax Credit Allocation Committee for the calendar year in which the allocation is made.

(2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I), (7), and (8) of Section 42(h) of the Internal Revenue Code shall not be applicable to this section.

(g) The aggregate housing credit dollar amount which may be allocated annually by the California Tax Credit Allocation Committee pursuant to this section, Section 12206, and Section 23610.5 shall be an amount equal to the sum of the following:

(1) Thirty-five million dollars (\$35,000,000).

(2) The unused housing credit ceiling, if any, for the preceding calendar years; and

(3) The amount of housing credit ceiling returned in the calendar year. For purposes of this paragraph, the amount of housing credit dollar amount returned in the calendar year equals the housing credit dollar amount previously allocated to any project that does not become a qualified low-income housing project within the period required by this section or to any project with respect to which an allocation is canceled by mutual consent of the California Tax Credit Allocation Committee and the allocation recipient.

(h) The term "compliance period" as defined in Section 42(i)(1) of the Internal Revenue Code is modified to mean, with respect to any building, the period of 30 consecutive taxable years beginning with the first taxable year of the credit period with respect thereto.

(i) Section 42(j) of the Internal Revenue Code shall not be applicable and the following requirements of this section shall be set forth in a regulatory agreement between the California Tax Credit Allocation Committee and the housing sponsor, which agreement shall be subordinated, when required, to any lien or encumbrance of any banks or other institutional lenders to the project. The regulatory agreement entered into pursuant to subdivision (f) of Section 50199.14 of the Health and Safety Code shall apply, providing the agreement includes all of the following provisions:

(1) A term not less than the compliance period.

(2) A requirement that the agreement be filed in the official records of the county in which the qualified low-income housing project is located.

(3) A provision stating which state and local agencies can enforce the regulatory agreement in the event the housing sponsor fails to satisfy any of the requirements of this section.

(4) A provision that the regulatory agreement shall be deemed a contract enforceable by tenants as third-party beneficiaries thereto and which allows individuals, whether prospective, present, or former occupants of the building, who meet the income limitation applicable to the building, the right to enforce the regulatory agreement in any state court.

(5) A provision incorporating the requirements of Section 42 of the Internal Revenue Code as modified by this section.

(6) A requirement that the housing sponsor notify the California Tax Credit Allocation Committee or its designee if there is a determination by the Internal Revenue Service that the project is not in compliance with Section 42(g) of the Internal Revenue Code.

(7) A requirement that the housing sponsor, as security for the performance of the housing sponsor's obligations under the regulatory agreement, assign the housing sponsor's interest in rents that it receives from the project, provided that until there is a default under the regulatory agreement, the housing sponsor is entitled to collect and retain the rents.

(8) The remedies available in the event of a default under the regulatory agreement that is not cured within a reasonable cure period, include, but are not limited to, allowing any of the parties designated to enforce the regulatory agreement to collect all rents with respect to the project; taking possession of the project and operating the project in accordance with the regulatory agreement until the enforcer determines the housing sponsor is in a position to operate the project in accordance with the regulatory agreement; applying to any court for specific performance; securing the appointment of a receiver to operate the project; or any other relief as may be appropriate.

(j) (1) The committee shall allocate the housing credit on a regular basis consisting of two or more periods in each calendar year during which applications may be filed and considered. The committee shall establish application filing deadlines, the maximum percentage of federal and state low-income housing tax credit ceiling that may be allocated by the committee in that period, and the approximate date on which allocations shall be made. If the enactment of federal or state law, the adoption of rules or regulations or other similar events prevent the use of two allocation periods, the committee may reduce the number of periods and adjust the filing deadlines, maximum percentage of credit allocated, and the allocation dates.

(2) The committee shall adopt a qualified allocation plan, as provided in Section 42(m)(1) of the Internal Revenue Code. In adopting this plan, the committee shall comply with the provisions of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue Code.

(3) Notwithstanding Section 42(m) of the Internal Revenue Code, the California Tax Credit Allocation Committee shall allocate housing credits in accordance with the qualified allocation plan and regulations, which shall include the following provisions:

(A) All housing sponsors, as defined by paragraph (3) of subdivision (a), shall demonstrate at the time the application is filed with the committee that the project meets the following threshold requirements:

(i) The housing sponsor shall demonstrate there is a need and demand for low-income housing in the community or region for which it is proposed.

(ii) The project's proposed financing, including tax credit proceeds, shall be sufficient to complete the project and that the proposed operating income shall be adequate to operate the project for the extended use period.

(iii) The project shall have enforceable financing commitments, either construction or permanent financing, for at least 50 percent of the total estimated financing of the project.

(iv) The housing sponsor shall have and maintain control of the site for the project.

(v) The housing sponsor shall demonstrate that the project complies with all applicable local land use and zoning ordinances.

(vi) The housing sponsor shall demonstrate that the project development team has the experience and the financial capacity to ensure project completion and operation for the extended use period.

(vii) The housing sponsor shall demonstrate the amount of tax credit that is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the extended use period, taking into account operating expenses, a supportable debt service, reserves, funds set aside for rental subsidies, and required equity, and a development fee that does not exceed a specified percentage of the eligible basis of the project prior to inclusion of the development fee in the eligible basis, as determined by the committee.

(B) The committee shall give a preference to those projects satisfying all of the threshold requirements of subparagraph (A) if:

(i) The project serves the lowest income tenants at rents affordable to those tenants; and

(ii) The project is obligated to serve qualified tenants for the longest period.

(C) In addition to the provisions of subparagraphs (A) and (B), the committee shall use the following criteria in allocating housing credits:

(i) Projects serving large families in which a substantial number, as defined by the committee of all residential units is comprised of low-income units with three and more bedrooms.

(ii) Projects providing single room occupancy units serving very low-income tenants.

(iii) Existing projects that are "at risk of conversion," as defined by paragraph (4) of subdivision (c).

(iv) Projects for which a public agency provides direct or indirect long-term financial support for at least 15 percent of the total project development costs or projects for which the owner's equity constitutes at least 30 percent of the total project development costs.

(v) Projects that provide tenant amenities not generally available to residents of low-income housing projects.

(4) For purposes of allocating credits pursuant to this section, the committee shall not give preference to any project by virtue of the date of submission of its application.

(k) Section 42(l) of the Internal Revenue Code shall be modified as follows:

The term "secretary" shall be replaced by the term "California Franchise Tax Board."

(l) In the case where the credit allowed under this section exceeds the net tax, the excess credit may be carried over to reduce the net tax in the following year, and succeeding taxable years, if necessary, until the credit has been exhausted.

(m) A project that received an allocation of a 1989 federal housing credit dollar amount shall be eligible to receive an allocation of a 1990 state housing credit dollar amount, subject to all of the following conditions:

(1) The project was not placed in service prior to 1990.

(2) To the extent the amendments made to this section by the Statutes of 1990 conflict with any provisions existing in this section prior to those amendments, the prior provisions of law shall prevail.

(3) Notwithstanding paragraph (2), a project applying for an allocation under this subdivision shall be subject to the requirements of paragraph (3) of subdivision (j).

(n) The credit period with respect to an allocation of credit in 1989 by the California Tax Credit Allocation Committee of which any amount is attributable to unallocated credit from 1987 or 1988 shall not begin until after December 31, 1989.

(o) The provisions of Section 11407(a) of Public Law 101-508, relating to the effective date of the extension of the low-income housing credit, shall apply to calendar years after 1989.

(p) The provisions of Section 11407(c) of Public Law 101-508, relating to election to accelerate credit, shall not apply.

(q) Any unused credit may continue to be carried forward, as provided in subdivision (l), until the credit has been exhausted.

This section shall remain in effect on and after December 1, 1990, for as long as Section 42 of the Internal Revenue Code pertaining to low-income housing credits remains in effect.

(r) The amendments to this section by the act adding this subdivision shall apply only to taxable years beginning on or after January 1, 1994.

SEC. 40. Section 23610.5 of the Revenue and Taxation Code is amended to read:

23610.5. (a) (1) There shall be allowed as a credit against the "tax" (as defined by Section 23036) a state low-income housing tax credit in an amount equal to the amount determined in subdivision (c), computed in accordance with Section 42 of the Internal Revenue Code of 1986, except as otherwise provided in this section.

(2) "Taxpayer," for purposes of this section, means the sole owner in the case of a C corporation, the partners in the case of a partnership, and the shareholders in the case of an S corporation.

(3) "Housing sponsor," for purposes of this section, means the sole owner in the case of a C corporation, the partnership in the case of a partnership, and the S corporation in the case of an S corporation.

(b) (1) The amount of the credit allocated to any housing sponsor shall be authorized by the California Tax Credit Allocation Committee, or any successor thereof, based on a project's need for the credit for economic feasibility in accordance with the requirements of this section.

(A) The low-income housing project shall be located in California and shall meet either of the following requirements:

(i) The project's housing sponsor shall have been allocated by the California Tax Credit Allocation Committee a credit for federal income tax purposes under Section 42 of the Internal Revenue Code.

(ii) It shall qualify for a credit under Section 42(h) (4) (B) of the Internal Revenue Code.

(B) The California Tax Credit Allocation Committee shall not require fees for the credit under this section in addition to those fees required for applications for the tax credit pursuant to Section 42 of the Internal Revenue Code. The committee may require a fee if the application for the credit under this section is submitted in a calendar year after the year the application is submitted for the federal tax credit.

(2) (A) The California Tax Credit Allocation Committee shall certify to the housing sponsor the amount of tax credit under this section allocated to the housing sponsor for each credit period.

(B) In the case of a partnership or an S corporation, the housing sponsor shall provide a copy of the California Tax Credit Allocation Committee certification to the taxpayer.

(C) The taxpayer shall, upon request, provide a copy of the certification to the Franchise Tax Board.

(D) All elections made by the taxpayer pursuant to Section 42 of the Internal Revenue Code shall apply to this section.

(E) For buildings located in designated difficult development areas or qualified census tracts as defined in Section 42(d) (5) (C) of the Internal Revenue Code, credits may be allocated under this section in the amounts prescribed in subdivision (c), provided that the amount of credit allocated under Section 42 of the Internal Revenue Code is computed on 100 percent of the qualified basis of the building.

(c) Section 42(b) of the Internal Revenue Code shall be modified as follows:

(1) In the case of any qualified low-income building placed in service by the housing sponsor during 1987, the term "applicable percentage" means 9 percent for each of the first three years and 3 percent for the fourth year for new buildings (whether or not the building is federally subsidized) and for existing buildings.

(2) In the case of any qualified low-income building that receives an allocation after 1989 and is a new building not federally subsidized, the term "applicable percentage" means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are not federally subsidized for the taxable year, determined in accordance with the requirements of Section 42(b)(2) of the Internal Revenue Code, in lieu of the percentage prescribed in Section 42(b)(1)(A).

(B) For the fourth year, the difference between 30 percent and the sum of the applicable percentages for the first three years.

(3) In the case of any qualified low-income building that receives an allocation after 1989 and that is a new building that is federally subsidized or that is an existing building that is "at risk of conversion," the term "applicable percentage" means the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are federally subsidized for the taxable year.

(B) For the fourth year, the difference between 13 percent and the sum of the applicable percentages for the first three years.

(4) For purposes of this section, the term "at risk of conversion," with respect to an existing building means a building that satisfies all of the following criteria:

(A) The building is presently owned by a housing sponsor other than a qualified nonprofit organization.

(B) The building is a federally assisted building for which the low-income use restrictions will terminate or the building is eligible for prepayment under Subtitle 13 of the Emergency Low Income Housing Assistance Act of 1987 or under Section 502(c) of the Housing Act of 1949, anytime in the two calendar years after the year of application to the California Tax Credit Allocation Committee, and the purchaser has received preliminary approval from the applicable federal agency for a maximum level of incentives through a plan of action.

(C) The person acquiring the building enters into a regulatory agreement that requires the building to be operated in accordance with the requirements of this section for a period equal to the greater of 55 years or the life of the building.

(D) The building satisfies the requirements of Section 42(e) of the Internal Revenue Code regarding rehabilitation expenditures, except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not apply.

(d) The term "qualified low-income housing project" as defined in Section 42(c)(2) of the Internal Revenue Code is modified by adding the following requirements:

(1) The taxpayer shall be entitled to receive a cash distribution from the operations of the project, after funding required reserves, which, at the election of the taxpayer, is equal to:

(A) An amount not to exceed 8 percent of the lesser of:

(i) The owner equity that shall include the amount of the capital contributions actually paid to the housing sponsor and shall not include any amounts until they are paid on an investor note; or

(ii) Twenty percent of the adjusted basis of the building as of the close of the first income year of the credit period; or

(B) The amount of the cash-flow from those units in the building that are not low-income units. For purposes of computing cash-flow under this subparagraph, operating costs shall be allocated to the low-income units using the "floor space fraction," as defined in Section 42 of the Internal Revenue Code.

(C) Any amount allowed to be distributed under subparagraph (A) that is not available for distribution during the first five years of the compliance period may accumulate and be distributed any time during the first 15 years of the compliance period but not thereafter.

(2) The limitation on return shall apply in the aggregate to the partners if the housing sponsor is a partnership and in the aggregate to the shareholders if the housing sponsor is an S corporation.

(3) The housing sponsor shall apply any cash available for distribution in excess of the amount eligible to be distributed under paragraph (1) to reduce the rent on rent-restricted units or to increase the number of rent-restricted units subject to the tests of Section 42(g) (1) of the Internal Revenue Code.

(e) The provisions of Section 42(f) of the Internal Revenue Code shall be modified as follows:

(1) The term "credit period" as defined in Section 42(f) (1) of the Internal Revenue Code is modified by substituting "four income years" for "10 taxable years."

(2) The special rule for the first taxable year of the credit period under Section 42(f) (2) of the Internal Revenue Code shall not apply to the tax credit under this section.

(3) Section 42(f) (3) of the Internal Revenue Code is modified to read:

If, as of the close of any income year in the compliance period, after the first year of the credit period, the qualified basis of any building exceeds the qualified basis of that building as of the close of the first year of the credit period, the housing sponsor, to the extent of its tax credit allocation, shall be eligible for a credit on the excess in an amount equal to the applicable percentage determined pursuant to subdivision (c) for the four-year period beginning with the later of the income years in which the increase in qualified basis occurs.

(f) The provisions of Section 42(h) of the Internal Revenue Code shall be modified as follows:

(1) Section 42(h) (2) of the Internal Revenue Code shall not be applicable and instead the following provisions shall be applicable: The total amount for the four-year credit period of the housing

credit dollars allocated in a calendar year to any building shall reduce the aggregate housing credit dollar amount of the California Tax Credit Allocation Committee for the calendar year in which the allocation is made.

(2) Paragraphs (3), (4), (5), (6) (E) (i) (II), (6) (F), (6) (G), (6) (I), (7), and (8) of Section 42(h) of the Internal Revenue Code shall not be applicable.

(g) The aggregate housing credit dollar amount which may be allocated annually by the California Tax Credit Allocation Committee pursuant to this section, Section 12206, and Section 17058 shall be an amount equal to the sum of the following:

(1) Thirty-five million dollars (\$35,000,000).

(2) The unused housing credit ceiling, if any, for the preceding calendar years; and

(3) The amount of housing credit ceiling returned in the calendar year. For purposes of this paragraph, the amount of housing credit dollar amount returned in the calendar year equals the housing credit dollar amount previously allocated to any project that does not become a qualified low-income housing project within the period required by this section or to any project with respect to which an allocation is canceled by mutual consent of the California Tax Credit Allocation Committee and the allocation recipient.

(h) The term "compliance period" as defined in Section 42(i) (1) of the Internal Revenue Code is modified to mean, with respect to any building, the period of 30-consecutive income years beginning with the first income year of the credit period with respect thereto.

(i) Section 42(j) of the Internal Revenue Code shall not be applicable and the following shall be substituted in its place:

(1) The requirements of this section shall be set forth in a regulatory agreement between the California Tax Credit Allocation Committee and the housing sponsor, and this agreement shall be subordinated, when required, to any lien or encumbrance of any banks or other institutional lenders to the project. The regulatory agreement entered into pursuant to subdivision (f) of Section 50199.14 of the Health and Safety Code, shall apply, providing the agreement includes all of the following provisions:

(A) A term not less than the compliance period.

(B) A requirement that the agreement be filed in the official records of the county in which the qualified low-income housing project is located.

(C) A provision stating which state and local agencies can enforce the regulatory agreement in the event the housing sponsor fails to satisfy any of the requirements of this section.

(D) A provision that the regulatory agreement shall be deemed a contract enforceable by tenants as third-party beneficiaries thereto, and which allows individuals, whether prospective, present, or former occupants of the building, who meet the income limitation applicable to the building, the right to enforce the regulatory agreement in any state court.

(E) A provision incorporating the requirements of Section 42 of the Internal Revenue Code as modified by this section.

(F) A requirement that the housing sponsor notify the California Tax Credit Allocation Committee or its designee if there is a determination by the Internal Revenue Service that the project is not in compliance with Section 42(g) of the Internal Revenue Code.

(G) A requirement that the housing sponsor, as security for the performance of the housing sponsor's obligations under the regulatory agreement, assign the housing sponsor's interest in rents that it receives from the project, provided that until there is a default under the regulatory agreement, the housing sponsor is entitled to collect and retain the rents.

(H) The remedies available in the event of a default under the regulatory agreement that is not cured within a reasonable cure period, include, but are not limited to, allowing any of the parties designated to enforce the regulatory agreement to collect all rents with respect to the project; taking possession of the project and operating the project in accordance with the regulatory agreement until the enforcer determines the housing sponsor is in a position to operate the project in accordance with the regulatory agreement; applying to any court for specific performance; securing the appointment of a receiver to operate the project; or any other relief as may be appropriate.

(j) (1) The committee shall allocate the housing credit on a regular basis consisting of two or more periods in each calendar year during which applications may be filed and considered. The committee shall establish application filing deadlines, the maximum percentage of federal and state low-income housing tax credit ceiling that may be allocated by the committee in that period, and the approximate date on which allocations shall be made. If the enactment of federal or state law, the adoption of rules or regulations, or other similar events prevent the use of two allocation periods, the committee may reduce the number of periods and adjust the filing deadlines, maximum percentage of credit allocated, and the allocation dates.

(2) The committee shall adopt a qualified allocation plan, as provided in Section 42(m)(1) of the Internal Revenue Code. In adopting this plan, the committee shall comply with the provisions of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue Code.

(3) Notwithstanding Section 42(m) of the Internal Revenue Code, the California Tax Credit Allocation Committee shall allocate housing credits in accordance with the qualified allocation plan and regulations, which shall include the following provisions:

(A) All housing sponsors, as defined by paragraph (3) of subdivision (a), shall demonstrate at the time the application is filed with the committee that the project meets the following threshold requirements:

(i) The housing sponsor shall demonstrate there is a need for

low-income housing in the community or region for which it is proposed.

(ii) The project's proposed financing, including tax credit proceeds, shall be sufficient to complete the project and shall be adequate to operate the project for the extended use period.

(iii) The project shall have enforceable financing commitments, either construction or permanent financing, for at least 50 percent of the total estimated financing of the project.

(iv) The housing sponsor shall have and maintain control of the site for the project.

(v) The housing sponsor shall demonstrate that the project complies with all applicable local land use and zoning ordinances.

(vi) The housing sponsor shall demonstrate that the project development team has the experience and the financial capacity to ensure project completion and operation for the extended use period.

(vii) The housing sponsor shall demonstrate the amount of tax credit that is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the extended use period, taking into account operating expenses, a supportable debt service, reserves, funds set aside for rental subsidies, and required equity, and a development fee that does not exceed a specified percentage of the eligible basis of the project prior to inclusion of the development fee in the eligible basis, as determined by the committee.

(B) The committee shall give a preference to those projects satisfying all of the threshold requirements of subparagraph (A) if:

(i) The project serves the lowest income tenants at rents affordable to those tenants; and

(ii) The project is obligated to serve qualified tenants for the longest period.

(C) In addition to the provisions of subparagraphs (A) and (B), the committee shall use the following criteria in allocating housing credits:

(i) Projects serving large families in which a substantial number, as defined by the committee of all residential units is comprised of low-income units with three and more bedrooms.

(ii) Projects providing single room occupancy units serving very low income tenants.

(iii) Existing projects that are "at risk of conversion," as defined by paragraph (4) of subdivision (c).

(iv) Projects for which a public agency provides direct or indirect long-term financial support for at least 15 percent of the total project development costs or projects for which the owner's equity constitutes at least 30 percent of the total project development costs.

(v) Projects that provide tenant amenities not generally available to residents of low-income housing projects.

(4) For purposes of allocating credits pursuant to this section, the committee shall not give preference to any project by virtue of the

date of submission of its application except to break a tie when two or more of the projects have an equal rating.

(5) Not less than 20 percent of the low-income housing tax credits available annually under this section, Section 12206, and Section 17058 shall be set aside for allocation to rural areas as defined in Section 50199.21 of the Health and Safety Code. Any amount of credit set aside for rural areas remaining on or after October 31 of any calendar year shall be available for allocation to any eligible project. No amount of credit set aside for rural areas shall be considered available for any eligible project so long as there are eligible rural applications pending on October 31.

(k) Section 42(l) of the Internal Revenue Code shall be modified as follows:

The term "secretary" shall be replaced by the term "California Franchise Tax Board."

(l) In the case where the state credit allowed under this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(m) A project that received an allocation of a 1989 federal housing credit dollar amount shall be eligible to receive an allocation of a 1990 state housing credit dollar amount, subject to all of the following conditions:

(1) The project was not placed in service prior to 1990.

(2) To the extent the amendments made to this section by the Statutes of 1990 conflict with any provisions existing in this section prior to those amendments, the prior provisions of law shall prevail.

(3) Notwithstanding paragraph (2), a project applying for an allocation under this subdivision shall be subject to the requirements of paragraph (3) of subdivision (j).

(n) The credit period with respect to an allocation of credit in 1989 by the California Tax Credit Allocation Committee of which any amount is attributable to unallocated credit from 1987 or 1988 shall not begin until after December 31, 1989.

(o) The provisions of Section 11407(a) of Public Law 101-508, relating to the effective date of the extension of the low-income housing credit, shall apply to calendar years after 1989.

(p) The provisions of Section 11407(c) of Public Law 101-508, relating to election to accelerate credit, shall not apply.

(q) (1) A bank or corporation may elect to assign any portion of any credit allowed under this section to one or more affiliated banks or corporations for each income year in which the credit is allowed. For purposes of this subdivision, "affiliated bank or corporation" has the meaning provided in subdivision (b) of Section 25110, as that section was amended by Chapter 881 of the Statutes of 1993, as of the last date of the income year in which the credit is allowed, except that "100 percent" is substituted for "more than 50 percent" wherever it appears in the section, as that section was amended by Chapter 881 of the Statutes of 1993, and "voting common stock" is

substituted for "voting stock" wherever it appears in the section, as that section was amended by Chapter 881 of the Statutes of 1993.

(2) The election provided in paragraph (1):

(A) May be based on any method selected by the corporation that originally receives the credit.

(B) Shall be irrevocable for the income year the credit is allowed, once made.

(C) May be changed for any subsequent year if the election to make the assignment is expressly shown on each of the returns of the affiliated banks or corporations that assign and receive the credits.

(r) Any unused credit may continue to be carried forward, as provided in subdivision (k), until the credit has been exhausted.

This section shall remain in effect on or after December 1, 1990, for as long as Section 42 of the Internal Revenue Code, pertaining to low-income housing credits, remains in effect.

(s) The amendments to this section by the act enacting this subdivision shall apply only to income years beginning on or after January 1, 1994, except that paragraph (1) of subdivision (q), as amended, shall apply to income years beginning on or after January 1, 1993.

SEC. 41. Section 37 of this act shall become operative only if Chapter 94 of the Statutes of 1994 becomes operative.

CHAPTER 1165

An act to add Title 7.86 (commencing with Section 67800) to the Government Code, relating to military base reuse, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Title 7.86 (commencing with Section 67800) is added to the Government Code, to read:

TITLE 7.86. THE MILITARY BASE REUSE AUTHORITY ACT

CHAPTER 1. TITLE AND DECLARATIONS

67800. This title shall be known and may be cited as the Military Base Reuse Authority Act.

67801. The Legislature finds and declares all of the following:

(a) It is in the best interest of the state to facilitate the transfer and reuse of property and infrastructure comprising military bases designated for closure by the federal government in the most expeditious manner.

(b) The disruption caused by the closure of any military base on the civilian economy and the people of the surrounding communities should be minimized.

(c) The state should facilitate the reuse and development of the military base in ways that enhance the economy and quality of life of the communities surrounding the base.

(d) Any reuse and development of the military base should to the maximum extent possible maintain and protect the unique environmental resources of the state.

(e) The objectives set forth above are most likely to be achieved if an effective governmental structure exists to plan for, finance, and carry out the transfer and reuse of the base in a cooperative, coordinated, balanced, and decisive manner.

CHAPTER 2. GENERAL PROVISIONS

67810. Unless the context otherwise requires, the definitions contained in this chapter govern the construction of this title.

(a) "Authority" means a military base reuse authority.

(b) "Basewide facility" means a public capital facility that, in the judgment of the board, is important to the overall reuse of the base, and has significance beyond any single city or the unincorporated area of a county.

(c) "Board" means the governing board of the authority, as specified in Section 67820.

(d) "Authority reuse plan" means the plan for the future use of the military base pursuant to Section 67830.

(e) "Local facility" means a public capital facility that, in the judgment of the board, is important primarily within a single city or the unincorporated area of the county.

(f) "Legislative body" means the city council of a city or the board of supervisors of a county.

(g) "Member agency" means any of the counties and cities serving on the board of the authority.

(h) "Public capital facilities" means all public capital facilities described in the authority reuse plan, including, but not limited to, roads, freeways, ramps, air transportation facilities and freight hauling and handling facilities, sewage and water conveyance and treatment facilities, school library and other educational facilities, and recreational facilities, that could most efficiently and conveniently be planned, negotiated, financed, or constructed by the authority to further the integrated future use of the military base.

(i) "Redevelopment authority," for the purposes of federal law concerning the transfer of property at the military base, means the authority.

67811. Counties and cities located wholly or partly within the boundaries of a military base may establish an authority with the powers and duties set forth in this title upon the adoption of resolutions favoring the establishment of the authority by the

governing bodies of those counties and cities that would appoint a majority of the voting membership of the board of the authority as prescribed by Section 67820.

67812. The authority is a public corporation of the State of California that is independent of the agencies from which its board is appointed. Notwithstanding any other provision of law, the powers and duties of the authority are those granted or imposed by this title. The Legislature finds and declares that the planning, financing, and management of the reuse of military bases is a matter of statewide importance, and that the powers and duties granted to the authority by this title shall prevail over those of any local entity, including any city or county, whether formed under the general laws of the State of California or pursuant to a charter, and any joint powers authority.

67813. The purpose of the authority is to plan for, finance, and manage the transition of the military base from military to civilian use.

CHAPTER 3. ORGANIZATION

67820. (a) The authority shall be formed if two-thirds of the legislative bodies listed in subdivision (b) adopt resolutions calling for the formation of the authority.

(b) The authority shall be governed by a board of directors composed of the following:

(1) One member from each city in whose sphere of influence the boundaries of the military base lie.

(2) One member from each county within which the boundaries of the military base lie.

(c) Each legislative body may appoint one alternate for each of its positions on the board, and each alternate shall have all the rights and authority of a board member when serving in that board member's place.

(d) Each board member and each alternate shall be a member of the legislative body making the appointment, except that alternates appointed by the county board of supervisors shall be residents of the county. Board members and alternates shall serve at the pleasure of the legislative body making the appointment.

67821. The board may appoint or remove ex officio nonvoting members at its pleasure.

67822. The board shall provide by resolution the dates on which and the time and place at which regular meetings of the board shall be held. A copy of each resolution establishing the date, time, and place of a regular meeting shall be filed with the secretary of the board and the clerk or secretary of the legislative body of each of the members. The board shall comply with the provisions of the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5).

67823. (a) The board shall adopt rules and regulations for the conduct of its meetings and activities.

(b) The board's rules and regulations may expand the board of directors to include one representative from each city that abuts the boundaries of the military base. The board's rules and regulations shall include the vote required for the board to take action pursuant to this section, and may provide for weighted voting for some or all actions based on factors including, but not limited to, an agency's acreage, assessed valuation, or population within the boundaries of the military base.

67824. The secretary of the board shall maintain minutes of the meetings of the board and, as soon as possible after each meeting, shall cause a copy of the minutes to be forwarded to each member of the board.

67825. A majority of the members of the board shall constitute a quorum and may act for the authority.

67826. A resolution, ordinance, or other action of the board shall not be approved or adopted sooner than 72 hours after its introduction, unless approved by unanimous vote of all members present at the time of consideration. Except as otherwise provided in this chapter, any action taken by the board shall require the affirmative vote of a majority of the appointed members of the board.

67827. The members of the board shall serve without compensation.

67828. The board shall elect from its own members a chair and a vice chair at the first board meeting held each year. Each shall serve a term of one year and may be reelected.

67829. The board shall determine the qualifications of, and shall appoint and fix the salary of, the executive officer of the agency, and shall employ or contract with other staff or consultants as may be necessary to execute the powers and function provided for under this title, including, but not limited to, attorneys, financing consultants, planners, accountants, engineers, architects, contractors, appraisers, and other consultants and advisers.

67830. The chief administrative officer or city manager of each member agency, or his or her designee, shall serve on an administrative committee to the board to provide advice, analysis, and recommendations to the board as the board may request from time to time.

67831. The board may, at its pleasure, appoint an additional advisory committee or committees to provide the board with options, critique, analysis, and other information as it finds useful, and may provide mechanisms through which any such committee may report to the board.

CHAPTER 4. POWERS AND DUTIES

67840. (a) The board shall prepare, adopt, review, revise from time to time, and maintain a plan, that complies with Section 65302 and federal requirements, for the future use and development of the

territory occupied by the military base, and a five-year capital improvement program prepared and adopted pursuant to Section 65403 that indicates basewide facilities and local facilities. The adopted plan shall be the official local plan for the reuse of the base for all public purposes, including all discussions with federal agencies, and for purposes of planning, design, and funding by all state agencies.

(b) The authority reuse plan may provide for development to occur in phases, with criteria concerning public facility development and other factors that must be satisfied within each time phase.

(c) In preparing, adopting, reviewing, and revising the reuse plan, the board shall be consistent with approved coastal plans, air quality plans, water quality plans, spheres of influence, and other countywide or regional plans required by federal or state law, other than local general plans, including any amendments subsequent to the enactment of this title, and shall consider related local general plans.

67840.1. After the board has adopted a reuse plan, each county or city with territory occupied by the base shall submit to the board its general plan or amended general plan, which shall be required to satisfy both of the following:

(a) The plan is submitted pursuant to a resolution adopted by the county or city, after a noticed public hearing, that certified that the portion of the general plan or amended general plan applicable to the territory of the base is intended to be carried out in a manner fully in conformity with this title.

(b) The plan contains, in accordance with guidelines established by the board, materials sufficient for a thorough and complete review.

67840.2. (a) The board shall, within 90 days after the submittal, after a noticed public hearing, either certify or refuse to certify, in whole or in part, the portion of the general plan or amended general plan applicable to the territory of the base.

(b) Where a general plan or amended general plan is refused certification, in whole or in part, the board shall provide a written explanation and may suggest modifications, that, if adopted and transmitted to the board by the county or a city, will allow the amended general plan to be deemed certified upon confirmation by the executive officer of the board. The county or a city may elect to meet the board's refusal of certification in a manner other than as suggested by the board and may then resubmit its revised general plan to the board. If the county or a city requests that the board not recommend or suggest modifications that, if made, will result in certification, the board shall refuse certification with the required findings.

(c) The board shall approve and certify the portions of a general plan or amended general plan applicable to the territory of the base, or any amendments thereto, if the board finds that the portions of the general plan or amended general plan applicable to the territory

of the base meet the requirements of this title, and are consistent with the reuse plan.

67840.3. (a) Within 30 days after the certification of a general plan or amended general plan, or any portion thereof, the board shall, after consultation with the county or a city, establish a date for that county or city to submit the zoning ordinances, zoning district maps, and, where necessary, other implementing actions applicable to the territory of the base.

(b) If the county or a city fails to meet the schedule established pursuant to subdivision (a), the board may waive the deadlines for board action on submitted zoning ordinances, zoning district maps, and, where necessary, other implementing actions, as set forth in Section 67840.4.

67840.4. (a) A county and cities to which subdivision (a) of Section 67840.1 applies shall submit to the board the zoning ordinances, zoning district maps, and, where necessary, other implementing actions applicable to the territory of the base that are required pursuant to this title.

(b) The board may only reject zoning ordinances, zoning district maps, or other implementing actions on the grounds that they do not conform with, or are inadequate to carry out, the certified general plan applicable to the territory of the base. If the board rejects the zoning ordinances, zoning district maps, or other implementing actions applicable to the territory of the base, it shall give written notice of the rejection specifying the provisions of the general plan with which the rejected zoning ordinances do not conform or that it finds will not be adequately carried out, together with its reasons for the action taken.

(c) The board may suggest modifications in the rejected zoning ordinances, zoning district maps, or other implementing actions, that, if adopted by the county or cities and transmitted to the board, shall be deemed approved upon confirmation by the executive officer of the board.

(d) The county or cities may elect to meet the board's rejection in a manner other than as suggested by the board and may then resubmit its revised zoning ordinances, zoning district maps, and other implementing actions to the board.

67840.5. (a) Except for appeals to the board, as provided in Section 67840.7, after the portion of a general plan applicable to the base has been certified and all implementing actions within the area affected have become effective, the development review authority shall be exercised by the respective county or city over any development proposed within the area to which the general plan applies.

(b) Subdivision (a) shall not apply to any development proposed or undertaken on any tidelands, submerged lands, or on public trust lands, whether filled or unfilled, lying within the coastal zone.

67840.6. After the board has certified a general plan or an amended general plan, any amendments to that certified plan that

are applicable to the territory of the base shall take effect only upon certification in the same manner as for the initially certified plan, as provided in this title.

67840.7. (a) After the board has adopted a reuse plan pursuant to this title, any revision or other change to that plan that only affects territory lying within the jurisdiction of one member agency may only be adopted by the board if one of the following conditions is satisfied:

(1) The revision or other change was initiated by resolution adopted by the legislative body of the affected member agency and approved by at least a simple majority affirmative vote of the board.

(2) The revision or other change was initiated by the board or any entity other than the affected member agency and approved by at least a two-thirds affirmative vote of the board.

(b) (1) No local agency shall permit, approve, or otherwise allow any development or other change of use within the area of the base that is not consistent with the plan as adopted or revised pursuant to this title. The board may adopt regulations to ensure compliance with the provisions of this title. No local agency shall permit, approve, or otherwise allow any development or other change of use within the area of the base that is outside the jurisdiction of that local agency.

(2) Subject to the consistency determinations required pursuant to this title, each member agency with jurisdiction lying within the area of the military base may plan for, zone, and issue or deny building permits and other development approvals within that area. Actions of the member agency pursuant to this subdivision may be reviewed by the board at its own initiative, or may be appealed to the board.

67841. The board may negotiate and enter into appropriate agreements with the United States or any of its agencies or departments for the purpose of determining the disposition, reuse, or conservation of the property or facilities within the area of the military base.

67842. (a) The board shall be the principal local public agent for the acquisition, lease disposition, and sale of real property and facilities within the territory of the military base, and is the state-designated agency for receipt of title to federal property, including property transferred pursuant to the "Pryor Amendment," except as otherwise provided in this section. The board has the authority to acquire, lease, sell, or otherwise dispose of real property and facilities within the territory of the military base.

(b) The board may mediate and resolve conflicts between local agencies concerning the uses of federal land to be transferred for public benefit purposes, or for other uses. The board shall have primary local responsibility for complying with the provisions of the federal Stewart B. McKinney Homeless Assistance Act (Public Law 100-77) related to low-income housing in the area of the base.

(c) The board may take title to property within the area of the

base that is either turned over to the board by the federal government at no cost or that is purchased by the board. The board may sell, lease, or otherwise dispose of this property at full market value or at less than full market value in order to facilitate the rapid and successful transition of the base to civilian use. In any transaction involving the transfer of federal property, the board shall fully honor all conditions, requirements, and understandings with the federal government with respect to the use and disposal of that property. In the sale, lease, or disposition of real property, the board shall follow those procedures and make those determinations that are required of redevelopment agencies pursuant to Article 11 (commencing with Section 33430) of Chapter 4 of Part 1 of Division 24 of the Health and Safety Code.

(d) The provisions of this title shall not preclude negotiations between the federal government and any local telecommunication, water, gas, electric, or cable provider for the transfer to any such utility or provider of federally-owned distribution systems and related facilities serving the military base.

67843. (a) The board shall identify those public capital facilities described in the authority reuse plan, that could most efficiently or conveniently be planned, negotiated, financed, or constructed by the board to further the integrated future use of the base. The board shall undertake to plan for and arrange the provision of those facilities, including arranging for their financing and construction. The board shall have authority to plan, design, construct, and finance these public capital facilities, or to delegate any of those powers to one or more member agencies.

(b) The board may seek state and federal grants and loans or other assistance to help fund these public facilities.

(c) The board may, in any year, levy assessments, reassessments, or special taxes and issue bonds to finance basewide facilities in accordance with, and pursuant to, any of the following:

(1) The Improvement Act of 1911 (Division 7 (commencing with Section 5000) of the Streets and Highways Code).

(2) The Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code).

(3) The Municipal Improvement Act of 1913 (Division 12 (commencing with Section 10000) of the Streets and Highways Code).

(4) The Benefit Assessment Act of 1982 (Chapter 6.4 (commencing with Section 54703)).

(5) The Landscape and Lighting Act of 1972 (Part 2 (commencing with Section 22500) of Division 15 of the Streets and Highways Code).

(6) The Integrated Financing District Act (Chapter 1.5 (commencing with Section 53175) of Division 2 of Title 5).

(7) The Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title

5).

(8) The Infrastructure Financing District Act (Chapter 2.8 (commencing with Section 53395) of Division 2 of Title 5).

(9) The Marks-Roos Local Bond Pooling Act of 1985 (Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1).

(10) The Revenue Bond Act of 1941 (Chapter 6 (commencing with Section 54300) of Division 2 of Title 5).

(11) Fire suppression assessments levied pursuant to Article 3.6 (commencing with Section 50078) of Chapter 1 of Part 1 of Division 1 of Title 5.

(12) Habitat maintenance assessments levied pursuant to Article 3.1 (commencing with Section 50060) of Chapter 1 of Part 1 of Division 1 of Title 5.

(d) The board may levy development fees on development projects within the area of the base. Any development fees shall comply with the requirements of Chapter 5 (commencing with Section 66000) of Division 1 of Title 5. No local agency shall issue any building permit for any development within the area of the military base until the board has certified that all development fees that it has levied with respect to the development project have been paid or otherwise satisfied.

(e) The board may receive funds from the California Infrastructure and Economic Development Bank pursuant to Division 1 (commencing with Section 63000) of Title 6.7.

67844. The board may enter into contracts and agreements as necessary to mitigate any impacts of the reuse of the military base.

67845. The board may study, evaluate, and recommend cleanup of toxic and explosive substances within the area of the base to the federal government, including the Department of Defense, and the State of California, if it determines that doing so is in the best interests of the communities surrounding the military base area.

67846. The board shall aggressively pursue all possible federal funding for the transfer, cleanup, and reuse of the local military base, including funding to pay for the costs of public capital facilities and funding to attract and encourage the development of private businesses and public universities and other public facilities within the area of the base. The board may also pursue and accept federal and state funding to pay part of the expenses of operating the authority.

67847. The board may take other action that is necessary or convenient to ensure the rapid and successful conversion of the area of the military base to civilian use in a way that provides maximum benefits to the communities of the area and the State of California.

CHAPTER 5. FUNDING

67850. In addition to any funds received from federal and state agencies for the expenses of operating the authority, the board may

receive contributions from agencies represented on the board. Each agency represented by a board member shall contribute to the authority, on or before August of each fiscal year, a sum to be determined by the board for each board member that the agency appoints. For purposes of this section, the term "public agency" does not include any elected official of the federal or state government.

67851. The board and the member agencies may provide by contract for the transfer to the board or between member agencies of revenues available from sales tax, property tax, or other sources in order to help finance the cost of paying for services or capital facilities to serve or enhance the development of military bases. The contract or contracts may provide for the transfer of funds to member agencies with responsibility for providing services or facilities within the area of military bases for a specified number of years, and for the repayment of those funds in later years with interest, or for repayment in the form of an equity interest in property, sales, or other tax revenues that may be payable as a result of development occurring within the area of the military base. Any such contract shall be effective only upon approval by the board and the member agencies involved.

CHAPTER 6. PLEDGE

67860. The State of California does hereby pledge to and agree with the holders of any bonds issued, and with any public or private entity with which the board has entered into a contract or an agreement, pursuant to the provisions of this title, that the state will not alter or change the structure, organization, programs, or powers hereby vested in the board until those bonds are fully met or discharged and until the board has fully met or discharged its obligations pursuant to those agreements or contracts. However, nothing in this title shall preclude an alteration or change if, and when, adequate provision shall have been made by law for the protection from impairment of the contracts represented by those bonds or contracts or agreements, and the right to so alter or change is hereby reserved. The board is authorized to include this pledge and undertaking of the state in its bonds and contracts or agreements.

CHAPTER 7. DISSOLUTION

67870. The authority shall cease to exist when the board determines that 80 percent of the territory of the military base that is designated for development or reuse in the plan prepared pursuant to this title has been developed or reused in a manner consistent with the reuse plan, or in any case not later than June 30, 20 years after the creation of the authority. The local agency formation commission or commissions of the county or counties that are member agencies shall provide for the orderly dissolution of the

authority, including ensuring that all contracts, agreements, and pledges to pay or repay money entered into by the authority are honored and properly administered, and that all assets of the authority are appropriately transferred.

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

In order to minimize the disruptive effects that the closure of military bases will have on the civilian economy and the people of the surrounding military base area, it is necessary for this act to take effect immediately.

CHAPTER 1166

An act to amend Sections 67811 and 67820 of, and to add Section 67848 to, the Government Code, to amend Sections 97.5, 4702, 4703, and 4703.2 of, and to add Sections 97.032 and 97.033 to, the Revenue and Taxation Code, and to add Section 1.7 to the San Bernardino County Flood Control Act (Chapter 73 of the Statutes of 1939), relating to local government, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 67811 of the Government Code, as added by Assembly Bill 3759 of the 1993-94 Regular Session, is amended to read:

67811. Counties and cities may establish an authority with the powers and duties set forth in this title upon the adoption of resolutions pursuant to Section 67820.

SEC. 2. Section 67820 of the Government Code, as added by Assembly Bill 3759 of the 1993-94 Regular Session, is amended to read:

67820. (a) The authority shall be formed if two-thirds of the legislative bodies listed in subdivision (b) with two-thirds of the territory over all or a portion of the boundaries of the military base and with responsibility for complying with Division 1 (commencing with Section 65000) of Title 7 adopt resolutions calling for the formation of the authority.

(b) The authority shall be governed by a board of directors composed of the following:

(1) One member from each city with a sphere of influence over all or a portion of the boundaries of the military base.

(2) One member from each county with territory over all or a

portion of the boundaries of the military base.

(3) One member from each city with territory over all or a portion of the boundaries of the military base.

(c) Each legislative body may appoint one alternate for each of its positions on the board, and each alternate shall have all the rights and authority of a board member when serving in that board member's place.

(d) Each board member and each alternate shall be a member of the legislative body making the appointment, except that alternates appointed by the county board of supervisors shall be residents of the county. Board members and alternates shall serve at the pleasure of the legislative body making the appointment.

(e) Notwithstanding subdivision (a) or (b), any local agency that does not adopt a resolution favoring establishment of the authority shall not be required to:

(1) Appoint a voting member to the board.

(2) Contribute to the authority pursuant to Section 67850 if it does not appoint a voting member to the board.

(3) Serve on an administrative committee pursuant to Section 67830 if it does not appoint a voting member to the board.

SEC. 3. Section 67848 is added to Chapter 4 (commencing with Section 76840) of Title 7.86 of the Government Code, as added by Assembly Bill 3759 of the 1993-94 Regular Session, to read:

67848. (a) The board is encouraged to look first to contracting with, and providing funding to, the California Conservation Corps for the purpose of carrying out conservation and environmental projects, including, but not limited to, the cleanup of low hazardous toxic materials.

(b) It is the intent of the Legislature that the California Conservation Corps be considered a resource for the board for carrying out conservation and environmental projects, including, but not limited to, the cleanup of low hazardous toxic materials, because of the training and safety requirements associated with those activities and the established, cost-effective program and infrastructure that the corps can provide through its own resources, or in partnership with local corps or public or private entities, for the hiring, training, and personal development of those young adults in local communities that carry out meaningful conservation and environmental projects.

(c) Nothing in this section shall be construed to preclude the board from utilizing the resources of local residents to the greatest extent possible in carrying out conservation and environmental projects.

SEC. 4. Section 97.032 is added to the Revenue and Taxation Code, to read:

97.032. Notwithstanding any other provision of this chapter, for the 1994-95 fiscal year, the amount of the revenue allocation reduction with respect to a qualified county that is attributable to the reduction determined for that county for the 1993-94 fiscal year

pursuant to paragraph (1) of subdivision (a) of Section 97.035 shall be reduced by the amounts of any increased revenues, allocated in the 1994-95 fiscal year in that county to a "qualifying school entity" as defined in paragraph (5) of subdivision (a) of Section 97.035, that would not have been so allocated but for that county being a qualified county. For purposes of this section, a "qualified county" means a county or city or county that has first implemented for the 1994-95 fiscal year the alternative procedure for the distribution of property tax levies that is authorized by Chapter 2 (commencing with Section 4701) of Part 8.

SEC. 5. Section 97.033 is added to the Revenue and Taxation Code, to read:

97.033. Notwithstanding any contrary provision in paragraph (4) of subdivision (d) of Section 97.035, for the County of Marin only, commencing with the 1993-94 fiscal year, if, after making the allocations pursuant to paragraph (2) as required by paragraph (4), the auditor determines that each community college district located entirely within that county is an excess school tax entity as defined in Section 95.1, the auditor shall then apply any remaining funds to reduce the amounts of those reductions calculated pursuant to this section with respect to the county, cities, and special districts in proportion to the amount of the reduction otherwise calculated under this section for each of those agencies.

SEC. 6. Section 97.5 of the Revenue and Taxation Code is amended to read:

97.5. Except as otherwise provided in Section 97.51 or 97.52, for the purpose of apportioning property tax revenues each fiscal year:

(a) The amount of property tax revenue allocated pursuant to subdivisions (a) and (b) of Section 96 or subdivision (a) of Section 97, modified by any adjustments made pursuant to Section 99 or 99.4, and subdivision (e) of Section 98, shall be combined to compute the total amount of property tax revenue allocated to the jurisdiction with respect to the tax rate area.

(b) The total amount of property tax revenue allocated to each jurisdiction with respect to all tax rate areas as determined pursuant to subdivision (a) shall be added to compute a total amount of property tax revenue for a jurisdiction in all tax rate areas.

(c) Each amount determined pursuant to subdivision (b) shall be divided by the total of all such amounts computed. The quotient determined shall be used to apportion actual property tax collections and shall be known as the "property tax apportionment factors."

(d) (1) Notwithstanding any other provision of law, for the 1990-91 fiscal year and each fiscal year thereafter, the auditor shall divide the sum of the amounts calculated with respect to each jurisdiction or community redevelopment agency pursuant to Sections 97, 98.6, and 98.9, and Section 33670 of the Health and Safety Code, by the countywide total of those calculated amounts. The resulting ratio shall be known as the "administrative cost apportionment factor" and shall be multiplied by the sum of the

property tax administrative costs incurred in the immediately preceding fiscal year by the assessor, tax collector, and auditor to determine the fiscal year property tax administrative costs proportionately attributable to each jurisdiction or community redevelopment agency. For purposes of this paragraph, property tax administrative costs shall also include applicable administrative overhead costs allowed by the federal Office of Management and Budget Circular A-87 standards, but shall not include any amount reimbursed pursuant to Sections 75.60 and 98.6, or include any amount in excess of the amounts reimbursable pursuant to Section 75.60, unless a county meets the conditions of paragraph (2) of subdivision (b) of Section 75.60. However, no amount of funds appropriated to counties for purposes of property tax administration in Item 9100-102-001 of the Budget Act of 1994 or any subsequent Budget Act shall result in any deduction from those property tax administrative costs that are eligible for reimbursement pursuant to this subdivision.

(2) Each proportionate share of property tax administrative costs determined pursuant to paragraph (1), except for those proportionate shares determined with respect to a school entity, shall be deducted from the property tax revenue allocation of the relevant jurisdiction or community redevelopment agency, and shall be added to the property tax revenue allocation of the county. For purposes of applying this paragraph for the 1990-91 fiscal year, each proportionate share of property tax administrative costs shall be deducted from those amounts allocated to the relevant jurisdiction or community redevelopment agency after January 1, 1991.

(3) Reductions made pursuant to this subdivision to property tax revenue allocations shall be made without regard to Section 907 of the Government Code.

(4) Any additional amounts of property tax revenue allocated to the county pursuant to this subdivision shall be used only to fund costs incurred by the county in assessing and collecting property taxes, and in allocating property tax revenues, and shall constitute charges for those services, not exceeding the actual and reasonable costs incurred by the county in performing those services.

(5) It is the intent of the Legislature in enacting this subdivision to recognize that since the adoption of Article XIII A of the California Constitution by the voters, county governments have borne an unfair and disproportionate part of the financial burden of assessing, collecting, and allocating property tax revenues for other jurisdictions and for redevelopment agencies. The Legislature finds and declares that this subdivision is intended to fairly apportion the burden of collecting property tax revenues and is not a reallocation of property tax revenue shares or a transfer of any financial or program responsibility.

(6) Commencing with the 1992-93 fiscal year and each fiscal year thereafter, this subdivision shall supersede and replace subdivisions (e), (f), and (g) of Section 97, as that section read on January 1, 1992,

as authority for a county to recover property tax administrative costs.

(e) For 1980–81 and each year thereafter, the property tax apportionment factors for the current year shall be used to apportion the total amount paid to a county annually for reimbursement of tax loss from business inventory exemptions pursuant to Chapter 1150 of the Statutes of 1979.

(f) For 1980–81 and each year thereafter, prior years' property tax revenues shall be apportioned using the factors determined pursuant to subdivision (c) for the immediately preceding fiscal year.

(g) For 1979–80, prior years' property tax revenues shall be apportioned using the tax allocation factors computed pursuant to Section 26912 of the Government Code.

(h) Notwithstanding the provisions of this section property tax revenues may be apportioned by tax rate area.

(i) Supplemental property tax revenues for 1985–86 and each year thereafter, generated by Sections 75 to 75.80, inclusive, shall be apportioned using the property tax apportionment factors for the current year.

(j) This section, as amended by Senate Bill 399 of the 1993–94 Regular Session, shall apply to the entire 1993–94 fiscal year, regardless of the operative date of Senate Bill 399, and to each fiscal year thereafter.

SEC. 7. Section 4702 of the Revenue and Taxation Code is amended to read:

4702. (a) The procedure authorized by this chapter may be placed in effect in any county by resolution of the board of supervisors of that county adopted not later than July 15th of the fiscal year for which it is to first apply and shall thereafter remain in effect unless the board orders its discontinuance or unless, prior to the commencement of any subsequent fiscal year, the board receives a petition for its discontinuance joined in by resolutions duly adopted by the governing boards of not less than two-thirds of the participating revenue districts in the county, in which event the board shall order discontinuance of the procedure effective at the commencement of the subsequent fiscal year.

(b) Notwithstanding subdivision (a), for the 1993–94 and 1994–95 fiscal years only, the procedure authorized by this chapter may be placed in effect in any county by resolution of the board of supervisors of that county adopted not later than October 15 of the relevant fiscal year, and shall remain in effect unless otherwise discontinued in accordance with the provisions of this chapter.

SEC. 8. Section 4703 of the Revenue and Taxation Code is amended to read:

4703. In each county that elects to adopt the procedure authorized by this chapter there is hereby created a tax losses reserve fund.

(a) The tax losses reserve fund shall be used exclusively, as hereinafter provided, to cover losses that may occur in the amount of tax liens as a result of special sales of tax-defaulted property.

Whenever in any year the amount of the tax losses reserve fund has reached an amount equivalent to 3 percent of the total of all taxes and assessments levied on the secured roll for that year for participating entities in the county, the amounts hereinafter authorized to be credited to that fund may, for the remainder of that year, be credited to the county general fund.

(b) The auditor and treasurer shall keep apportioned tax resources accounts in such a manner that the balance of amounts apportioned to funds on an accrual basis shall be known by both officers. In addition, the auditor shall keep secured taxes receivable accounts in such a manner as to establish accountability for the amounts receivable on the secured tax rolls. Secured tax rolls, as used in this chapter, include delinquent rolls prescribed by Section 2627.

SEC. 9. Section 4703.2 of the Revenue and Taxation Code is amended to read:

4703.2. (a) In any county electing to follow the procedure authorized by this chapter, the board of supervisors may, by September 1 of any fiscal year, on the recommendation of the county auditor, adopt a resolution electing to be governed by this section rather than the provisions of Section 4703. Upon adoption, a copy of this resolution shall be filed with the county auditor, the county treasurer, and the county tax collector. This election shall remain in effect each fiscal year unless the board of supervisors adopts another resolution by September 1 of a fiscal year electing to be governed instead by Section 4703. For the 1993-94 fiscal year only, the election to be governed by this section rather than Section 4703 may be made no later than January 15, 1994.

(b) In each county that elects to adopt the procedure authorized by this chapter and elects to be governed by this section rather than Section 4703 there shall be created a tax losses reserve fund.

(c) The tax losses reserve fund shall be used exclusively, as hereinafter provided, to cover losses that may occur in the amount of tax liens as a result of special sales of tax-defaulted property. In a county electing to be subject to this section rather than Section 4703, the tax losses reserve fund shall be maintained at not less than 50 percent of the total delinquent secured taxes and assessments for participating entities in the county as calculated at the end of the fiscal year. At the end of the fiscal year, amounts in the tax losses reserve fund that are in excess of 50 percent of the total delinquent secured taxes and assessments for participating entities in the county may be credited to the county general fund.

(d) The auditor and treasurer shall keep apportioned tax resources accounts in such a manner that the balance of amounts apportioned to funds on an accrual basis shall be known by both officers. In addition, the auditor shall keep secured taxes receivable accounts in such a manner as to establish accountability for the amounts receivable on the secured tax rolls. Secured tax rolls as used in this chapter include delinquent rolls prescribed by Section 2627.

SEC. 10. Section 1.7 is added to the San Bernardino County Flood

Control Act (Chapter 73 of the Statutes of 1939), to read:

Sec. 1.7. The board of supervisors may, by ordinance, change the boundaries of any zone created pursuant to Sections 1.01 to 1.6, inclusive, of this act.

In addition to any other requirement of current law, before changing the boundaries of any zone, the board of supervisors shall hold a public hearing on the proposed change. Notice of the hearing shall be published in a newspaper of general circulation within the zone. If there is no newspaper of general circulation within the zone, notice of the hearing shall be posted in at least seven places within the zone. The notice shall describe the proposed changes to the boundaries of the zone and contain a general statement of the reasons for the proposed change. At the hearing, any interested person may appear and protest the proposed boundary change.

SEC. 11. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique fiscal situation and property tax revenue allocation patterns with respect to community college districts and other local agencies in the County of Marin.

SEC. 12. Sections 1 to 3, inclusive, of this act shall become operative only if Assembly Bill 3759 of the 1993-94 Regular Session is enacted to add Title 7.86 (commencing with Section 67800) to the Government Code, and in that event shall become operative on the same date as that title.

SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the Legislature finds and declares that there are savings as well as costs in this act which, in the aggregate, do not result in additional net costs. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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

In order to clarify important matters with respect to local government with respect to the 1994-95 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 1167

An act to add Section 12467 to the Government Code, and to repeal and add Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of, the Revenue and Taxation Code, and to amend Sections 10 and 11 of Chapter 155 of the Statutes of 1994, relating to property taxation.

[Approved by Governor September 29, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 12467 is added to the Government Code, to read:

12467. The Controller shall regularly audit the apportionment and allocation by counties of property tax revenue pursuant to this chapter, in accordance with the following schedule:

(a) For counties with population in excess of 5,000,000 the audit shall be performed annually.

(b) For counties with population greater than 200,000 and less than 5,000,000, the audit shall be performed on a three-year cycle.

(c) For counties with population 200,000 or less, the audit shall be performed on a five-year cycle.

(d) The Controller may, at his or her discretion, perform audits more frequently than provided in subdivisions (b) and (c).

(e) The Controller shall annually submit a report to the Legislature containing a description of the audit findings for each county that was audited during the prior year. The report shall contain recommendations to the Legislature for legislation to correct any errors in the apportionment and allocation of property tax revenues that were determined as a result of these audits.

SEC. 2. Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation Code is repealed.

SEC. 3. Chapter 6 (commencing with Section 95) is added to Part 0.5 of Division 1 of the Revenue and Taxation Code, to read:

CHAPTER 6. ALLOCATION OF PROPERTY TAX REVENUE

Article 1. Definitions and Administration

95. For the purpose of this chapter:

(a) "Local agency" means a city, county, and special district.

(b) "Jurisdiction" means a local agency, school district, community college district, or county superintendent of schools. A jurisdiction as defined in this subdivision is a "district" for purposes of Section 1 of Article XIII A of the California Constitution.

For jurisdictions located in more than one county, the county auditor of each county in which that jurisdiction is located shall, for

the purposes of computing the amount for that jurisdiction pursuant to this chapter, treat the portion of the jurisdiction located within that county as a separate jurisdiction.

(c) "Property tax revenue" includes the amount of state reimbursement for the homeowners' exemption. "Property tax revenue" does not include the amount of property tax levied for the purpose of making payments for the interest and principal on either of the following:

(1) General obligation bonds or other indebtedness approved by the voters prior to July 1, 1978, including tax rates levied pursuant to Part 10 (commencing with Section 15000) of Division 1 of, and Sections 39308 and 39311 and former Sections 81338 and 81341 of the Education Code, and Section 26912.7 of the Government Code.

(2) Bonded indebtedness for the acquisition or improvement of real property approved by two-thirds of the voters on or after June 4, 1986.

(d) "Taxable assessed value" means total assessed value minus all exemptions other than the homeowners' and business inventory exemptions.

(e) "Jurisdictional change" includes a change of organization, as defined in Section 35027 of the Government Code, an incorporation, as defined in Section 35037 of the Government Code, a municipal reorganization, as defined in Section 35042 of the Government Code, a change of organization, as defined in Section 56021 of the Government Code, a formation, as defined in Section 56042 of the Government Code, and a reorganization, as defined in Section 56068 of the Government Code. "Jurisdictional change" also includes any change in the boundary of those special districts that are not under the jurisdiction of a local agency formation commission.

"Jurisdictional change" also includes a functional consolidation where two or more local agencies, except two or more counties, exchange or otherwise reassign functions and any change in the boundaries of a school district or community college district or county superintendent of schools.

(f) "School entities" means school districts, community college districts, the Educational Revenue Augmentation Fund, and county superintendents of schools.

(g) Except as otherwise provided in this subdivision, "tax rate area" means a specific geographic area all of which is within the jurisdiction of the same combination of local agencies and school entities for the current fiscal year.

In the case of a jurisdictional change pursuant to Section 99, the area subject to the change shall constitute a new tax rate area, except that if the area subject to change is within the same combinations of local agencies and school entities as an existing tax rate area, the two tax rate areas may be combined into one tax rate area.

Existing tax rate areas having the same combinations of local agencies and school entities may be combined into one tax rate area. For the combination of existing tax rate areas, the factors used to

allocate the annual tax increment pursuant to Section 98 shall be determined by calculating a weighted average of the annual tax increment factors used in the tax rate areas being combined.

(h) "State assistance payments" means:

(1) For counties, amounts determined pursuant to subdivision (b) of Section 16260 of the Government Code, increased by the amount specified for each county pursuant to Section 94 of Chapter 282 of the Statutes of 1979, with the resultant sum reduced by an amount derived by the calculation made pursuant to Section 16713 of the Welfare and Institutions Code.

(2) For cities, 82.91 percent of the amounts determined pursuant to subdivisions (b) and (i) of Section 16250 of the Government Code, plus for any city an additional amount equal to one-half of the amount of any outstanding debt as of June 30, 1978, for "museums" as shown in the Controller's "Annual Report of Financial Transactions of Cities for Fiscal Year 1977-78."

(3) For special districts, 95.24 percent of the amounts received pursuant to Chapter 3 (commencing with Section 16270) of Part 1.5 of Division 4 of Title 2 of the Government Code, Section 35.5 of Chapter 332 of the Statutes of 1978, and Chapter 12 of the Statutes of 1979.

(i) "City clerk" means the clerk of the governing body of a city or city and county.

(j) "Executive officer" means the executive officer of a local agency formation commission.

(k) "City" means any city whether general law or charter, except a city and county.

(l) "County" means any chartered or general law county. "County" includes a city and county.

(m) "Special district" means any agency of the state for the local performance of governmental or proprietary functions within limited boundaries. "Special district" includes a county service area, a maintenance district or area, an improvement district or improvement zone, or any other zone or area, formed for the purpose of designating an area within which a property tax rate will be levied to pay for a service or improvement benefiting that area. "Special district" includes the Bay Area Air Quality Management District. "Special district" does not include a city, a county, a school district or a community college district. "Special district" does not include any agency that is not authorized by statute to levy a property tax rate. However, any special district authorized to levy a property tax by the statute under which the district was formed shall be considered a special district. Additionally, a county free library established pursuant to Article 1 (commencing with Section 19100) of Chapter 6 of Part 11 of Division 1 of Title 1 of the Education Code, and for which a property tax was levied in the 1977-78 fiscal year, shall be considered a special district.

(n) "Excess tax school entity" means an educational agency for which the amount of the state funding entitlement determined

under Section 2558, 42238, 84750, or 84751 of the Education Code, as appropriate, is zero.

95.2. (a) (1) Notwithstanding any other provision of law, for the 1990–91 fiscal year, for the purposes of the computations required by Section 96.1 or its predecessor section, the amount of property tax presumed to have been received by the county in the prior year shall be increased by the amount of 1989–90 property tax administrative costs proportionately attributable to incorporated cities as determined pursuant to paragraph (2).

(2) The auditor shall determine the 1989–90 fiscal year property tax administrative costs proportionately attributable to incorporated cities by adding the 1989–90 fiscal year property tax-related costs of the assessor, tax collector, and auditor, including applicable administrative overhead costs as permitted by federal Office of Management and Budget Circular A-87 standards, and multiplying the sum of those amounts by the ratio of property tax revenue received by all incorporated cities divided by the total property tax revenue for all local jurisdictions in the county for that fiscal year.

(3) The county shall use the additional revenue received pursuant to this subdivision only to fund the actual costs of assessing, collecting, and allocating property taxes. At least once each fiscal year, the county auditor shall report the amount of these actual costs and allowable overhead costs to the legislative body and any other jurisdiction or person that request the information. To the extent that actual costs for assessing, collecting, and allocating property taxes plus allowable overhead costs are less than the amount determined pursuant to paragraph (2), the county auditor shall apportion the difference to each incorporated city as otherwise required by this section.

(4) The county may retain up to one-half of any increased property tax allocation to which a jurisdiction may be otherwise entitled, until the county receives its additional revenues pursuant to this subdivision.

(5) It is the intent of the Legislature in enacting this subdivision to recognize that since the adoption of Article XIII A of the California Constitution by the voters, county governments have borne an unfair and disproportionate part of the financial burden of assessing, collecting, and allocating property tax revenues for cities. It is further the intent of the Legislature that the adjustments provided for by this subdivision shall constitute charges by a county for the assessment, collection, and allocation of property taxes and shall not exceed the actual costs reasonably borne by a county for those activities.

(b) If so directed by the board of supervisors, the auditor shall determine the 1989–90 fiscal year property tax administrative costs proportionately attributable to local jurisdictions other than the county or city and county, and cities, by adding the property tax-related costs of the assessor, tax collector, and auditor, including applicable administrative overhead costs as permitted by federal

Office of Management and Budget Circular A-87 standards, and multiplying the sum of those amounts by the ratio of property tax revenue received by jurisdictions other than the county, city and county, and cities, divided by the total property tax received by all local jurisdictions in the county for that fiscal year. Notwithstanding any other provision of law, this amount may be calculated for each fiscal year commencing with the 1989-90 fiscal year, and the auditor shall, commencing in fiscal year 1990-91, if so directed by the board of supervisors, submit an invoice to these jurisdictions for services rendered in the prior fiscal year.

(c) Notwithstanding subdivision (b), no invoice as described in that subdivision shall be submitted to any school district, community college district, or county office of education, nor shall any of those entities be required to pay any invoice, for property tax administrative costs for services rendered in the 1990-91 fiscal year, or in any subsequent fiscal year. This subdivision shall not be construed to prevent the auditor of any county from collecting from school districts, community college districts, and county offices of education, in accordance with subdivision (b), property tax administrative costs for services rendered to those entities in the 1989-90 fiscal year.

95.3. (a) Notwithstanding any other provision of law, for the 1990-91 fiscal year and each fiscal year thereafter, the auditor shall divide the sum of the amounts calculated with respect to each jurisdiction or community redevelopment agency pursuant to Sections 96.1 and 100, or their predecessor sections, and Section 33670 of the Health and Safety Code, by the countywide total of those calculated amounts. The resulting ratio shall be known as the "administrative cost apportionment factor" and shall be multiplied by the sum of the property tax administrative costs incurred in the immediately preceding fiscal year by the assessor, tax collector, and auditor to determine the fiscal year property tax administrative costs proportionately attributable to each jurisdiction or community redevelopment agency. For purposes of this paragraph, property tax administrative costs shall also include applicable administrative overhead costs allowed by the federal Office of Management and Budget Circular A-87 standards, but shall not include any amount reimbursed pursuant to Section 75.60 and former Section 98.6, or include any amount in excess of the amounts reimbursable pursuant to Section 75.60, unless a county meets the conditions of paragraph (2) of subdivision (b) of Section 75.60.

(b) Each proportionate share of property tax administrative costs determined pursuant to subdivision (a), except for those proportionate shares determined with respect to a school entity, shall be deducted from the property tax revenue allocation of the relevant jurisdiction or community redevelopment agency, and shall be added to the property tax revenue allocation of the county. For purposes of applying this paragraph for the 1990-91 fiscal year, each proportionate share of property tax administrative costs shall be

deducted from those amounts allocated to the relevant jurisdiction or community redevelopment agency after January 1, 1991.

(c) Reductions made pursuant to this section to property tax revenue allocations shall be made without regard to Section 907 of the Government Code.

(d) Any additional amounts of property tax revenue allocated to the county pursuant to this subdivision shall be used only to fund costs incurred by the county in assessing and collecting property taxes, and in allocating property tax revenues, and shall constitute charges for those services, not exceeding the actual and reasonable costs incurred by the county in performing those services.

(e) It is the intent of the Legislature in enacting this section to recognize that since the adoption of Article XIII A of the California Constitution by the voters, county governments have borne an unfair and disproportionate part of the financial burden of assessing, collecting, and allocating property tax revenues for other jurisdictions and for redevelopment agencies. The Legislature finds and declares that this subdivision is intended to fairly apportion the burden of collecting property tax revenues and is not a reallocation of property tax revenue shares or a transfer of any financial or program responsibility.

(f) Commencing with the 1992-93 fiscal year and each fiscal year thereafter, this section shall supersede and replace Section 95.2, as authority for a county to recover property tax administrative costs.

(g) This section shall apply to the entire 1993-94 fiscal year, regardless of the operative date of the act adding the predecessor to this section, and to each fiscal year thereafter.

95.4. Amounts invoiced pursuant to subdivision (b) of Section 95.2 or its predecessor shall not include the amount of any costs incurred by the county auditor pursuant to Section 33672.5 of the Health and Safety Code.

Article 2. Basic Revenue Allocations

96. For the 1979-80 fiscal year only, property tax revenues shall be apportioned to each jurisdiction pursuant to this section and Section 96.2 or their predecessors by the county auditor, subject to the allocation and payment of funds as provided for in subdivision (b) of Section 33670 of the Health and Safety Code, as follows:

(a) For each tax rate area, each local agency shall be allocated an amount of property tax revenue equal to the sum of the amount of property tax revenue allocated pursuant to Section 26912 of the Government Code to each local agency for the 1978-79 fiscal year, as allocated to that tax rate area pursuant to paragraph (1) of subdivision (f) of former Section 98, modified by any adjustments required by Section 99, and the amount of state assistance payments allocated to that tax rate area pursuant to paragraph (2) of subdivision (f) of Section 96.5.

(b) The auditor shall determine the school entities' share of the

1979–80 property tax revenue by subtracting the state assistance payments allocated to local agencies within the county for the 1978–79 fiscal year from the aggregate amount of property tax revenue allocated pursuant to Section 26912 of the Government Code to all school entities within the county for the 1978–79 fiscal year. The amount of the difference shall be the school entities' share of property taxes for fiscal year 1979–80, and shall be allocated to the school entities in the same proportion as the allocation made to those entities for the 1978–79 fiscal year. The amount for each school entity shall be allocated among its tax rate areas pursuant to paragraph (3) of subdivision (f) of Section 96.5.

(c) The difference between the total amount of property tax revenue and the amounts allocated pursuant to subdivisions (a) and (b) shall be allocated pursuant to Section 96.5.

(d) For the purposes of computing property tax allocations for the 1978–79 fiscal year and each year thereafter, the county auditor shall recompute the 1978–79 property tax allocation for any city that levied a utility users' tax prior to 1978 but repealed that tax prior to December 31, 1977. For these cities, the term "property tax revenues for the 1975–76, 1976–77, and 1977–78 fiscal years" shall be deemed to include the aggregate of property tax and utility users' tax for those respective years.

96.1. Except as otherwise provided in Article 3 (commencing with Section 97), and in Article 4 (commencing with Section 98), for the 1980–81 fiscal year and each fiscal year thereafter, property tax revenues shall be apportioned to each jurisdiction pursuant to this section and Section 96.2 by the county auditor, subject to allocation and payment of funds as provided for in subdivision (b) of Section 33670 of the Health and Safety Code, to each jurisdiction in the following manner:

(a) For each tax rate area, each jurisdiction shall be allocated an amount of property tax revenue equal to the amount of property tax revenue allocated pursuant to this chapter to each jurisdiction in the prior fiscal year, modified by any adjustments required by Section 99 or 99.2.

(b) The difference between the total amount of property tax revenue and the amounts allocated pursuant to subdivision (a) shall be allocated pursuant to Section 96.5, and shall be known as the "annual tax increment."

(c) For purposes of this section, the amount of property tax revenue referred to in subdivision (a) shall not include amounts generated by the increased assessments under Chapter 3.5 (commencing with Section 75).

96.2. Except as otherwise provided in Section 96.21 or 96.22, for the purpose of apportioning property tax revenues each fiscal year:

(a) The amount of property tax revenue allocated pursuant to subdivisions (a) and (b) of Section 96 or subdivision (a) of Section 96.1, modified by any adjustments made pursuant to Section 99 or 99.2 and subdivision (e) of Section 96.5, shall be combined to

compute the total amount of property tax revenue allocated to the jurisdiction with respect to the tax rate area.

(b) The total amount of property tax revenue allocated to each jurisdiction with respect to all tax rate areas as determined pursuant to subdivision (a) shall be added to compute a total amount of property tax revenue for a jurisdiction in all tax rate areas.

(c) Each amount determined pursuant to subdivision (b) shall be divided by the total of all those amounts computed. The quotient determined shall be used to apportion actual property tax collections and shall be known as the "property tax apportionment factors."

(d) For the 1980–81 fiscal year and each fiscal year thereafter, prior years' property tax revenues shall be apportioned using the factors determined pursuant to subdivision (c) for the immediately preceding fiscal year.

(e) Notwithstanding this section, property tax revenues may be apportioned by tax rate area.

96.21. (a) Notwithstanding any other provision of this chapter, in the County of Solano, the apportionment of property tax revenues made pursuant to Section 96.2 or its predecessor section, for the 1987–88 fiscal year only, shall be modified as follows:

(1) The auditor shall increase by the sum of two hundred sixty-three thousand dollars (\$263,000) the total amount of property tax revenues apportioned to the City of Suisun.

(2) The auditor shall reduce by the sum of ninety thousand dollars (\$90,000) the total amount of property tax revenue apportioned to the Solano County General Fund.

(3) The auditor shall reduce by the total sum of one hundred seventy-three thousand dollars (\$173,000) the total amount of property tax revenue apportioned to all of the following: the Solano County Free Library; the Greater Vallejo Recreation District; the Solano County Water Conservation District; the Solano County Accumulated Capital Outlay Fund; the Solano County Aviation; the Solano County Recreation; the Solano County Zone of Benefit 1; the Solano County Library Special Tax Zone 1; the Fairfield-Suisun Cemetery District; the Solano County portion of the Bay Area Air Quality Management District; and the Cities of Benicia, Dixon, Fairfield, Vacaville, Rio Vista, and Vallejo. The reduction required by this paragraph shall be made by the auditor by computing that percentage of the total amount of property tax revenue allocated to all of the jurisdictions and funds specified in this paragraph which equals one hundred seventy-three thousand dollars (\$173,000) and by reducing the total amount of property tax revenue allocated to each of those jurisdictions and funds by that percentage.

(b) For the 1988–89 fiscal year and each fiscal year thereafter, the auditor shall increase the total amount of property tax revenue apportioned to the City of Suisun pursuant to Section 96.2 by the same percentage by which the total amount of property tax revenue to be apportioned to the city pursuant to Section 96.2 in the 1987–88 fiscal year was increased by the application of subdivision (a).

(c) For the 1988–89 fiscal year and each fiscal year thereafter, the auditor shall reduce the total amount of property tax revenue apportioned to each jurisdiction and fund specified in paragraphs (2) and (3) of subdivision (a) as follows:

(1) The auditor shall compute for each jurisdiction and fund that percentage of the total amount of the property tax revenue reduction required by subdivision (a) for the 1987–88 fiscal year which is equal to the total amount of its property tax revenue reduction for that fiscal year.

(2) The auditor shall reduce the total amount of the property tax revenue apportioned to each jurisdiction and fund for the applicable fiscal year by the amount determined by multiplying the percentage computed for the jurisdiction or fund in paragraph (1) by the total amount of the increase computed in subdivision (b).

96.22. (a) Notwithstanding any other provision of this chapter, in any county with an eligible city, the apportionment of property tax revenues made pursuant to Section 96.2 or its predecessor section, for the 1988–89 fiscal year only, shall be modified as follows:

(1) The auditor shall increase the total amount of property tax revenues apportioned to an eligible city by an amount equal to 20 percent of the “additional amount” provided to that city pursuant to paragraph (2) of subdivision (h) of Section 95.

(2) The auditor shall reduce by the amount determined in paragraph (1) the total amount of property tax revenues apportioned to an eligible local agency authorized to maintain vehicular recreation areas pursuant to Section 5541.1 of the Public Resources Code.

(b) For the 1988–89 fiscal year only, the allocation of annual tax increment pursuant to subdivision (e) of Section 98 or its predecessor section to the eligible city and the eligible local agency shall be adjusted correspondingly to reflect the modifications made by subdivision (a).

(c) For purposes of the calculations made pursuant to Section 96.1 or its predecessor section, in the 1989–90 fiscal year and each fiscal year thereafter, the amounts that are allocated to any eligible city and any eligible local agency pursuant to subdivision (a) shall be included in the “amount of property tax revenue allocated pursuant to this chapter in the prior year.”

(d) For the purposes of this section, “eligible city” means any city which received an additional amount of state assistance payments in accordance with paragraph (2) of subdivision (h) of Section 95.

(e) The amount allocated to an eligible city pursuant to this section shall be expended for zoo purposes only.

96.23. (a) Notwithstanding any other provision of this chapter, in the County of Nevada, the apportionment of property tax revenues made pursuant to Section 96.2 or its predecessor section shall be modified for the 1993–94 fiscal year only, as follows:

(1) The auditor shall increase by the sum of fifty-six thousand six hundred eighty-four dollars (\$56,684) the total amount of property

tax revenues apportioned to the North San Juan Fire Protection District.

(2) The auditor shall reduce by the sum of thirty-one thousand seven hundred eighty-three dollars (\$31,783) the total amount of property tax revenues apportioned to the Nevada County General Fund.

(3) The auditor shall reduce by the sum of twenty-four thousand nine hundred one dollars (\$24,901) the total amount of property tax revenues apportioned to all of the following local agencies within Nevada County: Nevada County Solid Waste; the Nevada Irrigation District; the City of Nevada City; the City of Grass Valley; Higgins Area Fire Protection District; Truckee Fire Protection District; the Truckee Sanitary District; the Nevada Cemetery District; the Truckee Cemetery District; the Nevada Resource Conservation District; the San Juan Ridge County Water District; the Washington County Water District; the Tahoe Forest Hospital; the Donner Summit Public Utility District; the Tahoe Airport District; the Gold Flat Fire Protection District; the Alta Oaks Sunset Fire Protection District; the Forty Niner Fire Protection District; the Ophir Hill Fire Protection District; the Consolidated Fire District; the Peardale-Chicago Park Fire Protection District; the Rough and Ready Fire Protection District; the Watt Park Fire Protection District; the Truckee Donner Park and Recreation District; the Tahoe Truckee Sanitation District; the Penn Valley Fire District; County Service Area 1A; County Service Area 2; County Service Area 3; County Service Area 4; County Service Area 5; County Service Area 10; County Service Area 11; County Service Area 16; and the Lake of the Pines Ranchos Community Services District. The reduction required by this paragraph shall be made by the auditor by computing that percentage of the total amount of property tax revenues allocated in fiscal year 1993-94 to all of the jurisdictions and funds specified in this paragraph that equals twenty-four thousand nine hundred one dollars (\$24,901) and by reducing the total amount of property tax revenues allocated to each of those jurisdictions and funds by that percentage.

(b) (1) For purposes of the calculations made pursuant to Section 96.1 in the 1994-95 fiscal year, the amount allocated to the North San Juan Fire Protection District in the 1993-94 fiscal year pursuant to paragraph (1) of subdivision (a) shall be included in the "amount of property tax revenue allocated pursuant to this chapter in the prior year."

(2) For the 1994-95 fiscal year and each fiscal year thereafter, the North San Juan Fire Protection District shall be allocated a share of the annual tax increment equal to 2.56 percent of the total of the annual tax increment amounts calculated under Section 96.5 for each of the tax rate areas comprising the North San Juan Fire Protection District. The auditor shall commensurately reduce on a pro rata basis the shares of the annual tax increment to be allocated to other local agencies, as defined in subdivision (a) of Section 95, within those tax

rate areas.

96.3. (a) For the 1983–84 and 1984–85 fiscal years, no local agency shall impose a property tax rate pursuant to subdivision (a) of Section 93 for other than bonded indebtedness that is in excess of the rate, if any, imposed in the 1982–83 fiscal year or imposed for the 1983–84 fiscal year pursuant to a budget resolution adopted on or before July 1, 1983, that contemplated the levy of an additional property tax rate for pension system costs, whichever rate is higher, for other than bonded indebtedness. This section shall be deemed to be a maximum tax rate pursuant to Section 20 of Article XIII of the California Constitution.

(b) If a local agency imposes a rate in excess of the maximum rate authorized by subdivision (a), the amount of property tax allocated to that local agency pursuant to this chapter shall be reduced by one dollar (\$1) for each one dollar (\$1) of property tax revenue attributable to the excess rate.

(c) Any property tax revenue that has been subtracted from a local agency's allocation pursuant to subdivision (b) shall be allocated to elementary, high school, and unified school districts within the agency's jurisdiction in proportion to the average daily attendance of each of those districts.

(d) As used in this section, "bonded indebtedness" means any bond obligation of a local government which was approved by the voters of such jurisdiction prior to July 1, 1978.

96.31. (a) For the 1985–86 fiscal year and each fiscal year thereafter, no jurisdiction shall impose a property tax rate pursuant to subdivision (a) of Section 93, unless it is imposed for one or more of the following purposes:

(1) To make annual payments for the interest and principal on general obligation bonds approved by the voters before July 1, 1978, and on bonded indebtedness for the acquisition and improvement of real property approved by the voters by a two-thirds vote after June 4, 1986.

(2) To make payments to the State of California under contracts for the sale, delivery, or use of water entered into pursuant to California Water Resources Development Bond Act in Chapter 8 (commencing with Section 12930) of Part 6 of Division 6 of the Water Code or to make payments to the United States or another public agency under voter-approved contracts for the sale, delivery, or use of water or for the repayment of voter-approved obligations for the construction, maintenance, or operation of water conservation, treatment, or distribution facilities, provided that the indebtedness was approved by the voters before July 1, 1978.

(3) To make payments pursuant to lease-purchase programs approved by the voters before July 1, 1978, provided that the jurisdiction imposed the property tax rate in the 1982–83 fiscal year.

(4) To make payments in support of pension programs approved by the voters before July 1, 1978, provided that the local agency imposed the property tax rate in the 1982–83 or 1983–84 fiscal year.

(5) To make payments in support of paramedic, library, or zoo programs approved by the voters before July 1, 1978, provided that the jurisdiction imposed the property tax rate in the 1982-83 fiscal year.

(6) To make payments for the interest and principal on an indebtedness, pursuant to Section 5544.2 of the Public Resources Code, approved by the voters before July 1, 1978, provided that the local agency imposed the property tax rate in the 1982-83 fiscal year.

(b) In the 1985-86 fiscal year and any fiscal year thereafter, a jurisdiction shall not impose a property tax rate, pursuant to subdivision (a) of Section 93, in excess of the rate it imposed in the 1982-83 or 1983-84 fiscal year. Notwithstanding the limit imposed by this subdivision, a higher property tax rate may be imposed whenever necessary to make payments for any of the purposes specified in paragraphs (1), (2), and (3) of subdivision (a). However, no property tax rate increase in excess of the rate imposed in the 1984-85 fiscal year shall be imposed if the purpose of the rate increase is to fund a reduction in the rates charged for water at the time of the property tax rate increase.

(c) Notwithstanding subdivisions (a) and (b), a charter city may levy an ad valorem property tax rate to make payments in support of a retirement system for fire and police employees if all of the following criteria are met:

(1) The retirement system is part of the city's charter and was approved by the voters before July 1, 1978.

(2) The city did not levy a separate ad valorem property tax rate to support the retirement system in the 1983-84 fiscal year.

(3) The retirement system provides for a cost-of-living adjustment that is indexed to a consumer price index and does not limit the annual increases which may be paid to members after their retirement.

(4) The retirement system is not currently available to newly hired fire and police employees and will not be available in the future.

(5) Before January 1, 1985, the city unsuccessfully litigated a limit to the cost-of-living adjustment that may be paid to members of the retirement system after their retirement.

(6) After July 1, 1985, the city conducted an election and a question authorizing the levying of an ad valorem property tax for the purpose of making payments in support of the retirement system received the affirmative votes of at least 60 percent of those voting on that question.

The proceeds of an ad valorem property tax rate levied pursuant to this subdivision shall be used only to pay for the obligations of a retirement system described by this subdivision. The proceeds shall not be used to finance more than 75 percent of the annual obligations of this retirement system. A city shall not levy an ad valorem property tax pursuant to this subdivision after June 30, 2034.

(d) If a jurisdiction imposes a rate in excess of the maximum rate

authorized by subdivision (a), (b), or (c), the amount of property tax allocated to the jurisdiction pursuant to this chapter shall be reduced by one dollar (\$1) for each one dollar (\$1) of property tax revenue attributable to the excess rate. Any property tax revenue that has been subtracted from a jurisdiction's allocation pursuant to this subdivision shall be allocated to elementary, high school, and unified school districts within the jurisdiction's jurisdiction in proportion to the average daily attendance of each district.

(e) This section shall be deemed to be a limit on the maximum property tax rate pursuant to Section 20 of Article XIII of the California Constitution.

96.4. (a) Notwithstanding any other provision of this part or Part 8 (commencing with Section 4651) of Division 1, when all loans, advances, or indebtedness incurred to finance or refinance a redevelopment project subject to a reimbursement agreement validated by Section 33608 of the Health and Safety Code have been paid as provided in subdivision (b) of Section 33670 of the Health and Safety Code, the portion of taxes specified in subdivision (b) of this section that is produced by property within the redevelopment project area and that would otherwise have been allocated and distributed to the city, shall instead be allocated and distributed as follows:

(1) Fifty percent of these tax revenues shall be distributed to the affected school entities specified in Section 95 until the school entities have received the amount, including interest, specified in this subdivision. The amount of taxes allocated under this subdivision shall be equal to the aggregate amount of taxes that would have otherwise been received by the school entities in the years 2006 to 2014, inclusive, but for the reimbursement paid to the city pursuant to the agreement specified in Section 33608 of the Health and Safety Code, plus simple interest on the unpaid balance at an annual rate of 7 percent, accruing from and after January 1, 2006, until payment in full.

(2) The balance of these tax revenues shall be paid to the city, including the remainder of the portion of taxes specified in subdivision (b) available after the distribution made pursuant to paragraph (1).

(b) This section applies to that portion of the property tax revenues from property within the redevelopment project area subject to Section 33608 of the Health and Safety Code that is in excess of the property tax revenues that would be produced by the rate upon which the tax is levied each year by or for the city upon the total sum of the assessed value of the taxable property in the redevelopment project area as shown upon the assessment roll used in connection with the taxation of the property by the city, last equalized prior to the effective date of the ordinance approving the final redevelopment plan for that redevelopment project area.

(c) For purposes of all other allocations of property taxes under this code, the amount allocated to school entities by this section shall

be treated as having been allocated to the city.

(d) The county auditor may assess the city for, and the city shall pay to the county auditor, the actual costs of making the reallocation and payment of property taxes required by this section.

96.5. The difference between the total amount of property tax revenue computed each year using the equalized assessment roll and the sum of the amounts allocated pursuant to subdivision (a) of Section 96.1 shall be known and may be cited as the annual tax increment, and shall be allocated, subject to allocation and payment of funds as provided for in subdivision (b) of Section 33670 of the Health and Safety Code, and modified by any adjustments made pursuant to Section 99 or 99.02, as follows:

(a) For each tax rate area, the auditor shall determine an amount of property tax revenue by multiplying the value of the change in taxable assessed value from the equalized assessment roll for the prior fiscal year to the equalized assessment roll for the current fiscal year by a tax rate of four dollars (\$4) per one hundred dollars (\$100) of assessed value. When computing the change in taxable assessed value between the 1980–81 fiscal year and the 1981–82 fiscal year, the assessed values for the 1980–81 fiscal year shall be multiplied by four. Starting with the 1981–82 fiscal year, the tax rate used in this calculation shall be one dollar (\$1) per one hundred dollars (\$100) of full value.

(b) Each amount determined pursuant to subdivision (a) shall be divided by the total of all those amounts computed for all tax rate areas within the county.

(c) The difference between the total amount of property tax revenue for the county and the sum of the amounts allocated pursuant to subdivisions (a) and (b) of Section 96 or subdivision (a) of Section 96.1 shall be computed.

(d) The amount determined pursuant to subdivision (c) shall be multiplied by the quotients determined pursuant to subdivision (b) to derive, for each tax rate area, the amount of property tax revenue attributable to changes in assessed valuation.

(e) Except as provided in paragraph (4) of subdivision (b) of former Section 97.3, as that section read on January 1, 1994, in the 1984–85 fiscal year only, in subdivision (d) of former Section 97.32, as that section read on January 1, 1994, in the 1985–86 fiscal year only, and in paragraph (4) of subdivision (b) of former Sections 97.35, 97.37, and 97.38 in the 1989–90 fiscal year only, the amount of property tax revenue determined pursuant to subdivision (d) shall be allocated to the jurisdictions in the tax rate area in the same proportion that the total property tax revenue determined pursuant to subdivision (d) for the prior year was allocated to all those jurisdictions in the tax rate area except that those proportions within each tax rate area may be adjusted for affected agencies pursuant to the provisions of Section 99 or 99.02.

(f) Any agency that has not filed a map of its boundaries by January 1, in compliance with Chapter 8 (commencing with Section

54900) of Part 1 of Division 2 of Title 5 of the Government Code, shall not receive any allocation pursuant to this section for the following fiscal year.

(g) For purposes of the calculations made pursuant to this section or its predecessor for the 1993-94 and 1998-99 fiscal years, the amount of property tax revenue allocated to the county, a city, a special district, a school district, community college district, or an Educational Reserve Augmentation Fund in the prior fiscal year shall be that amount as determined pursuant to Section 96.1, as modified or as provided in Article 3 (commencing with Section 97).

96.6. (a) Notwithstanding any other provision of law, for the purposes of this chapter, the apportionment of property tax revenues required by Article 1 (commencing with Section 95) to Article 4 (commencing with Section 98), inclusive, shall not involve the subtraction of the redevelopment increment, calculated pursuant to subdivision (b) of Section 33670 of the Health and Safety Code, from any jurisdiction that is not within the boundaries of a redevelopment project area. Any redevelopment increment that is subtracted from a jurisdiction within a redevelopment project area shall be computed on the basis of the factors or rates which are developed pursuant to Section 96.5. In order to determine each jurisdiction's liability for the redevelopment increment, the factors or rates for tax rate areas that are part of a redevelopment project shall be applied to the current assessed value of the taxable property within the redevelopment project area, less the assessed valuation on the assessment roll last equalized prior to the effective date of the ordinance establishing the redevelopment project. Nothing in this section shall be construed as prohibiting a county from making the allocation and payment of funds as provided for by subdivision (b) of Section 33670 of the Health and Safety Code prior to the apportionment of property tax revenues to any jurisdiction.

(b) It is the intent of the Legislature that subdivision (a) of this section is a declaration and clarification of existing law. Any computation made pursuant to Article 1 (commencing with Section 95) to Article 4 (commencing with Section 98), inclusive, or their predecessors, or pursuant to Section 33670 of the Health and Safety Code prior to the effective date of this section, that is inconsistent with the provisions of subdivision (a), shall be deemed to have complied with the provisions of subdivision (a) only insofar as the computation may affect apportionments for the 1981-82 fiscal year or prior fiscal years.

(c) Commencing with the 1982-83 fiscal year, the provisions of subdivision (a) of this section shall be utilized in the apportionment of property tax revenues.

96.7. In the case of any county taking over the responsibilities of an independent local health special district created pursuant to Chapter 6 (commencing with Section 880) of Part 2 of Division 1 of the Health and Safety Code, as enacted by Chapter 60 of the Statutes of 1939, for purposes of computations pursuant to this chapter, the

amount of state assistance payments with respect to that county shall be increased by five hundred four thousand nine hundred fifty-seven dollars (\$504,957).

96.8. (a) On or before August 1, 1982, and on or before August 1 of each year thereafter, any jurisdiction may request that the amount computed for it pursuant to this chapter be reduced for the current fiscal year by a specified amount. Upon receiving a request as so described, the county auditor shall compute an effective tax rate reduction by dividing the amount of property tax revenue to be reduced by the taxable assessed value on the secured roll of the jurisdiction and multiplying the quotient by 100. The effective tax rate reduction shall be applied to the taxable assessed value on each secured roll tax bill for property within the jurisdiction, and the resulting amount shall be subtracted from the property tax owed by the taxpayer which is attributable to the tax rate provided by subdivision (b) of Section 2237. This subtracted amount shall be shown on each such tax bill with a notation reading: "Tax reduction by (name of jurisdiction)." The same effective tax rate reduction shall be applied in a comparable manner to the taxable assessed value on the next succeeding unsecured roll tax bill for property within the jurisdiction, except that for the 1981-82 fiscal year any such rate reduction used on that year's unsecured roll shall be equal to the 1980-81 rate divided by four.

(b) Notwithstanding any other provision of law, if a school entity acts pursuant to subdivision (a), the state shall not increase school apportionments to that school entity to make up the reduction in property tax revenues.

(c) Effective tax rate reductions made pursuant to this section shall not be taken into account in computing property tax allocations pursuant to this chapter, except that for the 1981-82 fiscal year any rate reduction used on that year's unsecured roll shall be equal to the 1980-81 rate divided by four.

Article 3. Revenue Allocation Shifts for Education

97. (a) Notwithstanding any other provision of this chapter, the computations and allocations made by each county pursuant to Section 96.1 or its predecessor section, for the 1992-93 fiscal year only, shall be modified as follows:

(1) The amount of property tax revenue deemed allocated to the county or city and county in the prior fiscal year shall be reduced by an amount equal to one dollar and ninety-two cents (\$1.92) per each resident of the county or city and county. In addition, the amount of property tax revenue deemed allocated in the prior fiscal year to each city or city and county shall be reduced by an amount equal to one dollar and sixty-five cents (\$1.65) per each resident of that city or city and county.

(2) The amount of property tax revenues not allocated to the county, city and county, and any city as a result of the reductions

calculated pursuant to paragraph (1) shall be deposited in the Educational Revenue Augmentation Fund pursuant to paragraph (1) of subdivision (d) of Section 97.2.

(b) Notwithstanding any other provision of this chapter, for the 1993-94 fiscal year only, for purposes of the calculations and allocations made by each county pursuant to Section 96.1, the amount of property tax revenue deemed allocated in the prior fiscal year to the Educational Revenue Augmentation Fund shall be reduced by the total amount of the reductions required for each county or city and county and each city or city and county pursuant to paragraph (1) of subdivision (a).

(c) For the purpose of this section, the population of a city, county, or city and county shall be the population determined pursuant to Section 11005.

97.1. (a) Notwithstanding any other provision of this chapter, the computations and allocations made by each county pursuant to Section 96.1 or its predecessor section, as modified by Section 97.2 or its predecessor section for the 1992-93 fiscal year, shall be modified for the 1993-94 fiscal year as follows:

(1) The amount of property tax revenue deemed allocated to the county or city and county in the prior fiscal year shall be reduced by an amount equal to seventy-eight cents (\$0.78) per each resident of the county or city and county. In addition, the amount of property tax revenue deemed allocated in the prior fiscal year to each city or city and county shall be reduced by an amount equal to ninety-nine cents (\$0.99) per each resident of that city or city and county.

(2) The amount of property tax revenues not allocated to the county, city and county, and any city as a result of the reductions calculated pursuant to paragraph (1) shall be deposited in the Educational Revenue Augmentation Fund established pursuant to paragraph (1) of subdivision (d) of Section 97.2.

(b) For the purpose of this section, the population of a city, county, or city and county shall be the population determined pursuant to Section 11005.

97.2. Notwithstanding any other provision of this chapter, the computations and allocations made by each county pursuant to Section 96.1 or its predecessor section shall be modified for the 1992-93 fiscal year pursuant to subdivisions (a) to (d), inclusive, and for the 1997-98 and 1998-99 fiscal years pursuant to subdivision (e), as follows:

(a) (1) Except as provided in paragraph (2), the amount of property tax revenue deemed allocated in the prior fiscal year to each county shall be reduced by the dollar amounts indicated as follows, multiplied by .953649:

County	Property Tax Reduction per County
Alameda	\$ 27,323,576
Alpine	5,169
Amador	286,131
Butte	846,452
Calaveras	507,526
Colusa	186,438
Contra Costa.....	12,504,318
Del Norte	46,523
El Dorado	1,544,590
Fresno.....	5,387,570
Glenn	378,055
Humboldt	1,084,968
Imperial	998,222
Inyo.....	366,402
Kern	6,907,282
Kings.....	1,303,774
Lake	998,222
Lassen.....	93,045
Los Angeles.....	244,178,806
Madera	809,194
Marin	3,902,258
Mariposa.....	40,136
Mendocino.....	1,004,112
Merced	2,445,709
Modoc.....	134,650
Mono.....	319,793
Monterey	2,519,507
Napa	1,362,036
Nevada	762,585
Orange	9,900,654
Placer	1,991,265
Plumas	71,076
Riverside	7,575,353
Sacramento	15,323,634
San Benito	198,090
San Bernardino	14,467,099
San Diego	17,687,776
San Francisco	53,266,991
San Joaquin	8,574,869
San Luis Obispo.....	2,547,990
San Mateo	7,979,302
Santa Barbara	4,411,812
Santa Clara	20,103,706
Santa Cruz.....	1,416,413

Shasta	1,096,468
Sierra	97,103
Siskiyou	467,390
Solano	5,378,048
Sonoma.....	5,455,911
Stanislaus	2,242,129
Sutter	831,204
Tehama	450,559
Trinity	50,399
Tulare	4,228,525
Tuolumne	740,574
Ventura	9,412,547
Yolo	1,860,499
Yuba	842,857

(2) Notwithstanding paragraph (1), the amount of the reduction specified in that paragraph for any county or city and county that has been materially and substantially impacted as a result of a federally declared disaster, as evidenced by at least 20 percent of the cities, or cities and unincorporated areas of the county representing 20 percent of the population within the county suffering substantial damage, as certified by the Director of the Office of Emergency Services, occurring between October 1, 1989, and the effective date of this section, shall be reduced by that portion of five million dollars (\$5,000,000) determined for that county or city and county pursuant to subparagraph (B) of paragraph (3).

(3) On or before October 1, 1992, the Director of Finance shall do all of the following:

(A) Determine the population of each county and city and county in which a federally declared disaster has occurred between October 1, 1989, and the effective date of this section.

(B) Determine for each county and city and county as described in subparagraph (A) its share of five million dollars (\$5,000,000) on the basis of that county's population relative to the total population of all counties described in subparagraph (A).

(C) Notify each auditor of each county and city and county of the amounts determined pursuant to subparagraph (B).

(b) (1) Except as provided in paragraph (2), the amount of property tax revenue deemed allocated in the prior fiscal year to each city, except for a newly incorporated city that did not receive property tax revenues in the 1991-92 fiscal year, shall be reduced by 9 percent. In making the above computation with respect to cities in Alameda County, the computation for a city described in paragraph (6) of subdivision (a) of Section 100.7, as added by Section 73.5 of Chapter 323 of the Statutes of 1983, shall be adjusted so that the amount multiplied by 9 percent is reduced by the amount determined for that city for "museums" pursuant to paragraph (2) of subdivision (h) of Section 95.

(2) Notwithstanding paragraph (1), the amount of the reduction

determined pursuant to that paragraph for any city that has been materially and substantially impacted as a result of a federally declared disaster, as certified by the Director of the Office of Emergency Services, occurring between October 1, 1989, and the effective date of this section, shall be reduced by that portion of fifteen million dollars (\$15,000,000) determined for that city pursuant to subparagraph (B) of paragraph (3).

(3) On or before October 1, 1992, the Director of Finance shall do all of the following:

(A) Determine the population of each city in which a federally declared disaster has occurred between October 1, 1989, and the effective date of this section.

(B) Determine for each city as described in subparagraph (A) its share of fifteen million dollars (\$15,000,000) on the basis of that city's population relative to the total population of all cities described in subparagraph (A).

(C) Notify each auditor of each county and city and county of the amounts determined pursuant to subparagraph (B).

(4) In the 1992-93 fiscal year and each fiscal year thereafter, the auditor shall adjust the computations required pursuant to Article 4 (commencing with Section 98) so that those computations do not result in the restoration of any reduction required pursuant to this section.

(c) (1) Subject to paragraph (2), the amount of property tax revenue, other than those revenues that are pledged to debt service, deemed allocated in the prior fiscal year to a special district, other than a multicounty district, a local hospital district, or a district governed by a city council or whose governing board has the same membership as a city council, shall be reduced by 35 percent. For purposes of this subdivision, "revenues that are pledged to debt service" include only those amounts required to pay debt service costs in the 1991-92 fiscal year on debt instruments issued by a special district for the acquisition of capital assets.

(2) No reduction pursuant to paragraph (1) for any special district, other than a countywide water agency that does not sell water at retail, shall exceed an amount equal to 10 percent of that district's total annual revenues, from whatever source, as shown in the 1989-90 edition of the State Controller's Report on Financial Transactions Concerning Special Districts (not including any annual revenues from fiscal years following the 1989-90 fiscal year). With respect to any special district, as defined pursuant to subdivision (m) of Section 95, that is allocated property tax revenue pursuant to this chapter but does not appear in the State Controller's Report on Financial Transactions Concerning Special Districts, the auditor shall determine the total annual revenues for that special district from the information in the 1989-90 edition of the State Controller's Report on Financial Transactions Concerning Counties. With respect to a special district that did not exist in the 1989-90 fiscal year, the auditor may use information from the first full fiscal year, as appropriate, to

determine the total annual revenues for that special district. No reduction pursuant to paragraph (1) for any countywide water agency that does not sell water at retail shall exceed an amount equal to 10 percent of that portion of that agency's general fund derived from property tax revenues.

(3) The auditor in each county shall, on or before January 15, 1993, and on or before January 30 of each year thereafter, submit information to the Controller concerning the amount of the property tax revenue reduction to each special district within that county as a result of paragraphs (1) and (2). The Controller shall certify that the calculation of the property tax revenue reduction to each special district within that county is accurate and correct, and submit this information to the Director of Finance.

(A) The Director of Finance shall determine whether the total of the amounts of the property tax revenue reductions to special districts, as certified by the Controller, is equal to the amount that would be required to be allocated to school districts and community college districts as a result of a three hundred seventy-five million dollar (\$375,000,000) shift of property tax revenues from special districts for the 1992-93 fiscal year. If, for any year, the total of the amount of the property tax revenue reductions to special districts is less than the amount as described in the preceding sentence, the amount of property tax revenue, other than those revenues that are pledged to debt service, deemed allocated in the prior fiscal year to a special district, other than a multicounty district, a local hospital district, or a district governed by a city council or whose governing board has the same membership as a city council, shall, subject to subparagraph (B), be reduced by an amount up to 5 percent of the amount subject to reduction for that district pursuant to paragraphs (1) and (2).

(B) No reduction pursuant to subparagraph (A), in conjunction with a reduction pursuant to paragraphs (1) and (2), for any special district, other than a countywide water agency that does not sell water at retail, shall exceed an amount equal to 10 percent of that district's total annual revenues, from whatever source, as shown in the most recent State Controller's Report on Financial Transactions Concerning Special Districts. No reduction pursuant to subparagraph (A), in conjunction with a reduction pursuant to paragraphs (1) and (2), for any countywide water agency that does not sell water at retail shall exceed an amount equal to 10 percent of that portion of that agency's general fund derived from property tax revenues.

(C) In no event shall the amount of the property tax revenue loss to a special district derived pursuant to subparagraphs (A) and (B) exceed 40 percent of that district's property tax revenues or 10 percent of that district's total revenues, from whatever source.

(4) For the purpose of determining the total annual revenues of a special district that provides fire protection or fire suppression services, all of the following shall be excluded from the

determination of total annual revenues:

(A) If the district had less than two million dollars (\$2,000,000) in total annual revenues in the 1991-92 fiscal year, the revenue generated by a fire suppression assessment levied pursuant to Article 3.6 (commencing with Section 50078) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code.

(B) Any appropriation for fire protection received by a district pursuant to Section 25642 of the Government Code.

(C) The revenue received by a district as a result of contracts entered into pursuant to Section 4133 of the Public Resources Code.

(5) For the purpose of determining the total annual revenues of a resource conservation district, all of the following shall be excluded from the determination of total annual revenues:

(A) Any revenues received by that district from the state for financing the acquisition of land, or the construction or improvement of state projects, and for which that district serves as the fiscal agent in administering those state funds pursuant to an agreement entered into between that district and a state agency.

(B) Any amount received by that district as a private gift or donation.

(C) Any amount received as a county grant or contract as supplemental to, or independent of, that district's property tax share.

(D) Any amount received by that district as a federal or state grant.

(d) (1) The amount of property tax revenues not allocated to the county, cities within the county, and special districts as a result of the reductions calculated pursuant to subdivisions (a), (b), and (c) shall instead be deposited in the Educational Revenue Augmentation Fund to be established in each county. The amount of revenue in the Educational Revenue Augmentation Fund, derived from whatever source, shall be allocated pursuant to paragraphs (2) and (3) to school districts and county offices of education, in total, and to community college districts, in total, in the same proportion that property tax revenues were distributed to school districts and county offices of education, in total, and community college districts, in total, during the 1991-92 fiscal year.

(2) The auditor shall, based on information provided by the county superintendent of schools pursuant to this paragraph, allocate the proportion of the Educational Revenue Augmentation Fund to those school districts and county offices of education within the county that are not excess tax school entities, as defined in subdivision (n) of Section 95. The county superintendent of schools shall determine the amount to be allocated to each school district and county office of education in inverse proportion to the amounts of property tax revenue per average daily attendance in each school district and county office of education. In no event shall any additional money be allocated from the fund to a school district or county office of education upon that school district or county office of education becoming an excess tax school entity.

(3) The auditor shall, based on information provided by the Chancellor of the California Community Colleges pursuant to this paragraph, allocate the proportion of the Educational Revenue Augmentation Fund to those community college districts within the county that are not excess tax school entities, as defined in subdivision (n) of Section 95. The chancellor shall determine the amount to be allocated to each community college district in inverse proportion to the amounts of property tax revenue per funded full-time equivalent student in each community college district. In no event shall any additional money be allocated from the fund to a community college district upon that district becoming an excess tax school entity.

(4) If, after making the allocation required pursuant to paragraph (2), the auditor determines that there are still additional funds to be allocated, the auditor shall allocate those excess funds pursuant to paragraph (3). If, after making the allocation pursuant to paragraph (3), the auditor determines that there are still additional funds to be allocated, the auditor shall allocate those excess funds pursuant to paragraph (2).

(5) For purposes of allocations made pursuant to Section 96.1 or its predecessor section for the 1993-94 fiscal year, the amounts allocated from the Educational Revenue Augmentation Fund pursuant to this subdivision, other than amounts deposited in the Educational Revenue Augmentation Fund pursuant to Section 33681 of the Health and Safety Code, shall be deemed property tax revenue allocated to the Educational Revenue Augmentation Fund in the prior fiscal year.

(e) (1) For the 1997-98 fiscal year:

(A) The amount of property tax revenue deemed allocated in the prior fiscal year to any city subject to the reduction specified in paragraph (2) of subdivision (b) shall be reduced by an amount that is equal to the difference between the amount determined for the city pursuant to paragraph (1) of subdivision (b) and the amount of the reduction determined for the city pursuant to paragraph (2) of subdivision (b).

(B) The amount of property tax revenue deemed allocated in the prior fiscal year to any county or city and county subject to the reduction specified in paragraph (2) of subdivision (a) shall be reduced by an amount that is equal to the difference between the amount specified for the county or city and county pursuant to paragraph (1) of subdivision (a) and the amount of the reduction determined for the county or city and county pursuant to paragraph (2) of subdivision (a).

(2) The amount of property tax revenues not allocated to a city or city and county as a result of this subdivision shall be deposited in the Educational Revenue Augmentation Fund described in subparagraph (A) of paragraph (1) of subdivision (d).

(3) For purposes of allocations made pursuant to Section 96.1 for the 1998-99 fiscal year, the amounts allocated from the Educational

Revenue Augmentation Fund pursuant to this subdivision shall be deemed property tax revenues allocated to the Educational Revenue Augmentation Fund in the prior fiscal year.

(f) It is the intent of the Legislature in enacting this section that this section supersede and be operative in place of Section 97.03 of the Revenue and Taxation Code, as added by Senate Bill 617 of the 1991-92 Regular Session.

97.21. For the purpose of determining under Section 97.2 the total annual revenues of a special district that provides fire protection or fire suppression services and had less than two million dollars (\$2,000,000) in total annual revenues in the 1991-92 fiscal year, all of the following shall, in addition to any other revenues otherwise excluded, be excluded from the determination of total annual revenues:

(a) The revenue generated by a special tax levied pursuant to Article 3.5 (commencing with Section 50075) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code.

(b) The revenue generated by a special tax levied pursuant to Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code.

(c) The revenue generated by a special tax levied pursuant to Article 16 (commencing with Section 53970) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

97.22. For the purposes of paragraph (1) of subdivision (c) of Section 97.2, "multicounty district" includes District 2 of the Alameda Contra Costa Transit District. This section shall be deemed to have become operative July 1, 1992, and the auditor is hereby authorized to adjust the 1993-94 distributions to the Educational Revenue Augmentation Fund accordingly.

97.3. Notwithstanding any other provision of this chapter, the computations and allocations made by each county pursuant to Section 96.1 or its predecessor section, as modified by Section 97.2 or its predecessor section for the 1992-93 fiscal year, shall be modified for the 1993-94 fiscal year pursuant to subdivisions (a) to (c), inclusive, as follows:

(a) The amount of property tax revenue deemed allocated in the prior fiscal year to each county and city and county shall be reduced by an amount to be determined by the Director of Finance in accordance with the following:

(1) The total amount of the property tax reductions for counties and cities and counties determined pursuant to this section shall be one billion nine hundred ninety-eight million dollars (\$1,998,000,000) in the 1993-94 fiscal year.

(2) The Director of Finance shall determine the amount of the reduction for each county or city and county as follows:

(A) The proportionate share of the property tax revenue reduction for each county or city and county that would have been imposed on all counties under the proposal specified in the "May Revision of the 1993-94 Governor's Budget" shall be determined by

reference to the document entitled "Estimated County Property Tax Transfers Under Governor's May Revision Proposal," published by the Legislative Analyst's Office on June 1, 1993.

(B) Each county's or city and county's proportionate share of total taxable sales in all counties in the 1991-92 fiscal year shall be determined.

(C) An amount for each county and city and county shall be determined by applying its proportionate share determined pursuant to subparagraph (A) to the one billion nine hundred ninety-eight million dollar (\$1,998,000,000) statewide reduction for counties and cities and counties.

(D) An amount for each county and city and county shall be determined by applying its proportionate share determined pursuant to subparagraph (B) to the one billion nine hundred ninety-eight million dollar (\$1,998,000,000) statewide reduction for counties and cities and counties.

(E) The Director of Finance shall add the amounts determined pursuant to subparagraphs (C) and (D) for each county and city and county, and divide the resulting figure by two. The amount so determined for each county and city and county shall be divided by a factor of 1.038. The resulting figure shall be the amount of property tax revenue to be subtracted from the amount of property tax revenue deemed allocated in the prior fiscal year.

(3) The Director of Finance shall, by July 15, 1993, report to the Joint Legislative Budget Committee its determination of the amounts determined pursuant to paragraph (2).

(4) On or before August 15, 1993, the Director of Finance shall notify the auditor of each county and city and county of the amount of property tax revenue reduction determined for each county and city and county.

(5) Notwithstanding any other provision of this subdivision, the amount of the reduction specified in paragraph (2) for any county or city and county that has first implemented, for the 1993-94 fiscal year, the alternative procedure for the distribution of property tax levies authorized by Chapter 2 (commencing with Section 4701) of Part 8 shall be reduced, for the 1993-94 fiscal year only, in the amount of any increased revenue allocated to each qualifying school entity that would not have been allocated for the 1993-94 fiscal year but for the implementation of that alternative procedure. For purposes of this paragraph, "qualifying school entity" means any school district, county office of education, or community college district that is not an excess tax school entity as defined in Section 95. Notwithstanding any other provision of this paragraph, the amount of any reduction calculated pursuant to this paragraph for any county or city and county shall not exceed the reduction calculated for that county or city and county pursuant to paragraph (2).

(b) The amount of property tax revenue deemed allocated in the prior fiscal year to each city shall be reduced by an amount to be determined by the Director of Finance in accordance with the

following:

(1) The total amount of the property tax reductions determined for cities pursuant to this section shall be two hundred eighty-eight million dollars (\$288,000,000) in the 1993-94 fiscal year.

(2) The Director of Finance shall determine the amount of reduction for each city as follows:

(A) The amount of property tax revenue that is estimated to be attributable in the 1993-94 fiscal year to the amount of each city's state assistance payment received by that city pursuant to Chapter 282 of the Statutes of 1979 shall be determined.

(B) A factor for each city equal to the amount determined pursuant to subparagraph (A) for that city, divided by the total of the amounts determined pursuant to subparagraph (A) for all cities, shall be determined.

(C) An amount for each city equal to the factor determined pursuant to subparagraph (B), multiplied by three hundred eighty-two million five hundred thousand dollars (\$382,500,000), shall be determined.

(D) In no event shall the amount for any city determined pursuant to subparagraph (C) exceed a per capita amount of nineteen dollars and thirty-one cents (\$19.31), as determined in accordance with that city's population on January 1, 1993, as estimated by the Department of Finance.

(E) The amount determined for each city pursuant to subparagraphs (C) and (D) shall be the amount of property tax revenue to be subtracted from the amount of property tax revenue deemed allocated in the prior year.

(3) The Director of Finance shall, by July 15, 1993, report to the Joint Legislative Budget Committee those amounts determined pursuant to paragraph (2).

(4) On or before August 15, 1993, the Director of Finance shall notify each county auditor of the amount of property tax revenue reduction determined for each city located within that county.

(c) (1) The amount of property tax revenue deemed allocated in the prior fiscal year to each special district, as defined pursuant to subdivision (m) of Section 95, shall be reduced by the amount determined for the district pursuant to paragraph (3) and increased by the amount determined for the district pursuant to paragraph (4). The total net amount of these changes is intended to equal two hundred forty-four million dollars (\$244,000,000) in the 1993-94 fiscal year.

(2) Notwithstanding any other provision of this subdivision, no reduction shall be made pursuant to this subdivision with respect to any of the following special districts:

(A) A local hospital district as described in Division 23 (commencing with Section 32000) of the Health and Safety Code.

(B) A water agency that does not sell water at retail, but not including an agency the primary function of which, as determined on the basis of total revenues, is flood control.

(C) A transit district.

(D) A police protection district formed pursuant to Part 1 (commencing with Section 20000) of Division 14 of the Health and Safety Code.

(E) A special district that was a multicounty special district as of July 1, 1979.

(3) On or before September 15, 1993, the county auditor shall determine an amount for each special district equal to the amount of its allocation determined pursuant to Section 96 or 96.1, and Section 96.5 or their predecessor sections for the 1993-94 fiscal year multiplied by the ratio determined pursuant to paragraph (1) of subdivision (a) of former Section 98.6 as that section read on June 15, 1993. In those counties that were subject to former Sections 98.65, 98.66, 98.67, and 98.68, as those sections read on that same date, the county auditor shall determine an amount for each special district that represents the current amount of its allocation determined pursuant to Section 96 or 96.1, and Section 96.5 or their predecessor sections for the 1993-94 fiscal year that is attributed to the property tax shift from schools required by Chapter 282 of the Statutes of 1979. In determining this amount, the county auditor shall adjust for the influence of increased assessed valuation within each district, including the effect of jurisdictional changes, and the reductions in property tax allocations required in the 1992-93 fiscal year by Chapters 699 and 1369 of the Statutes of 1992. In the case of a special district that has been consolidated or reorganized, the auditor shall determine the amount of its current property tax allocation that is attributable to the prior district's or districts' receipt of state assistance payments pursuant to Chapter 282 of the Statutes of 1979. Notwithstanding any other provision of this paragraph, for a special district that is governed by a city council or whose governing board has the same membership as a city council and that is a subsidiary district as defined in subdivision (e) of Section 16271 of the Government Code, the county auditor shall multiply the amount that otherwise would be calculated pursuant to this paragraph by 0.38 and the result shall be used in the calculations required by paragraph (5). In no event shall the amount determined by this paragraph be less than zero.

(4) (A) On or before September 15, 1993, the county auditor shall determine an amount for each special district that is engaged in fire protection activities, as reported to the Controller for inclusion in the 1989-90 Edition of the Financial Transactions Report Concerning Special Districts under the heading of "Fire Protection," that is equal to the amount of revenue allocated to that special district from the Special District Augmentation Fund for fire protection activities in the 1992-93 fiscal year. In the case of a special district, other than a special district governed by the county board of supervisors or whose governing body is the same as the county board of supervisors, that is engaged in fire protection activities as reported to the Controller, the county auditor shall also determine the amount by which the

district's amount determined pursuant to paragraph (3) exceeds the amount by which its allocation was reduced by operation of former Section 98.6 in the 1992-93 fiscal year. This amount shall be added to the amount otherwise determined for the district under this paragraph. In any county subject to former Section 98.65, 98.66, 98.67, or 98.68 in that same fiscal year, the county auditor shall determine for each special district that is engaged in fire protection activities an amount that is equal to the amount determined for that district pursuant to paragraph (3).

(B) For purposes of this paragraph, a special district includes any special district that is allocated property tax revenue pursuant to this chapter and does not appear in the State Controller's Report on Financial Transactions Concerning Special Districts, but is engaged in fire protection activities and appears in the State Controller's Report on Financial Transactions Concerning Counties.

(5) The total amount of property taxes allocated to special districts by the county auditor as a result of paragraph (4) shall be subtracted from the amount of property tax revenues not allocated to special districts by the county auditor as a result of paragraph (3) to determine the amount to be deposited in the Education Revenue Augmentation Fund as specified in subdivision (d).

(6) On or before September 30, 1993, the county auditor shall notify the Director of Finance of the net amount determined for special districts pursuant to paragraph (5).

(d) (1) The amount of property tax revenues not allocated to the county, city and county, cities within the county, and special districts as a result of the reductions required by subdivisions (a), (b), and (c) shall instead be deposited in the Educational Revenue Augmentation Fund established in each county or city and county pursuant to Section 97.2. The amount of revenue in the Educational Revenue Augmentation Fund, derived from whatever source, shall be allocated pursuant to paragraphs (2) and (3) to school districts and county offices of education, in total, and to community college districts, in total, in the same proportion that property tax revenues were distributed to school districts and county offices of education, in total, and community college districts, in total, during the 1992-93 fiscal year.

(2) The county auditor shall, based on information provided by the county superintendent of schools pursuant to this paragraph, allocate that proportion of the revenue in the Educational Revenue Augmentation Fund to be allocated to school districts and county offices of education only to those school districts and county offices of education within the county that are not excess tax school entities, as defined in subdivision (n) of Section 95. The county superintendent of schools shall determine the amount to be allocated to each school district in inverse proportion to the amounts of property tax revenue per average daily attendance in each school district. For each county office of education, the allocation shall be made based on the historical split of base property tax revenue

between the county office of education and school districts within the county. In no event shall any additional money be allocated from the Educational Revenue Augmentation Fund to a school district or county office of education upon that district or county office of education becoming an excess tax school entity. If, after determining the amount to be allocated to each school district and county office of education, the county superintendent of schools determines there are still additional funds to be allocated, the county superintendent of schools shall determine the remainder to be allocated in inverse proportion to the amounts of property tax revenue, excluding Educational Revenue Augmentation Fund moneys, per average daily attendance in each remaining school district, and on the basis of the historical split described above for each county office of education, that is not an excess tax school entity until all funds that would not result in a school district or county office of education becoming an excess tax school entity are allocated. The county superintendent of schools may determine the amounts to be allocated between each school district and county office of education to ensure that all funds that would not result in a school district or county office of education becoming an excess tax school entity are allocated.

(3) The county auditor shall, based on information provided by the Chancellor of the California Community Colleges pursuant to this paragraph, allocate that proportion of the revenue in the Educational Revenue Augmentation Fund to be allocated to community college districts only to those community college districts within the county that are not excess tax school entities, as defined in subdivision (n) of Section 95. The chancellor shall determine the amount to be allocated to each community college district in inverse proportion to the amounts of property tax revenue per funded full-time equivalent student in each community college district. In no event shall any additional money be allocated from the Educational Revenue Augmentation Fund to a community college district upon that district becoming an excess tax school entity.

(4) If, after making the allocation required pursuant to paragraph (2), the auditor determines that there are still additional funds to be allocated, the auditor shall allocate those excess funds pursuant to paragraph (3). If, after making the allocation pursuant to paragraph (3), the auditor determines that there are still additional funds to be allocated, the auditor shall allocate those excess funds pursuant to paragraph (2). If, after determining the amount to be allocated to each community college district, the Chancellor of the California Community Colleges determines that there are still additional funds to be allocated, the Chancellor of the California Community Colleges shall determine the remainder to be allocated to each community college district in inverse proportion to the amounts of property tax revenue, excluding Educational Revenue Augmentation Fund moneys, per funded full-time equivalent student in each remaining community college district that is not an excess tax school entity until

all funds that would not result in a community college district becoming an excess tax school entity are allocated.

(5) For purposes of allocations made pursuant to Section 96.1 for the 1994-95 fiscal year, the amounts allocated from the Educational Revenue Augmentation Fund pursuant to this subdivision, other than those amounts deposited in the Educational Revenue Augmentation Fund pursuant to any provision of the Health and Safety Code, shall be deemed property tax revenue allocated to the Educational Revenue Augmentation Fund in the prior fiscal year.

97.31. (a) (1) The Director of Finance may direct the county auditor to reduce the amount of the transfer to the Educational Revenue Augmentation Fund determined pursuant to subdivision (a) of Section 97.3 for any eligible county in accordance with subdivision (b) of this section, and also shall reduce the amount of that transfer for certain counties in accordance with subdivision (c). The total amount of the reductions for all counties that may be authorized pursuant to subdivision (b) shall not exceed two million dollars (\$2,000,000).

(2) For purposes of this section, an "eligible county" is a county with a population of less than 350,000 as reported in the 1990 federal census that had a fire element of the tax bill in 1977-78, that continues to fund some portion of those costs from the county general fund in 1993-94, and that provides these services in the same manner as a special district less than countywide and has so indicated in the Controller's Report on Financial Transactions Concerning Counties.

(b) (1) For each eligible county, the county auditor may submit the following information to the Director of Finance not later than November 1, 1993:

(A) The amount of property tax allocated to the county fire district in the 1977-78 fiscal year.

(B) The amount allocated from the county budget to the county fire district in the 1978-79 fiscal year.

(C) The amount of property tax reduction for the county fire district attributable to the passage of Article XIII A of the California Constitution by the voters in the primary election in June 1978.

(D) The amount of money allocated from the county budget to the county fire district in the 1993-94 fiscal year.

(E) The amount allocated to the county fire district from the Special District Augmentation Fund in the 1992-93 fiscal year.

(2) For each eligible county that submits to the Director of Finance by November 1, 1993, the information described in paragraph (1), the Director of Finance shall make the following calculations:

(A) Multiply the amount of property tax allocated to the county fire district in the 1977-78 fiscal year by the change in the value of the property tax base for the county from the 1977-78 fiscal year to the 1978-79 fiscal year.

(B) Subtract the amount reported pursuant to subparagraph (C) of paragraph (1) from the amount determined pursuant to

subparagraph (A).

(C) Multiply the amount determined pursuant to subparagraph (B) by an amount determined by the Director of Finance to be the change in assessed value for the county from the 1978-79 fiscal year to the 1993-94 fiscal year.

(D) Multiply the amount reported pursuant to subparagraph (E) of paragraph (1) by 1.038.

(E) Add the amount determined pursuant to subparagraph (C) to the amount determined pursuant to subparagraph (D).

(F) Subtract the amount determined pursuant to subparagraph (E) from the amount reported pursuant to subparagraph (D) of paragraph (1).

(3) The Director of Finance shall determine the sum of all the amounts determined pursuant to subparagraph (F) of paragraph (2).

(4) If the sum determined pursuant to paragraph (3) is greater than two million dollars (\$2,000,000), then the Director of Finance shall proportionately reduce the amount for each county so that the total of the amounts for all counties does not exceed two million dollars (\$2,000,000). If the sum determined pursuant to subdivision (e) does not exceed two million dollars (\$2,000,000), then the Director of Finance shall not reduce the amount determined for each county.

(5) The Director of Finance shall by January 15, 1994, notify each county of its reduction in the amount to be transferred to the Educational Revenue Augmentation Fund pursuant to subdivision (a) of Section 97.3. The maximum amount of the reduction that may be authorized pursuant to this subdivision is one-half the amount determined pursuant to subparagraph (F) of paragraph (2).

(c) The amount to be transferred from a county to an Educational Revenue Augmentation Fund pursuant to subdivision (a) of Section 97.3 shall be reduced by one hundred thousand dollars (\$100,000) for the County of Madera and by two hundred thousand dollars (\$200,000) for the County of Tulare.

97.32. Notwithstanding Section 97.3, a special district does not include, for purposes of the reductions required by that section, a memorial district formed pursuant to Article 1 (commencing with Section 1170) of Chapter 1 of Part 2 of Division 6 of the Military and Veteran's Code.

97.33. (a) Notwithstanding any other provision of this chapter, for the 1993-94 fiscal year, the amounts of property tax revenue that are required to be shifted pursuant to Section 97.3 from a city described in the second clause of paragraph (2) of subdivision (h) of Section 95 or a city described in paragraph (2) of subdivision (b) of Section 16700 of the Welfare and Institutions Code, and from the county in which those cities are located, to the Educational Relief Augmentation Fund, shall each be reduced by an amount equal to the sum of the property tax revenue loss incurred by the city or county as a result of the Oakland/Berkeley fire that occurred in

October 1991. The auditor shall certify to the Department of Finance the amount of the property tax revenue loss for each city and the county as a result of those properties that were reassessed as a result of that fire. The property tax revenue loss shall be the difference between the property tax revenues, including property tax revenue attributable to tax rates levied pursuant to subdivision (b) of Section 1 of Article XIII A of the California Constitution, that would have been derived based on the original assessed value of those properties for the 1991-92 fiscal year prior to any reassessment for disaster relief, increased by 2 percent, and the property tax revenues derived from the assessed value of those properties for the 1992-93 fiscal year.

(b) In each of the 1994-95, 1995-96, and 1996-97 fiscal years, for the county and cities described in subdivision (a), one-third of the adjustments made pursuant to subdivision (a) for each described city and the county shall be added to the amount of property tax revenue deemed allocated to each city and the county in the prior fiscal year.

97.34. (a) Notwithstanding any other provision of this chapter, the amount of the revenue reduction resulting from the application of subdivision (c) of Section 97.2 to an amount equal to the amount of the water quality control compliance costs of a qualified special district for the 1992-93 fiscal year shall, for purposes of property tax revenue allocations for the 1993-94 fiscal year, be added to the amount of property tax revenue deemed allocated to that district in the 1992-93 fiscal year. The water quality control compliance costs of a qualified special district for the relevant fiscal year shall also be deducted from the amount of property tax revenue subject to reduction with respect to that district under Section 97.3 for the 1993-94 fiscal year, and under any statute with respect to any subsequent fiscal year that would reduce the amount of property tax revenue deemed allocated in the prior fiscal year to that district for purposes of increasing the amount of property tax revenue to be allocated to another jurisdiction.

(b) For purposes of this section:

(1) A "qualified special district" means any special district that is required to comply with Chapter 12 (commencing with Section 13950) of Division 7 of the Water Code.

(2) "Water quality control compliance costs" mean those costs, including, but not limited to, reserves for nongrowth facility augmentation and replacement and environmental protection, that are determined by the county auditor in accordance with subdivision (a) to have been incurred by a qualified special district in complying with Chapter 12 (commencing with Section 13950) of Division 7 of the Water Code.

(c) The auditor may assess each qualified special district its share of the auditor's actual and reasonable costs of complying with this section. For purposes of this subdivision, each share of costs shall be determined in accordance with that district's proportional share of the total amount of water quality control compliance costs determined by the auditor for purposes of this section for each fiscal

year.

97.35. Notwithstanding Section 97.3, the amount of property tax revenues of a community service district that is subject to reduction pursuant to that section shall not include those property tax revenues, up to the amount of ninety thousand dollars (\$90,000), that are allocated by that district to "police protection and personal safety" activities, as indicated in the 1989-90 edition of the State Controller's Report on the Financial Transactions of Special Districts in California.

97.4. (a) Notwithstanding Section 97.2 or 97.3 or any other provision of this chapter, in implementing the changes in allocations of property tax revenues required by Sections 97, 97.1, 97.2, and 97.3, the county auditor may elect to determine and give effect to the changes in allocations of property tax revenues required by Sections 97, 97.1, 97.2, and 97.3 on a countywide, rather than tax rate area, basis. If the county auditor so elects, he or she shall ensure adequate recognition of year-to-year revenue growth so that the results of changes implemented on a countywide basis do not differ materially from the results which would be obtained from the use of a tax rate area basis.

(b) (1) Notwithstanding any other provision of law, for the 1992-93 fiscal year and each fiscal year thereafter, in any county in which property tax increment revenues are allocated to a redevelopment agency pursuant to Section 33670 of the Health and Safety Code, the county auditor shall deposit in the Educational Revenue Augmentation Fund an amount that is equal to the total amount of revenues that would be so deposited pursuant to Sections 97, 97.1, 97.2, and 97.3 if no reduction were made in that amount of revenues for purposes of allocations to a redevelopment agency pursuant to Section 33670 of the Health and Safety Code. Those revenues deposited in the Educational Revenue Augmentation Fund in accordance with this paragraph shall be allocated or transferred only to school districts, county offices of education, or community college districts, in accordance with subdivision (d) of either Section 97.2 or 97.3.

(2) The deposit of property tax revenue in the Educational Revenue Augmentation Fund in accordance with paragraph (1) shall not reduce or otherwise affect the amount of property tax revenue to be allocated to a redevelopment agency pursuant to subdivision (b) of Section 33670 of the Health and Safety Code, and any additional amount required to be allocated to the Educational Revenue Augmentation Fund pursuant to paragraph (1) shall be deducted from those amounts allocated to the county, cities, and special districts with respect to each tax rate area in which property tax increment revenues are allocated to a redevelopment agency. These reductions shall be made in proportion to the total amount of the reductions required with respect to the county and each city and special district in each of these redevelopment agency tax rate areas under Sections 97, 97.1, 97.2, and 97.3.

(3) This subdivision shall not require the modification of any property tax revenue allocation that was made by the county auditor for the 1992-93 fiscal year in a manner inconsistent with paragraph (1) or (2), if that allocation was implemented on or before June 30, 1993. However, property tax revenue allocations made in the 1993-94 fiscal year and any fiscal year thereafter shall be determined by the county auditor as if the allocations made for the 1992-93 fiscal year had been made in a manner consistent with paragraph (1).

Article 4. Tax Equity Allocations for Certain Cities

98. (a) In each county, other than the County of Ventura, having within its boundaries a qualifying city, the computations made pursuant to Section 96.1 or its predecessor section, for the 1989-90 fiscal year and each fiscal year thereafter, shall be modified as follows:

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

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

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

(3) After making the allocations pursuant to paragraphs (1) and (2), but before making the calculations pursuant to Section 96.5 or its predecessor section, the auditor shall, for all tax rate areas in the qualifying city, calculate the proportionate share of property tax revenue allocated pursuant to this section and Section 96.1, or their predecessor sections, in the 1989-90 fiscal year and each fiscal year thereafter to each jurisdiction in the tax rate area.

(4) In lieu of making the allocations of annual tax increment pursuant to subdivision (e) of Section 96.5 or its predecessor section, the auditor shall, for the 1989-90 fiscal year and each year thereafter, allocate the amount of property tax revenue determined pursuant to subdivision (d) of Section 96.5 or its predecessor section to jurisdictions in the tax rate area using the proportionate shares derived pursuant to paragraph (3).

(5) For purposes of the calculations made pursuant to Section 96.1 or its predecessor section, in the 1990-91 fiscal year and each fiscal year thereafter, the amounts that would have been allocated to

qualifying cities pursuant to this subdivision shall be deemed to be the “amount of property tax revenue allocated in the prior fiscal year.”

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

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

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

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

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

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

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

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

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

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

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

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

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

determined in paragraph (5).

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

(d) "Qualifying city" means any city, except a qualifying city as defined in Section 98.1, that incorporated prior to June 5, 1987, and had an amount of property tax revenue allocated to it pursuant to subdivision (a) of Section 96.1 or its predecessor section in the 1988-89 fiscal year that is less than 7 percent of the amount of property tax revenue computed as follows:

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

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

(3) The auditor shall subtract the amount determined in paragraph (2) from the amount of property tax revenue determined in paragraph (1) of subdivision (c).

(4) The auditor shall divide the amount of property tax revenue determined in paragraph (1) of this subdivision by the amount of property tax revenue determined in paragraph (3) of this subdivision.

(5) If the quotient determined in paragraph (4) of this subdivision is less than 0.07, the city is a qualifying city. If the quotient determined in that paragraph is equal to or greater than 0.07, the city is not a qualifying city.

(e) The auditor may assess each qualifying city its proportional share of the actual costs of making the calculations required by this section, and may deduct that assessment from the amount allocated pursuant to subdivision (b). For purposes of this subdivision, a qualifying city's proportional share of the auditor's actual costs shall not exceed the proportion it receives of the total amounts excluded in the county pursuant to subdivision (a).

(f) Notwithstanding subdivision (b), in any fiscal year in which a qualifying city is to receive a distribution pursuant to this section, the auditor shall reduce the actual amount distributed to the qualifying city by the sum of the following:

(1) The amount of property tax revenue that was exchanged between the county and the qualifying city as a result of negotiation pursuant to Section 99.03.

(2) The amount of revenue not collected by the qualifying city in the first fiscal year following the city's reduction after January 1, 1988, of the tax rate or tax base of any locally imposed general or special tax, except any tax that was imposed after January 1, 1988. In the case of a tax that existed before January 1, 1988, this paragraph shall apply only with respect to an amount attributable to a reduction of the rate or base to a level lower than the rate or base applicable on January 1, 1988. The amount so computed by the auditor shall constitute a reduction in the amount of property tax revenue distributed to the

qualifying city pursuant to this section in each succeeding fiscal year. That amount shall be aggregated with any additional amount computed pursuant to this paragraph as the result of the city's reduction in any subsequent year of the tax rate or tax base of the same or any other locally imposed general or special tax.

(3) The amount of property tax revenue received pursuant to this chapter in excess of the amount allocated for the 1986–87 fiscal year by all special districts that are governed by the city council of the qualifying city or whose governing body is the same as the city council of the qualifying city with respect to all tax rate areas within the boundaries of the qualifying city. Notwithstanding this paragraph, commencing with the 1994–95 fiscal year, the auditor shall not reduce the amount distributed to a qualifying city under this section by reason of that city becoming the successor agency to a special district that is dissolved, merged with that city, or becomes a subsidiary district of that city, on or after July 1, 1994.

(g) If the auditor determines that the amount to be distributed to a qualifying city pursuant to subdivision (b), as modified by subdivisions (e) and (f), would result in a qualifying city having proceeds of taxes in excess of its appropriation limit, the auditor shall reduce the amount, on a dollar-for-dollar basis, by the amount that exceeds the city's appropriations limit.

(h) The amount not distributed to the tax rate areas of a qualifying city as a result of this section shall be distributed by the auditor to the county.

(i) Notwithstanding any other provision of this section, no qualifying city shall be distributed an amount pursuant to this section that is less than the amount the city would have been allocated without the application of the TEA formula.

(j) Notwithstanding any other provision of this section, the auditor shall not distribute any amount determined pursuant to this section to any qualifying city that has in the prior fiscal year used any revenues or issued bonds for the construction, acquisition, or development, of any facility which is defined in Section 103(b)(4), 103(b)(5), or 103(b)(6) of the Internal Revenue Code of 1954 prior to the enactment of the Tax Reform Act of 1986 (P.L. 99-514) and is no longer eligible for tax-exempt financing.

98.01. (a) An independent qualifying city shall receive a distribution of the following percentages of the TEA formula, as computed in subdivision (c) of Section 98, if the amount of that distribution, less the applicable reductions provided for in subdivisions (e), (f), and (g) of Section 98, would be greater than the amount the city would have been allocated without the application of the TEA formula:

(1) Thirty-three and one-third percent of the amount determined in subparagraph (G) of paragraph (6) of subdivision (c) of Section 98, less any applicable reductions provided for in subdivisions (e), (f), and (g) of Section 98, for the first fiscal year in which the independent qualifying city receives an allocation pursuant to this

section.

(2) Sixty-six and two-thirds percent of the amount determined in subparagraph (G) of paragraph (6) of subdivision (c) of Section 98, less any applicable reductions provided for in subdivisions (e), (f), and (g) of Section 98, for the second fiscal year in which the independent qualifying city receives an allocation pursuant to this section.

(3) One hundred percent of the amount determined in subparagraph (G) of paragraph (6) of subdivision (c) of Section 98, less any applicable reductions provided for in subdivisions (e), (f), and (g) of Section 98, for the third fiscal year in which the independent qualifying city receives an allocation pursuant to this section.

The amount not distributed as a result of this subdivision to the tax rate areas in each independent qualifying city, shall be allocated by the auditor to the county. The auditor may assess each independent qualifying city its proportional share of the actual costs of making the calculations required by this subdivision, and may deduct that assessment from the amount allocated pursuant to this subdivision. For purposes of this subdivision, an independent qualifying city's proportional share of the auditor's actual costs shall not exceed the proportion it receives of the total amounts excluded in the county pursuant to subdivision (a) of Section 98.

(b) "Independent qualifying city" means a qualifying city, as defined in Section 98, in the County of Los Angeles which met the following criteria on January 1, 1988:

(1) Was not served by a special district which received a portion of the 1 percent property tax revenue, and provided any of the following services to the qualified city:

- (A) Emergency medical services.
- (B) Fire prevention services.
- (C) Fire suppression.
- (D) Libraries.
- (E) Parks.
- (F) Recreation services.
- (G) Street lighting.

(2) Did not have redevelopment project areas which receive property tax revenues.

(3) The county general fund received greater than 65 percent of the 1 percent property tax revenues collected from tax rate areas within the qualifying city's boundaries.

98.02. (a) In the County of Ventura, the computations made pursuant to Section 96.1 or its predecessor section, for the 1989-90 fiscal year and each year thereafter, shall be modified as follows:

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

amounts calculated pursuant to the TEA formula.

(b) (1) Each qualifying city shall, for the 1989–90 fiscal year and each fiscal year thereafter, be allocated by the auditor an amount determined pursuant to the TEA formula.

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

(3) After making the allocations pursuant to paragraphs (1) and (2), but before making the calculations pursuant to Section 96.5 or its predecessor section, the auditor shall, for all tax rate areas, except excluded tax rate areas, in the qualifying city, calculate the proportionate share of property tax revenue allocated pursuant to this section and Section 96.1, or their predecessor sections, in the 1989–90 fiscal year and each fiscal year thereafter to each jurisdiction in the tax rate area.

(4) In lieu of making the allocations of annual tax increment pursuant to subdivision (e) of Section 96.5 or its predecessor section, the auditor shall for the 1989–90 fiscal year and each fiscal year thereafter, allocate the amount of property tax revenue determined pursuant to subdivision (d) of Section 98 to jurisdictions in the tax rate area, except an excluded tax rate area, using the proportionate shares derived pursuant to paragraph (3).

(5) For purposes of the calculations made pursuant to Section 96.1 or its predecessor section, in the 1990–91 fiscal year and each fiscal year thereafter, the amounts that would have been allocated to all tax rate areas, except excluded tax rate areas, of qualifying cities pursuant to this subdivision shall be deemed to be the "amount of property tax revenue allocated to those tax rate areas in the prior fiscal year."

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

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

(2) The auditor shall determine the amount of funds allocated in each fiscal year to those tax rate areas, except excluded tax rate areas, within a community redevelopment agency in accordance with subdivision (b) of Section 33670 of the Health and Safety Code.

(3) (A) The auditor shall determine the total amount of funds paid in each fiscal year by a community redevelopment agency

within the city to jurisdictions other than the city pursuant to subdivision (b) of Section 33401 and Section 33676 of the Health and Safety Code, and the cost to the redevelopment agency of any land or facilities transferred and any amounts paid to jurisdictions other than the city to assist in the construction or reconstruction of facilities pursuant to an agreement entered into under Section 33401 or 33445.5 of the Health and Safety Code.

(B) Of the total amount determined in subparagraph (A), the auditor shall compute a proportionate amount to be attributed to all tax rate areas, except excluded tax rate areas, within the community redevelopment agency. That proportionate amount shall be equal to that proportion which the amount determined in paragraph (2) in each fiscal year bears to the total amount of funds allocated in each fiscal year to a community redevelopment agency in accordance with subdivision (b) of Section 33670 of the Health and Safety Code.

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

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

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

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

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

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

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

(d) For purposes of this section, "excluded tax rate area" means either of the following:

(1) Any tax rate area included in territory annexed by the qualifying city and allocated a prescribed percentage of property tax revenue pursuant to an existing agreement between the qualifying city and the county.

(2) Any tax rate area described in paragraph (1) that was detached from the county library district and that is also allocated an additional prescribed percentage of property tax revenue pursuant to an existing agreement between the qualifying city and the county.

(e) (1) All existing agreements between the qualifying city and the county covering the allocation of property tax revenues to tax rate areas described in subdivision (d) shall remain in force.

(2) All existing agreements between the qualifying city and the

county covering the allocation of property tax revenues to tax rate areas that were detached from the county library district but are not included in territory that was annexed by the qualifying city shall remain in force.

(3) All allocations to those tax rate areas described in subdivision (d), including allocations of annual tax increments, made pursuant to the existing agreements between the qualifying city and the county shall be governed by subdivision (a) of Section 96.1 and Section 96.5.

(4) All allocations to those tax rate areas described in paragraph (2), including allocations of annual tax increments, made pursuant to the existing agreements between the qualifying city and the county shall be governed by subdivision (a) of Section 96.1 and Section 96.5. However, the tax rate areas referred to in this paragraph shall also be distributed an amount of property tax revenue determined pursuant to the TEA formula that is over and above the amount allocated as provided in the preceding sentence.

(f) "Qualifying city" means any city that incorporated prior to June 5, 1987, and had an amount of property tax revenue allocated to it pursuant to subdivision (a) of Section 96.1 or its predecessor section in the 1988-89 fiscal year that is less than 4 percent of the amount of property tax revenue computed as follows:

(1) The auditor shall determine the total amount of property tax revenue allocated to all tax rate areas, except excluded tax rate areas, in the city in the 1988-89 fiscal year.

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

(3) The auditor shall subtract the amount determined in paragraph (2) from the amount of property tax revenue in paragraph (1) of subdivision (c).

(4) The auditor shall divide the amount of property tax revenue determined in paragraph (1) of this subdivision by the amount of property tax revenue determined in paragraph (3) of this subdivision.

(5) If the quotient determined in paragraph (4) of this subdivision is less than 0.04, the city is a qualifying city. If the quotient determined in that paragraph is equal to or greater than 0.04, the city is not a qualifying city.

(g) The auditor may assess each qualifying city its proportional share of the actual costs of making the calculations required by this section, and may deduct that assessment from the amount allocated pursuant to subdivision (b). For purposes of this subdivision, a qualifying city's proportional share of the auditor's actual costs shall not exceed the proportion it receives of the total amounts excluded in the county pursuant to subdivision (a).

(h) Notwithstanding subdivision (b), in any fiscal year in which a qualifying city receives a distribution pursuant to this section, the auditor shall reduce the actual amount distributed to the qualifying

city by the amount of revenue not collected by the qualifying city in the first fiscal year following the city's reduction after January 1, 1988, of the tax rate or tax base of any locally imposed general or special tax. The amount so computed by the auditor shall constitute a reduction in the amount of property tax revenue distributed to the qualifying city pursuant to this section in each succeeding fiscal year. That amount shall be aggregated with any additional amount computed pursuant to this paragraph as the result of the city's reduction in any subsequent year of the tax rate or tax base of the same or any other locally imposed general or special tax.

(i) If the auditor determines that the amount to be distributed to a qualifying city pursuant to subdivision (b), as modified by subdivisions (g) and (h), would result in a qualifying city having proceeds of taxes in excess of its appropriation limit, the auditor shall reduce the amount, on a dollar-for-dollar basis, by the amount that exceeds the city's appropriations limit.

(j) The amount not distributed to tax rate areas, except excluded tax rate areas, of a qualifying city as a result of this section shall be distributed by the auditor to the county.

(k) Notwithstanding any other provision of this section, no qualifying city shall be distributed an amount pursuant to this section that is less than the amount the city would have been allocated without the application of the TEA formula.

(l) Notwithstanding any other provision of this section, commencing with the 1994-95 fiscal year, the auditor shall not reduce the amount distributed to a qualifying city under this section by reason of that city becoming the successor agency to a special district that is dissolved, merged with that city, or becomes a subsidiary district of that city, on or after July 1, 1994.

(m) The amount not distributed as a result of this section to the tax rate areas, except excluded tax rate areas, in each qualifying city shall be allocated by the auditor to the county.

98.03. For purposes of Section 98, the definition of qualifying city contained in subdivision (d) of that section shall not include the City of Foster City.

98.04. Notwithstanding any other provision of law, commencing with the 1989-90 fiscal year and each fiscal year thereafter, in any given year, the amount allocated by the auditor in accordance with Section 98 or its predecessor section for a qualifying city in the County of Santa Clara shall not exceed 55 percent of the amount that otherwise would be allocated pursuant to that section.

98.1. (a) In the County of Orange, the computations made pursuant to Section 96.1 or its predecessor section, for the 1984-85 fiscal year only, shall be modified as follows:

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

formula, as defined in subdivision (c).

(2) The amount excluded pursuant to paragraph (1) shall be subtracted from the allocations of all local agencies other than a qualifying city with tax rate areas within the boundaries of a qualifying city in proportion to each such local agency's share of the total 1983-84 property tax revenues, as defined in subdivision (c) of Section 95, allocated to all those tax rate areas.

(b) (1) Each qualifying city, as defined in subdivision (d), shall for the 1984-85 fiscal year only, be allocated by the auditor an amount determined pursuant to the TEA formula, as defined in subdivision (c).

(2) For each qualifying city, the auditor shall distribute the amount determined pursuant to the TEA formula to all tax rate areas within the city in proportion to each tax rate area's share of the total 1983-84 assessed value in the city.

(3) After making the allocations, pursuant to paragraphs (1) and (2) but before making the calculations pursuant to Section 96.5, the auditor shall, for all tax rate areas in the qualifying city, calculate the proportionate share of property tax revenue allocated pursuant to this section and Section 96.1 in the 1984-85 fiscal year to each jurisdiction in the tax rate area.

(4) In lieu of making the allocations of annual tax increment pursuant to subdivision (e) of Section 96.5 or its predecessor section, the auditor shall for the 1984-85 fiscal year only, allocate the amount of property tax revenue determined pursuant to subdivision (d) of Section 96.5 or its predecessor section to jurisdictions in the tax rate area using the proportionate shares derived pursuant to paragraph (3).

(5) For purposes of the calculations made pursuant to Section 96.1 or its predecessor section, in the 1985-86 fiscal year and fiscal years thereafter, the amounts allocated to qualifying cities pursuant to this subdivision (notwithstanding any deduction made pursuant to subdivision (e)) shall be deemed to be the "amount of property tax revenue allocated pursuant to this chapter in the prior fiscal year."

(c) "TEA formula" shall mean Tax Equity Allocation formula, and shall be calculated by the auditor by applying a tax rate of ten cents (\$.10) per \$100 assessed value to the 1983-84 assessed value of the qualifying city.

(d) "Qualifying city" shall mean any city in the County of Orange that existed but did not levy a property tax in the 1977-78 fiscal year.

(e) The auditor may assess each qualifying city its proportional share of the actual costs of making the calculations required by this section, and may deduct that assessment from the amount allocated pursuant to subdivision (b). For purposes of this subdivision, a qualifying city's proportional share of the auditor's actual costs shall not exceed the proportion it receives of the total amounts excluded in the county pursuant to paragraph (1) of subdivision (a).

Article 5. Jurisdictional Changes and Negotiated Transfers

99. (a) For the purposes of the computations required by this chapter:

(1) In the case of a jurisdictional change, other than a city incorporation or a formation of a district as defined in Section 2215, the auditor shall adjust the allocation of property tax revenue determined pursuant to Section 96 or 96.1, or the annual tax increment determined pursuant to Section 96.5, for local agencies whose service area or service responsibility would be altered by the jurisdictional change, as determined pursuant to subdivision (b) or (c).

(2) In the case of a city incorporation, the auditor shall assign the allocation of property tax revenues determined pursuant to Section 56842 of the Government Code and the adjustments in tax revenues that may occur pursuant to Section 56845 of the Government Code to the newly formed city or district and shall make the adjustment as determined by Section 56842 in the allocation of property tax revenue determined pursuant to Section 96 or 96.1 for each local agency whose service area or service responsibilities would be altered by the incorporation.

(3) In the case of a formation of a district as defined in Section 2215, the auditor shall assign the allocation of property tax revenues determined pursuant to Section 56842 of the Government Code to the district and shall make the adjustment as determined by Section 56842 in the allocation of property tax revenue determined pursuant to Section 96 or 96.1 for each local agency whose service area or service responsibilities would be altered by the formation.

(b) Upon the filing of an application or a resolution pursuant to the Cortese-Knox Local Government Reorganization Act of 1985 (Division 3 (commencing with Section 56000) of Title 5 of the Government Code), but prior to the issuance of a certificate of filing, the executive officer shall give notice of the filing to the assessor and auditor of each county within which the territory subject to the jurisdictional change is located. This notice shall specify each local agency whose service area or responsibility will be altered by the jurisdictional change.

(1) (A) The county assessor shall provide to the county auditor, within 30 days of the notice of filing, a report which identifies the assessed valuations for the territory subject to the jurisdictional change and the tax rate area or areas in which the territory exists.

(B) The auditor shall estimate the amount of property tax revenue generated within the territory that is the subject of the jurisdictional change during the current fiscal year.

(2) The auditor shall estimate what proportion of the property tax revenue determined pursuant to paragraph (1) is attributable to each local agency pursuant to Section 96.1 and Section 96.5.

(3) Within 45 days of notice of the filing of an application or resolution, the auditor shall notify the governing body of each local

agency whose service area or service responsibility will be altered by the amount of, and allocation factors with respect to, property tax revenue estimated pursuant to paragraph (2) that is subject to a negotiated exchange.

(4) Upon receipt of the estimates pursuant to paragraph (3) the local agencies shall commence negotiations to determine the amount of property tax revenues to be exchanged between and among the local agencies. This negotiation period shall not exceed 30 days.

The exchange may be limited to an exchange of property tax revenues from the annual tax increment generated in the area subject to the jurisdictional change and attributable to the local agencies whose service area or service responsibilities will be altered by the proposed jurisdictional change. The final exchange resolution shall specify how the annual tax increment shall be allocated in future years.

(5) In the event that a jurisdictional change would affect the service area or service responsibility of one or more special districts, the board of supervisors of the county or counties in which the districts are located shall, on behalf of the district or districts, negotiate any exchange of property tax revenues.

(6) Notwithstanding any other provision of law, the executive officer shall not issue a certificate of filing pursuant to Section 56828 of the Government Code until the local agencies included in the property tax revenue exchange negotiation, within the 30-day negotiation period, present resolutions adopted by each such county and city whereby each county and city agrees to accept the exchange of property tax revenues.

(7) In the event that the commission modifies the proposal or its resolution of determination, any local agency whose service area or service responsibility would be altered by the proposed jurisdictional change may request, and the executive officer shall grant, 15 days for the affected agencies, pursuant to paragraph (4) to renegotiate an exchange of property tax revenues. Notwithstanding the time period specified in paragraph (4), if the resolutions required pursuant to paragraph (6) are not presented to the executive officer within the 15-day period, all proceedings of the jurisdictional change shall automatically be terminated.

(8) No later than the date on which the certificate of completion of the jurisdictional change is recorded with the county recorder, the executive officer shall notify the auditor or auditors of the exchange of property tax revenues and the auditor or auditors shall make the appropriate adjustments as provided in subdivision (a).

(c) Whenever a jurisdictional change is not required to be reviewed and approved by a local agency formation commission, the local agencies whose service area or service responsibilities would be altered by the proposed change, shall give notice to the State Board of Equalization and the assessor and auditor of each county within which the territory subject to the jurisdictional change is located. This notice shall specify each local agency whose service area or

responsibility will be altered by the jurisdictional change and request the auditor and assessor to make the determinations required pursuant to paragraphs (1) and (2) of subdivision (b). Upon notification by the auditor of the amount of, and allocation factors with respect to, property tax subject to exchange, the local agencies, pursuant to the provisions of paragraphs (4), (5), and (6) of subdivision (b), shall determine the amount of property tax revenues to be exchanged between and among the local agencies. Notwithstanding any other provision of law, no such jurisdictional change shall become effective until each county and city included in these negotiations agrees, by resolution, to accept the negotiated exchange of property tax revenues. The exchange may be limited to an exchange of property tax revenue from the annual tax increment generated in the area subject to the jurisdictional change and attributable to the local agencies whose service area or service responsibilities will be altered by the proposed jurisdictional change. The final exchange resolution shall specify how the annual tax increment shall be allocated in future years. Upon the adoption of the resolutions required pursuant to this section, the adopting agencies shall notify the auditor who shall make the appropriate adjustments as provided in subdivision (a).

(d) With respect to adjustments in the allocation of property taxes pursuant to this section, a county and any local agency or agencies within the county may develop and adopt a master property tax transfer agreement. The agreement may be revised from time to time by the parties subject to the agreement.

(e) Except as otherwise provided in subdivision (f), for the purpose of determining the amount of property tax to be allocated in the 1979-80 fiscal year and each fiscal year thereafter for those local agencies that were affected by a jurisdictional change which was filed with the State Board of Equalization after January 1, 1978, but on or before January 1, 1979. The local agencies shall determine by resolution the amount of property tax revenues to be exchanged between and among the affected agencies and notify the auditor of the determination.

(f) For the purpose of determining the amount of property tax to be allocated in the 1979-80 fiscal year and each fiscal year thereafter, for a city incorporation that was filed pursuant to Sections 54900 to 54904 after January 1, 1978, but on or before January 1, 1979, the amount of property tax revenue considered to have been received by the jurisdiction for the 1978-79 fiscal year shall be equal to two-thirds of the amount of property tax revenue projected in the final local agency formation commission staff report pertaining to the incorporation multiplied by the proportion that the total amount of property tax revenue received by all jurisdictions within the county for the 1978-79 fiscal year bears to the total amount of property tax revenue received by all jurisdictions within the county for the 1977-78 fiscal year. Except, however, in the event that the final commission report did not specify the amount of property tax

revenue projected for that incorporation, the commission shall by October 10, determine pursuant to Section 54790.3 of the Government Code the amount of property tax to be transferred to the city.

The provisions of this subdivision shall also apply to the allocation of property taxes for the 1980–81 fiscal year and each fiscal year thereafter for incorporations approved by the voters in June 1979.

(g) For the purpose of the computations made pursuant to this section, in the case of a district formation that was filed pursuant to Sections 54900 to 54904, inclusive, of the Government Code after January 1978, but before January 1, 1979, the amount of property tax to be allocated to the district for the 1979–80 fiscal year and each fiscal year thereafter shall be determined pursuant to Section 54790.3 of the Government Code.

(h) For the purposes of the computations required by this chapter, in the case of a jurisdictional change, other than a change requiring an adjustment by the auditor pursuant to subdivision (a), the auditor shall adjust the allocation of property tax revenue determined pursuant to Section 96 or 96.1 or its predecessor section, or the annual tax increment determined pursuant to Section 96.5 or its predecessor section, for each local school district, community college district, or county superintendent of schools whose service area or service responsibility would be altered by the jurisdictional change, as determined as follows:

(1) The governing body of each district, county superintendent of schools, or county whose service areas or service responsibilities would be altered by the change shall determine the amount of property tax revenues to be exchanged between and among the affected jurisdictions. This determination shall be adopted by each affected jurisdiction by resolution. For the purpose of negotiation, the county auditor shall furnish the parties and the county board of education with an estimate of the property tax revenue subject to negotiation.

(2) In the event that the affected jurisdictions are unable to agree, within 60 days after the effective date of the jurisdictional change, and if all the jurisdictions are wholly within one county, the county board of education shall, by resolution, determine the amount of property tax revenue to be exchanged. If the jurisdictions are in more than one county, the State Board of Education shall, by resolution, within 60 days after the effective date of the jurisdictional change, determine the amount of property tax to be exchanged.

(3) Upon adoption of any resolution pursuant to this subdivision, the adopting jurisdictions or State Board of Education shall notify the county auditor who shall make the appropriate adjustments as provided in subdivision (a).

(i) For purposes of subdivision (h), the annexation by a community college district of territory within a county not previously served by a community college district is an alteration of service area. The community college district and the county shall

negotiate the amount, if any, of property tax revenues to be exchanged. In these negotiations, there shall be taken into consideration the amount of revenue received from the timber yield tax and forest reserve receipts by the community college district in the area not previously served. In no event shall the property tax revenue to be exchanged exceed the amount of property tax revenue collected prior to the annexation for the purposes of paying tuition expenses of residents enrolled in the community college district, adjusted each year by the percentage change in population and the percentage change in the cost of living, or per capita personal income, whichever is lower, less the amount of revenue received by the community college district in the annexed area from the timber yield tax and forest reserve receipts.

(j) At any time after a jurisdictional change is effective, any of the local agencies party to the agreement to exchange property tax revenue may renegotiate the agreement with respect to the current fiscal year or subsequent fiscal years, subject to approval by all local agencies affected by the renegotiation.

99.01. (a) For the purposes of Section 99, in the case of a jurisdictional change that will result in a special district providing one or more services to an area where those services have not been previously provided by any local agency, the following shall apply:

(1) The special district referred to in this subdivision and each local agency that receives an apportionment of property tax revenue from the area shall be considered local agencies whose service area or service responsibility will be altered by the jurisdictional change.

(2) The exchange of property tax among those local agencies shall be limited to property tax revenue from the annual tax increment generated in the area subject to the jurisdictional change and attributable to those local agencies.

(3) Notwithstanding the provisions of paragraph (5) of subdivision (b) of Section 99, any special district affected by the jurisdictional change may negotiate on its own behalf, if it so chooses.

(4) If a special district involved in the negotiation (other than the district which will provide one or more services to the area where those services have not been previously provided) fails to adopt a resolution providing for the exchange of property tax revenue, the board of supervisors of the county in the area subject to the jurisdictional change is located shall determine the exchange of property tax revenue for that special district.

(b) The provisions of subdivisions (a), (b), (c), (d), and (j) of Section 99 not in conflict with this section shall apply. The jurisdictional changes described in subdivisions (e), (f), (g), (h), and (i) of Section 99 shall not be affected by the provisions of this section.

99.02. (a) For the purposes of the computations required by this chapter for the 1985-86 fiscal year and fiscal years thereafter, in the case of any transfer of property tax revenues between local agencies that is adopted and approved in conformity with subdivisions (b) and (c), the auditor shall adjust the allocation of property tax

revenue determined pursuant to Section 96.1 or its predecessor section, or the annual tax increment determined pursuant to Section 96.5 or its predecessor section, for those local agencies whose allocation would be altered by the transfer.

(b) Commencing with the 1985–86 fiscal year, any local agency may, by the adoption of a resolution of its governing body or governing board, determine to exchange any portion of its property tax revenues which is allocable to one or more tax rate areas within the local agency with one or more other local agencies having the same tax rate area or tax rate areas. Upon the local agency's adoption of the resolution, the local agency shall notify the board of supervisors of the county or the city council of the city within which the exchange of property tax revenues is proposed.

(c) If the board of supervisors or the city council concurs with the proposed exchange of property tax revenue, the board or council shall, by resolution, notify the county auditor of the approved exchange.

(d) Upon receipt of notification from the board of supervisors or the city council, the county auditor shall make the necessary adjustments specified in subdivision (a).

(e) Prior to the adoption or approval by any local agency of a transfer of property tax revenues pursuant to this section, each local agency that will be affected by the proposed transfer shall hold a public hearing to consider the effect of the proposed transfer on fees, charges, assessments, taxes, or other revenues. Notice of the hearing shall be published pursuant to Section 6061 of the Government Code in one or more newspapers of general circulation within each affected local agency.

(f) No local agency shall reallocate property tax revenue pursuant to this section unless each of the following conditions exists:

(1) The transferring agency determines that revenues are available for this purpose.

(2) The transfer will not result in any increase in the ratio between the amount of revenues of the transferring agency that are generated by regulatory licenses, use charges, user fees, or assessments and used to finance services provided by the transferring agency.

(3) The transfer will not impair the ability of the transferring agency to provide existing services.

(4) The transfer will not result in a reduction of property tax revenues to school entities.

99.03. (a) For the purposes of Section 99, in the case of a jurisdictional change that results in a qualifying city, as defined in Section 98, providing its own fire protection services in accordance with Section 25643 of the Government Code in lieu of the county providing those services, the negotiated exchange of property tax revenues between the county and the qualifying city pursuant to subdivision (c) of Section 99 as a result of that jurisdictional change may also provide for a negotiated adjustment in the amount of

property tax revenue distributed by the auditor to the qualifying city in accordance with Section 98. The negotiated adjustment may be made in any amount that does not exceed the amount of property tax revenue exchanged between the county and the qualifying city.

(b) This section applies only to exchanges of property tax revenue affecting the County of Riverside and qualifying cities within that county.

99.1. (a) For the purposes of the computations required by this chapter for the 1986–87 fiscal year and fiscal years thereafter, in the case of any transfer of property tax revenues between local agencies that is adopted and approved in conformity with subdivisions (b) and (c), the county auditor shall adjust the allocation of property tax revenue determined pursuant to Section 96.1 or its predecessor section, or the annual tax increment determined pursuant to Section 96.5 or its predecessor section, for those local agencies whose allocation would be altered by the transfer.

(b) Commencing with the 1986–87 fiscal year or any fiscal year thereafter, a local agency may, by the adoption of a resolution of its governing board, determine to exchange any portion of its property tax revenues that is allocable to one or more tax rate areas, with one or more other local agencies having the same tax rate area or tax rate areas. Upon the adoption of the resolution, the governing board of the local agency shall notify the board of supervisors of the affected county.

If the transfer of property tax revenues will alter the property tax revenue allocation of a city, the governing board of the local agency shall, upon adoption of the resolution, also notify the affected city.

(c) If the board of supervisors of the affected county concurs with the proposed exchange of property tax revenues, it shall, by resolution, approve the exchange and notify the county auditor. If the property tax allocation of a city would be affected by the exchange, the board shall not notify the county auditor pursuant to this subdivision until the city council of the affected city has, by resolution, approved the proposed exchange of property tax revenues.

(d) Upon receipt of notification from the board of supervisors pursuant to subdivision (c), the county auditor shall make the necessary adjustments specified in subdivision (a).

(e) Prior to the adoption by the governing board of a local agency of a resolution pursuant to subdivision (b), the local agency shall hold a public hearing to consider the effect of the proposed transfer. Notice of the hearing shall be published pursuant to Section 6061 of the Government Code in one or more newspapers of general circulation within the local agency.

(f) No local agency shall reallocate property tax revenue pursuant to this section unless the transfer will not result in any increase in the ratio between the amount of revenues of the transferring agency that are generated by regulatory licenses, use charges, user fees, or assessments and the amount of revenues of the transferring agency

used to finance services provided by it.

(g) This section applies only to exchanges affecting the Ventura Regional Sanitation District located within the County of Ventura.

99.2. No amendment made by any chapter of the Statutes of 1980, or any year thereafter, to Section 99 of the Revenue and Taxation Code shall be construed, except as expressly provided therein, to apply to a jurisdictional change initiated, pursuant to the applicable provisions of law governing those jurisdictional changes, prior to the effective date of the amendment. The provisions of Section 99 of the Revenue and Taxation Code in effect at the time the jurisdictional change is initiated shall govern the procedures for, and exchange of, property tax revenues between local agencies whose service area or service responsibility would be altered by that jurisdictional change, provided that there shall be no duty to impound any property tax revenues.

Article 6. Miscellaneous Provisions

100. Notwithstanding any other provision of law, commencing with the 1988–89 fiscal year, property tax assessed value attributable to unitary and operating nonunitary property, as defined in Sections 723 and 723.1, that is assessed by the State Board of Equalization shall be allocated by county as provided in Section 756, and the assessed value and revenues attributable to that allocation shall be allocated within each county as follows:

(a) Each county shall establish one countywide tax rate area. The assessed value of all unitary and operating nonunitary property shall be assigned to this tax rate area. No other property shall be assigned to this tax rate area.

(b) Property assigned to the tax rate area created by subdivision (a) shall be taxed at a rate equal to the sum of the following two rates:

(1) A rate determined by dividing the county's total ad valorem tax levies for the secured roll, including levies made pursuant to Section 96.8, for the prior year, exclusive of levies for debt service, by the county's total ad valorem secured roll assessed value for the prior year.

(2) A rate determined as follows:

(A) By dividing the county's total ad valorem tax levies for unitary and operating nonunitary property for the prior year debt service only by the county's total unitary and operating nonunitary assessed value for the prior year.

(B) Beginning with the 1989–90 fiscal year, adjusting the rate determined pursuant to subparagraph (A) by the percentage change between the two preceding fiscal years in the county's ad valorem debt service levy for the secured roll, not including unitary and operating nonunitary debt service.

(c) The property tax revenue derived from the assessed value assigned to the countywide tax rate area pursuant to subdivision (a) by the use of the tax rate determined in paragraph (1) of subdivision

(b) shall be allocated as follows:

(1) For the 1988–89 fiscal year and each fiscal year thereafter, each taxing jurisdiction shall be allocated an amount of property tax revenue equal to 102 percent of the amount of the aggregate property tax revenue it received from all unitary and operating nonunitary property in the prior fiscal year, exclusive of revenue attributable to levies for debt service.

(2) If the amount of property tax revenue available for allocation in the current fiscal year is insufficient to make the allocations required by paragraph (1), the amount of revenue to be allocated to each taxing jurisdiction shall be prorated based on a factor determined by dividing the total amount of property tax revenue available to all taxing jurisdictions from unitary and operating nonunitary property in the current year, exclusive of revenue attributable to levies for debt service, by the total amount of property tax revenue received by all taxing jurisdictions from unitary and operating nonunitary property in the prior fiscal year, exclusive of revenue attributable to levies for debt service.

(3) If the amount of property tax revenue available for allocation to all taxing jurisdictions in the current fiscal year from unitary and operating nonunitary property, exclusive of revenue attributable to levies for debt service, exceeds 102 percent of the property tax revenue received by all taxing jurisdictions from all unitary and operating nonunitary property in the prior fiscal year, exclusive of revenue attributable to levies for debt service, the amount of revenue in excess of 102 percent shall be allocated to all taxing jurisdictions in the county by a ratio determined by dividing each taxing jurisdiction's share of the county's total ad valorem tax levies for the secured roll for the prior year, exclusive of levies for debt service, by the county's total ad valorem tax levies for the secured roll for the prior year, exclusive of levies for debt service.

(d) The property tax revenue derived from the assessed value assigned to the countywide tax rate area pursuant to subdivision (a) by the use of the tax rate determined in paragraph (2) of subdivision (b) shall be allocated as follows:

(1) An amount shall be computed for each taxing jurisdiction and shall be determined by multiplying the amounts required in the current year pursuant to subdivisions (a) and (c) of Section 93 by that percentage that shall be determined by dividing the amount of property tax revenue the jurisdiction received in the prior year from unitary property and operating nonunitary property by the total amount of property tax revenue the jurisdiction received in the prior year from all property.

(2) The amount of property tax revenue available for allocation pursuant to this subdivision shall be allocated among taxing jurisdictions in the proportion that the amount computed for each taxing jurisdiction pursuant to paragraph (1) bears to the total amount computed pursuant to paragraph (1) for all taxing jurisdictions.

(3) If a taxing jurisdiction is levying a tax rate for debt service for the first time in the current fiscal year, for purposes of determining the percentage specified in paragraph (1), that percentage shall be the percentage determined by dividing the amount of property tax revenue received by that taxing jurisdiction in the prior year pursuant to subdivision (c) from unitary and operating nonunitary property by the total amount of property tax revenue received by that taxing jurisdiction in the prior year from all property within the taxing jurisdiction.

(e) For purposes of this section:

(1) "The county's total ad valorem tax levies for the secured roll" means all ad valorem tax levies for the county's secured roll, including the general tax levy, levies for debt service (including land only and land and improvement rates), and levies for redevelopment agencies.

(2) "The county's total ad valorem secured roll" means the county's local roll, after all exemptions except the homeowner's exemption, and the county's utility roll.

(3) "Taxing jurisdiction" includes a redevelopment agency.

(f) The assessed value of the unitary and operating nonunitary property shall be kept separate for each state assessee throughout the allocation process.

(g) Each state assessee shall be issued only one tax bill for all unitary and operating nonunitary property within the county.

(h) This section does not apply to unitary property of regulated railway companies.

(i) This section does not apply to property that on July 1, 1987, was undeveloped and owned by a utility and located within a city, county, or city and county that adopts a resolution stating that the property is subject to a development plan or agreement and that this section shall not apply to that property, and the city, county, or city and county transmits a copy of that resolution, including a legal description of the property, to the State Board of Equalization and the county's auditor-controller prior to January 1, 1988.

(j) (1) For property that on July 1, 1990, was undeveloped and owned by a utility and that is located within a city, county, or city and county that adopts a resolution stating that the property is subject to a development plan or agreement and that this subdivision applies to that property, and the city, county, or city and county transmits a copy of that resolution, including a legal description of the property, to the county auditor prior to August 1, 1991, the allocation of property tax revenues derived with respect to that property pursuant to Sections 96.1, 96.2, 97.31, 98, 98.01, and 98.04, shall be subject to the allocation required by paragraph (2).

(2) The county auditor shall annually allocate to a city, county, or city and county, that has adopted and transmitted a resolution pursuant to paragraph (1), the amount of property tax revenues derived with respect to the property described in paragraph (1) that would be allocated to that city, county, or city and county if that

property were subject to assessment by the county assessor. In order to provide the allocations required by this paragraph, the county auditor shall make any necessary pro rata reductions in allocations to local agencies other than that city, county, or city and county adopting and transmitting a resolution pursuant to paragraph (1), of property tax revenues derived with respect to the property described in paragraph (1).

(k) (1) For property subject to this section that is owned by a utility that serves no more than two counties and is located within a city, county, or city and county that adopts a resolution stating that the property is subject to a development plan or agreement for new construction and the city, county, or city and county transmits a copy of that resolution, including a legal description of the property, to the State Board of Equalization and the county auditor prior to January 1, 1995, the allocation of property tax revenues derived with respect to that property pursuant to Sections 96.1, 97.31, 98, 98.01, and 98.04, shall be subject to the requirements of paragraph (2) until December 31, 2004.

(2) If the city, county, or city and county has adopted and transmitted a resolution pursuant to paragraph (1), the county auditor shall annually allocate the property tax revenue attributable to the new construction described in the development plan or agreement, as if that new construction were subject to assessment by the county assessor, according to the following formula:

(A) An amount of property tax revenue to school entities, as defined in subdivision (f) of Section 95, equivalent to the same percentage the school entities received in the prior fiscal year of the property tax revenues paid by the utility in the county in which the property described in paragraph (1) is located.

(B) An amount of property tax revenue to the county in which the property is located equivalent to the same percentage the county received in the prior fiscal year of the property tax revenues paid by the utility in the county in which the property described in paragraph (1) is located. The county shall distribute those property tax revenues to the county general fund, the county library district, the county flood control district, the county sanitation districts, and the county service areas.

(C) The property tax revenue remaining after the allocations described in subparagraphs (A) and (B) are made shall be distributed to the city in which the property described in paragraph (1) is located.

(3) In order to provide the allocations required by paragraph (2), the county auditor shall make any necessary pro rata reductions in allocations of property taxes attributable to the property specified in paragraph (1) to jurisdictions other than those receiving an allocation under paragraph (2).

(4) The allocation required by this subdivision shall not apply to property tax revenues allocated on or after December 31, 2004.

100.1. Notwithstanding any other provision of law, commencing

with the 1988–89 fiscal year, property tax assessed value attributable to unitary property, as defined in Section 723, of a regulated railway company that is assessed by the State Board of Equalization, shall be allocated to tax rate areas as follows:

(a) Each tax rate area shall receive an amount of assessed value equal to the amount of assessed value received in the prior fiscal year adjusted for changes in track mileage unless the total amount of assessed value to be allocated is insufficient, in which case, each tax rate area shall receive a pro rata share of the amount it received in the prior fiscal year adjusted for changes in track mileage.

(b) If the total amount of assessed value to be allocated is greater than the amount of assessed value allocated in the prior fiscal year adjusted for changes in track mileage, each tax rate area shall receive a pro rata share of the amount in excess of the prior year's assessed value of the regulated railway company adjusted for track mileage.

(c) If a tax rate area is divided, the prior fiscal year amount of assessed value of the unitary property of the regulated railway company shall be divided among the resulting tax rate areas in the same proportion that the track mileage on unitary property is divided among the resulting tax rate areas.

(d) The assessed value allocated to each tax rate area under subdivision (a), (b), or (c) shall be further allocated between land, improvements, and personal property in the same proportion as existed for each regulated railway company statewide in the 1987–88 assessment year.

(e) For purposes of this section:

(1) "The amount of assessed value received in the prior fiscal year adjusted for changes in track mileage" means the prior year's amount of assessed value in each tax rate area after it has been adjusted upward or downward in direct proportion to the change in the amount of track mileage on unitary property in the current year over the prior year.

(2) "Track mileage" means the number of miles of track adjusted to reflect the relative importance of mainline, branch, and other track.

100.2. Supplemental property tax revenues for 1985–86 and each year thereafter, generated by Sections 75 to 75.80, inclusive, shall be apportioned using the property tax apportionment factors for the current year.

100.3. Notwithstanding any other provision of this chapter, in the County of Santa Cruz, the auditor shall, for the 1993–94 fiscal year only, deposit those property tax revenues that would otherwise be allocated to enterprise special districts in a Supplemental Allocation Fund. The county board of supervisors shall allocate moneys in the fund for the 1993–94 fiscal year only to either enterprise special districts or the County Library Fund.

SEC. 4. Section 10 of Chapter 155 of the Statutes of 1994 is amended to read:

Sec. 10. It is the intent of the Legislature that the amendments

to Section 97.2 of the Revenue and Taxation Code or its predecessor section, made by Section 4 of this act, change the calculation of property tax revenue allocations for the 1992-93 fiscal year as if Chapter 1279 of the Statutes of 1993 had not been enacted.

SEC. 5. Section 11 of Chapter 155 of the Statutes of 1994 is amended to read:

Sec. 11. It is the intent of the Legislature in enacting subdivision (c) of Section 97.3 of the Revenue and Taxation Code or its predecessor section to transfer from a special district to the Educational Revenue Augmentation Fund, for the 1993-94 fiscal year, a total amount of property tax revenue not to exceed that amount of property tax revenue attributable to the amount of state assistance payments received by that special district pursuant to Chapter 282 of the Statutes of 1979, as reduced by transfers required by Section 97.2 of the Revenue and Taxation Code or its predecessor section.

SEC. 6. Section 95.3 is added to Article 1 (commencing with Section 95) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code, to read:

95.3. (a) Notwithstanding any other provision of law, for the 1990-91 fiscal year and each fiscal year thereafter, the auditor shall divide the sum of the amounts calculated with respect to each jurisdiction or community redevelopment agency pursuant to Sections 96.1 and 100, or their predecessor sections, and Section 33670 of the Health and Safety Code, by the countywide total of those calculated amounts. The resulting ratio shall be known as the "administrative cost apportionment factor" and shall be multiplied by the sum of the property tax administrative costs incurred in the immediately preceding fiscal year by the assessor, tax collector, and auditor to determine the fiscal year property tax administrative costs proportionately attributable to each jurisdiction or community redevelopment agency. For purposes of this paragraph, property tax administrative costs shall also include applicable administrative overhead costs allowed by the federal Office of Management and Budget Circular A-87 standards, but shall not include any amount reimbursed pursuant to Section 75.60 and former Section 98.6, or include any amount in excess of the amounts reimbursable pursuant to Section 75.60, unless a county meets the conditions of paragraph (2) of subdivision (b) of Section 75.60. However, no amount of funds appropriated to counties for purposes of property tax administration in Item 9100-102-001 of the Budget Act of 1994 or any subsequent Budget Act shall result in any deduction from those property tax administrative costs that are eligible for reimbursement pursuant to this subdivision.

(b) Each proportionate share of property tax administrative costs determined pursuant to subdivision (a), except for those proportionate shares determined with respect to a school entity, shall be deducted from the property tax revenue allocation of the relevant jurisdiction or community redevelopment agency, and shall be

added to the property tax revenue allocation of the county. For purposes of applying this paragraph for the 1990-91 fiscal year, each proportionate share of property tax administrative costs shall be deducted from those amounts allocated to the relevant jurisdiction or community redevelopment agency after January 1, 1991.

(c) Reductions made pursuant to this section to property tax revenue allocations shall be made without regard to Section 907 of the Government Code.

(d) Any additional amounts of property tax revenue allocated to the county pursuant to this subdivision shall be used only to fund costs incurred by the county in assessing and collecting property taxes, and in allocating property tax revenues, and shall constitute charges for those services, not exceeding the actual and reasonable costs incurred by the county in performing those services.

(e) It is the intent of the Legislature in enacting this section to recognize that since the adoption of Article XIII A of the California Constitution by the voters, county governments have borne an unfair and disproportionate part of the financial burden of assessing, collecting, and allocating property tax revenues for other jurisdictions and for redevelopment agencies. The Legislature finds and declares that this subdivision is intended to fairly apportion the burden of collecting property tax revenues and is not a reallocation of property tax revenue shares or a transfer of any financial or program responsibility.

(f) Commencing with the 1992-93 fiscal year and each fiscal year thereafter, this section shall supersede and replace Section 95.2, as authority for a county to recover property tax administrative costs.

(g) This section shall apply to the entire 1993-94 fiscal year, regardless of the operative date of the act adding the predecessor to this section, and to each fiscal year thereafter.

SEC. 7. Section 97.2 is added to Article 3 (commencing with Section 97) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code, to read:

97.2. Notwithstanding any other provision of this chapter, the computations and allocations made by each county pursuant to Section 96.1 or its predecessor section shall be modified for the 1992-93 fiscal year pursuant to subdivisions (a) to (d), inclusive, and for the 1997-98 and 1998-99 fiscal years pursuant to subdivision (e), as follows:

(a) (1) Except as provided in paragraph (2), the amount of property tax revenue deemed allocated in the prior fiscal year to each county shall be reduced by the dollar amounts indicated as follows, multiplied by .953649:

County	Property Tax Reduction per County
Alameda	\$ 27,323,576
Alpine	5,169
Amador	286,131
Butte	846,452
Calaveras	507,526
Colusa	186,438
Contra Costa.....	12,504,318
Del Norte	46,523
El Dorado	1,544,590
Fresno.....	5,387,570
Glenn	378,055
Humboldt	1,084,968
Imperial	998,222
Inyo	366,402
Kern	6,907,282
Kings.....	1,303,774
Lake	998,222
Lassen.....	93,045
Los Angeles.....	244,178,806
Madera	809,194
Marin	3,902,258
Mariposa.....	40,136
Mendocino.....	1,004,112
Merced	2,445,709
Modoc.....	134,650
Mono.....	319,793
Monterey	2,519,507
Napa	1,362,036
Nevada	762,585
Orange	9,900,654
Placer	1,991,265
Plumas	71,076
Riverside	7,575,353
Sacramento	15,323,634
San Benito.....	198,090
San Bernardino	14,467,099
San Diego	17,687,776
San Francisco	53,266,991
San Joaquin	8,574,869
San Luis Obispo.....	2,547,990
San Mateo	7,979,302
Santa Barbara.....	4,411,812
Santa Clara	20,103,706
Santa Cruz.....	1,416,413

Shasta	1,096,468
Sierra	97,103
Siskiyou	467,390
Solano	5,378,048
Sonoma.....	5,455,911
Stanislaus	2,242,129
Sutter	831,204
Tehama	450,559
Trinity	50,399
Tulare	4,228,525
Tuolumne	740,574
Ventura	9,412,547
Yolo	1,860,499
Yuba	842,857

(2) Notwithstanding paragraph (1), the amount of the reduction specified in that paragraph for any county or city and county that has been materially and substantially impacted as a result of a federally declared disaster, as evidenced by at least 20 percent of the cities, or cities and unincorporated areas of the county representing 20 percent of the population within the county suffering substantial damage, as certified by the Director of the Office of Emergency Services, occurring between October 1, 1989, and the effective date of this section, shall be reduced by that portion of five million dollars (\$5,000,000) determined for that county or city and county pursuant to subparagraph (B) of paragraph (3).

(3) On or before October 1, 1992, the Director of Finance shall do all of the following:

(A) Determine the population of each county and city and county in which a federally declared disaster has occurred between October 1, 1989, and the effective date of this section.

(B) Determine for each county and city and county as described in subparagraph (A) its share of five million dollars (\$5,000,000) on the basis of that county's population relative to the total population of all counties described in subparagraph (A).

(C) Notify each auditor of each county and city and county of the amounts determined pursuant to subparagraph (B).

(b) (1) Except as provided in paragraph (2), the amount of property tax revenue deemed allocated in the prior fiscal year to each city, except for a newly incorporated city that did not receive property tax revenues in the 1991-92 fiscal year, shall be reduced by 9 percent. In making the above computation with respect to cities in Alameda County, the computation for a city described in paragraph (6) of subdivision (a) of Section 100.7, as added by Section 73.5 of Chapter 323 of the Statutes of 1983, shall be adjusted so that the amount multiplied by 9 percent is reduced by the amount determined for that city for "museums" pursuant to paragraph (2) of subdivision (h) of Section 95.

(2) Notwithstanding paragraph (1), the amount of the reduction

determined pursuant to that paragraph for any city that has been materially and substantially impacted as a result of a federally declared disaster, as certified by the Director of the Office of Emergency Services, occurring between October 1, 1989, and the effective date of this section, shall be reduced by that portion of fifteen million dollars (\$15,000,000) determined for that city pursuant to subparagraph (B) of paragraph (3).

(3) On or before October 1, 1992, the Director of Finance shall do all of the following:

(A) Determine the population of each city in which a federally declared disaster has occurred between October 1, 1989, and the effective date of this section.

(B) Determine for each city as described in subparagraph (A) its share of fifteen million dollars (\$15,000,000) on the basis of that city's population relative to the total population of all cities described in subparagraph (A).

(C) Notify each auditor of each county and city and county of the amounts determined pursuant to subparagraph (B).

(4) In the 1992-93 fiscal year and each fiscal year thereafter, the auditor shall adjust the computations required pursuant to Article 4 (commencing with Section 98) so that those computations do not result in the restoration of any reduction required pursuant to this section.

(c) (1) Subject to paragraph (2), the amount of property tax revenue, other than those revenues that are pledged to debt service, deemed allocated in the prior fiscal year to a special district, other than a multicounty district, a local hospital district, or a district governed by a city council or whose governing board has the same membership as a city council, shall be reduced by 35 percent. For purposes of this subdivision, "revenues that are pledged to debt service" include only those amounts required to pay debt service costs in the 1991-92 fiscal year on debt instruments issued by a special district for the acquisition of capital assets.

(2) No reduction pursuant to paragraph (1) for any special district, other than a countywide water agency that does not sell water at retail, shall exceed an amount equal to 10 percent of that district's total annual revenues, from whatever source, as shown in the 1989-90 edition of the State Controller's Report on Financial Transactions Concerning Special Districts (not including any annual revenues from fiscal years following the 1989-90 fiscal year). With respect to any special district, as defined pursuant to subdivision (m) of Section 95, that is allocated property tax revenue pursuant to this chapter but does not appear in the State Controller's Report on Financial Transactions Concerning Special Districts, the auditor shall determine the total annual revenues for that special district from the information in the 1989-90 edition of the State Controller's Report on Financial Transactions Concerning Counties. With respect to a special district that did not exist in the 1989-90 fiscal year, the auditor may use information from the first full fiscal year, as appropriate, to

determine the total annual revenues for that special district. No reduction pursuant to paragraph (1) for any countywide water agency that does not sell water at retail shall exceed an amount equal to 10 percent of that portion of that agency's general fund derived from property tax revenues.

(3) The auditor in each county shall, on or before January 15, 1993, and on or before January 30 of each year thereafter, submit information to the Controller concerning the amount of the property tax revenue reduction to each special district within that county as a result of paragraphs (1) and (2). The Controller shall certify that the calculation of the property tax revenue reduction to each special district within that county is accurate and correct, and submit this information to the Director of Finance.

(A) The Director of Finance shall determine whether the total of the amounts of the property tax revenue reductions to special districts, as certified by the Controller, is equal to the amount that would be required to be allocated to school districts and community college districts as a result of a three hundred seventy-five million dollar (\$375,000,000) shift of property tax revenues from special districts for the 1992-93 fiscal year. If, for any year, the total of the amount of the property tax revenue reductions to special districts is less than the amount as described in the preceding sentence, the amount of property tax revenue, other than those revenues that are pledged to debt service, deemed allocated in the prior fiscal year to a special district, other than a multicounty district, a local hospital district, or a district governed by a city council or whose governing board has the same membership as a city council, shall, subject to subparagraph (B), be reduced by an amount up to 5 percent of the amount subject to reduction for that district pursuant to paragraphs (1) and (2).

(B) No reduction pursuant to subparagraph (A), in conjunction with a reduction pursuant to paragraphs (1) and (2), for any special district, other than a countywide water agency that does not sell water at retail, shall exceed an amount equal to 10 percent of that district's total annual revenues, from whatever source, as shown in the most recent State Controller's Report on Financial Transactions Concerning Special Districts. No reduction pursuant to subparagraph (A), in conjunction with a reduction pursuant to paragraphs (1) and (2), for any countywide water agency that does not sell water at retail shall exceed an amount equal to 10 percent of that portion of that agency's general fund derived from property tax revenues.

(C) In no event shall the amount of the property tax revenue loss to a special district derived pursuant to subparagraphs (A) and (B) exceed 40 percent of that district's property tax revenues or 10 percent of that district's total revenues, from whatever source.

(4) For the purpose of determining the total annual revenues of a special district that provides fire protection or fire suppression services, all of the following shall be excluded from the

determination of total annual revenues:

(A) If the district had less than two million dollars (\$2,000,000) in total annual revenues in the 1991-92 fiscal year, the revenue generated by a fire suppression assessment levied pursuant to Article 3.6 (commencing with Section 50078) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code.

(B) Any appropriation for fire protection received by a district pursuant to Section 25642 of the Government Code.

(C) The revenue received by a district as a result of contracts entered into pursuant to Section 4133 of the Public Resources Code.

(5) For the purpose of determining the total annual revenues of a resource conservation district, all of the following shall be excluded from the determination of total annual revenues:

(A) Any revenues received by that district from the state for financing the acquisition of land, or the construction or improvement of state projects, and for which that district serves as the fiscal agent in administering those state funds pursuant to an agreement entered into between that district and a state agency.

(B) Any amount received by that district as a private gift or donation.

(C) Any amount received as a county grant or contract as supplemental to, or independent of, that district's property tax share.

(D) Any amount received by that district as a federal or state grant.

(6) For purposes of determining the total annual revenues of the Sunrise Recreation and Park District in the County of Sacramento, there shall be excluded any one-time revenues received by that district during the 1989-90 fiscal year for the purposes of park development and land acquisition.

(d) (1) The amount of property tax revenues not allocated to the county, cities within the county, and special districts as a result of the reductions calculated pursuant to subdivisions (a), (b), and (c) shall instead be deposited in the Educational Revenue Augmentation Fund to be established in each county. The amount of revenue in the Educational Revenue Augmentation Fund, derived from whatever source, shall be allocated pursuant to paragraphs (2) and (3) to school districts and county offices of education, in total, and to community college districts, in total, in the same proportion that property tax revenues were distributed to school districts and county offices of education, in total, and community college districts, in total, during the 1991-92 fiscal year.

(2) The auditor shall, based on information provided by the county superintendent of schools pursuant to this paragraph, allocate the proportion of the Educational Revenue Augmentation Fund to those school districts and county offices of education within the county that are not excess tax school entities, as defined in subdivision (n) of Section 95. The county superintendent of schools shall determine the amount to be allocated to each school district and county office of education in inverse proportion to the amounts of

property tax revenue per average daily attendance in each school district and county office of education. In no event shall any additional money be allocated from the fund to a school district or county office of education upon that school district or county office of education becoming an excess tax school entity.

(3) The auditor shall, based on information provided by the Chancellor of the California Community Colleges pursuant to this paragraph, allocate the proportion of the Educational Revenue Augmentation Fund to those community college districts within the county that are not excess tax school entities, as defined in subdivision (n) of Section 95. The chancellor shall determine the amount to be allocated to each community college district in inverse proportion to the amounts of property tax revenue per funded full-time equivalent student in each community college district. In no event shall any additional money be allocated from the fund to a community college district upon that district becoming an excess tax school entity.

(4) If, after making the allocation required pursuant to paragraph (2), the auditor determines that there are still additional funds to be allocated, the auditor shall allocate those excess funds pursuant to paragraph (3). If, after making the allocation pursuant to paragraph (3), the auditor determines that there are still additional funds to be allocated, the auditor shall allocate those excess funds pursuant to paragraph (2).

(5) For purposes of allocations made pursuant to Section 96.1 or its predecessor section for the 1993-94 fiscal year, the amounts allocated from the Educational Revenue Augmentation Fund pursuant to this subdivision, other than amounts deposited in the Educational Revenue Augmentation Fund pursuant to Section 33681 of the Health and Safety Code, shall be deemed property tax revenue allocated to the Educational Revenue Augmentation Fund in the prior fiscal year.

(e) (1) For the 1997-98 fiscal year:

(A) The amount of property tax revenue deemed allocated in the prior fiscal year to any city subject to the reduction specified in paragraph (2) of subdivision (b) shall be reduced by an amount that is equal to the difference between the amount determined for the city pursuant to paragraph (1) of subdivision (b) and the amount of the reduction determined for the city pursuant to paragraph (2) of subdivision (b).

(B) The amount of property tax revenue deemed allocated in the prior fiscal year to any county or city and county subject to the reduction specified in paragraph (2) of subdivision (a) shall be reduced by an amount that is equal to the difference between the amount specified for the county or city and county pursuant to paragraph (1) of subdivision (a) and the amount of the reduction determined for the county or city and county pursuant to paragraph (2) of subdivision (a).

(2) The amount of property tax revenues not allocated to a city

or city and county as a result of this subdivision shall be deposited in the Educational Revenue Augmentation Fund described in subparagraph (A) of paragraph (1) of subdivision (d).

(3) For purposes of allocations made pursuant to Section 96.1 for the 1998-99 fiscal year, the amounts allocated from the Educational Revenue Augmentation Fund pursuant to this subdivision shall be deemed property tax revenues allocated to the Educational Revenue Augmentation Fund in the prior fiscal year.

(f) It is the intent of the Legislature in enacting this section that this section supersede and be operative in place of Section 97.03 of the Revenue and Taxation Code, as added by Senate Bill 617 of the 1991-92 Regular Session.

SEC. 8. Section 97.3 is added to Article 3 (commencing with Section 97) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code, to read:

97.3. Notwithstanding any other provision of this chapter, the computations and allocations made by each county pursuant to Section 96.1 or its predecessor section, as modified by Section 97.2 or its predecessor section for the 1992-93 fiscal year, shall be modified for the 1993-94 fiscal year pursuant to subdivisions (a) to (c), inclusive, as follows:

(a) The amount of property tax revenue deemed allocated in the prior fiscal year to each county and city and county shall be reduced by an amount to be determined by the Director of Finance in accordance with the following:

(1) The total amount of the property tax reductions for counties and cities and counties determined pursuant to this section shall be one billion nine hundred ninety-eight million dollars (\$1,998,000,000) in the 1993-94 fiscal year.

(2) The Director of Finance shall determine the amount of the reduction for each county or city and county as follows:

(A) The proportionate share of the property tax revenue reduction for each county or city and county that would have been imposed on all counties under the proposal specified in the "May Revision of the 1993-94 Governor's Budget" shall be determined by reference to the document entitled "Estimated County Property Tax Transfers Under Governor's May Revision Proposal," published by the Legislative Analyst's Office on June 1, 1993.

(B) Each county's or city and county's proportionate share of total taxable sales in all counties in the 1991-92 fiscal year shall be determined.

(C) An amount for each county and city and county shall be determined by applying its proportionate share determined pursuant to subparagraph (A) to the one billion nine hundred ninety-eight million dollar (\$1,998,000,000) statewide reduction for counties and cities and counties.

(D) An amount for each county and city and county shall be determined by applying its proportionate share determined pursuant to subparagraph (B) to the one billion nine hundred

ninety-eight million dollar (\$1,998,000,000) statewide reduction for counties and cities and counties.

(E) The Director of Finance shall add the amounts determined pursuant to subparagraphs (C) and (D) for each county and city and county, and divide the resulting figure by two. The amount so determined for each county and city and county shall be divided by a factor of 1.038. The resulting figure shall be the amount of property tax revenue to be subtracted from the amount of property tax revenue deemed allocated in the prior fiscal year.

(3) The Director of Finance shall, by July 15, 1993, report to the Joint Legislative Budget Committee its determination of the amounts determined pursuant to paragraph (2).

(4) On or before August 15, 1993, the Director of Finance shall notify the auditor of each county and city and county of the amount of property tax revenue reduction determined for each county and city and county.

(5) Notwithstanding any other provision of this subdivision, the amount of the reduction specified in paragraph (2) for any county or city and county that has first implemented, for the 1993-94 fiscal year, the alternative procedure for the distribution of property tax levies authorized by Chapter 2 (commencing with Section 4701) of Part 8 shall be reduced, for the 1993-94 fiscal year only, in the amount of any increased revenue allocated to each qualifying school entity that would not have been allocated for the 1993-94 fiscal year but for the implementation of that alternative procedure. For purposes of this paragraph, "qualifying school entity" means any school district, county office of education, or community college district that is not an excess tax school entity as defined in Section 95.1. Notwithstanding any other provision of this paragraph, the amount of any reduction calculated pursuant to this paragraph for any county or city and county shall not exceed the reduction calculated for that county or city and county pursuant to paragraph (2).

(b) The amount of property tax revenue deemed allocated in the prior fiscal year to each city shall be reduced by an amount to be determined by the Director of Finance in accordance with the following:

(1) The total amount of the property tax reductions determined for cities pursuant to this section shall be two hundred eighty-eight million dollars (\$288,000,000) in the 1993-94 fiscal year.

(2) The Director of Finance shall determine the amount of reduction for each city as follows:

(A) The amount of property tax revenue that is estimated to be attributable in the 1993-94 fiscal year to the amount of each city's state assistance payment received by that city pursuant to Chapter 282 of the Statutes of 1979 shall be determined.

(B) A factor for each city equal to the amount determined pursuant to subparagraph (A) for that city, divided by the total of the amounts determined pursuant to subparagraph (A) for all cities, shall be determined.

(C) An amount for each city equal to the factor determined pursuant to subparagraph (B), multiplied by three hundred eighty-two million five hundred thousand dollars (\$382,500,000), shall be determined.

(D) In no event shall the amount for any city determined pursuant to subparagraph (C) exceed a per capita amount of nineteen dollars and thirty-one cents (\$19.31), as determined in accordance with that city's population on January 1, 1993, as estimated by the Department of Finance.

(E) The amount determined for each city pursuant to subparagraphs (C) and (D) shall be the amount of property tax revenue to be subtracted from the amount of property tax revenue deemed allocated in the prior year.

(3) The Director of Finance shall, by July 15, 1993, report to the Joint Legislative Budget Committee those amounts determined pursuant to paragraph (2).

(4) On or before August 15, 1993, the Director of Finance shall notify each county auditor of the amount of property tax revenue reduction determined for each city located within that county.

(c) (1) The amount of property tax revenue deemed allocated in the prior fiscal year to each special district, as defined pursuant to subdivision (m) of Section 95, shall be reduced by the amount determined for the district pursuant to paragraph (3) and increased by the amount determined for the district pursuant to paragraph (4). The total net amount of these changes is intended to equal two hundred forty-four million dollars (\$244,000,000) in the 1993-94 fiscal year.

(2) (A) Notwithstanding any other provision of this subdivision, no reduction shall be made pursuant to this subdivision with respect to any of the following special districts:

(i) A local hospital district as described in Division 23 (commencing with Section 32000) of the Health and Safety Code.

(ii) A water agency that does not sell water at retail, but not including an agency the primary function of which, as determined on the basis of total revenues, is flood control.

(iii) A transit district.

(iv) A police protection district formed pursuant to Part 1 (commencing with Section 20000) of Division 14 of the Health and Safety Code.

(v) A special district that was a multicounty special district as of July 1, 1979.

(B) Notwithstanding any other provision of this subdivision, the first one hundred four thousand dollars (\$104,000) of the amount of any reduction that otherwise would be made under this subdivision with respect to a qualifying community services district shall be excluded. For purposes of this subparagraph, a "qualifying community services district" means a community service district that meets all of the following requirements:

(i) Was formed pursuant to Division 3 (commencing with Section

61000) of Title 6 of the Government Code.

(ii) Succeeded to the duties and properties of a police protection district upon the dissolution of that district.

(iii) Currently provides police protection services to substantially the same territory as did that district.

(iv) Is located within a county in which the board of supervisors has requested the Department of Finance that this subparagraph be operative in the county.

(3) On or before September 15, 1993, the county auditor shall determine an amount for each special district equal to the amount of its allocation determined pursuant to Section 96 or 96.1, and Section 96.5 or their predecessor sections for the 1993-94 fiscal year multiplied by the ratio determined pursuant to paragraph (1) of subdivision (a) of former Section 98.6 as that section read on June 15, 1993. In those counties that were subject to former Sections 98.65, 98.66, 98.67, and 98.68, as those sections read on that same date, the county auditor shall determine an amount for each special district that represents the current amount of its allocation determined pursuant to Section 96 or 96.1, and Section 96.5 or their predecessor sections for the 1993-94 fiscal year that is attributed to the property tax shift from schools required by Chapter 282 of the Statutes of 1979. In determining this amount, the county auditor shall adjust for the influence of increased assessed valuation within each district, including the effect of jurisdictional changes, and the reductions in property tax allocations required in the 1992-93 fiscal year by Chapters 699 and 1369 of the Statutes of 1992. In the case of a special district that has been consolidated or reorganized, the auditor shall determine the amount of its current property tax allocation that is attributable to the prior district's or districts' receipt of state assistance payments pursuant to Chapter 282 of the Statutes of 1979. Notwithstanding any other provision of this paragraph, for a special district that is governed by a city council or whose governing board has the same membership as a city council and that is a subsidiary district as defined in subdivision (e) of Section 16271 of the Government Code, the county auditor shall multiply the amount that otherwise would be calculated pursuant to this paragraph by 0.38 and the result shall be used in the calculations required by paragraph (5). In no event shall the amount determined by this paragraph be less than zero.

(4) (A) On or before September 15, 1993, the county auditor shall determine an amount for each special district that is engaged in fire protection activities, as reported to the Controller for inclusion in the 1989-90 Edition of the Financial Transactions Report Concerning Special Districts under the heading of "Fire Protection," that is equal to the amount of revenue allocated to that special district from the Special District Augmentation Fund for fire protection activities in the 1992-93 fiscal year. In the case of a special district, other than a special district governed by the county board of supervisors or whose governing body is the same as the county board of supervisors, that

is engaged in fire protection activities as reported to the Controller, the county auditor shall also determine the amount by which the district's amount determined pursuant to paragraph (3) exceeds the amount by which its allocation was reduced by operation of former Section 98.6 in the 1992-93 fiscal year. This amount shall be added to the amount otherwise determined for the district under this paragraph. In any county subject to former Section 98.65, 98.66, 98.67, or 98.68 in that same fiscal year, the county auditor shall determine for each special district that is engaged in fire protection activities an amount that is equal to the amount determined for that district pursuant to paragraph (3).

(B) For purposes of this paragraph, a special district includes any special district that is allocated property tax revenue pursuant to this chapter and does not appear in the State Controller's Report on Financial Transactions Concerning Special Districts, but is engaged in fire protection activities and appears in the State Controller's Report on Financial Transactions Concerning Counties.

(5) The total amount of property taxes allocated to special districts by the county auditor as a result of paragraph (4) shall be subtracted from the amount of property tax revenues not allocated to special districts by the county auditor as a result of paragraph (3) to determine the amount to be deposited in the Education Revenue Augmentation Fund as specified in subdivision (d).

(6) On or before September 30, 1993, the county auditor shall notify the Director of Finance of the net amount determined for special districts pursuant to paragraph (5).

(d) (1) The amount of property tax revenues not allocated to the county, city and county, cities within the county, and special districts as a result of the reductions required by subdivisions (a), (b), and (c) shall instead be deposited in the Educational Revenue Augmentation Fund established in each county or city and county pursuant to Section 97.2. The amount of revenue in the Educational Revenue Augmentation Fund, derived from whatever source, shall be allocated pursuant to paragraphs (2) and (3) to school districts and county offices of education, in total, and to community college districts, in total, in the same proportion that property tax revenues were distributed to school districts and county offices of education, in total, and community college districts, in total, during the 1992-93 fiscal year.

(2) The county auditor shall, based on information provided by the county superintendent of schools pursuant to this paragraph, allocate that proportion of the revenue in the Educational Revenue Augmentation Fund to be allocated to school districts and county offices of education only to those school districts and county offices of education within the county that are not excess tax school entities, as defined in subdivision (n) of Section 95. The county superintendent of schools shall determine the amount to be allocated to each school district in inverse proportion to the amounts of property tax revenue per average daily attendance in each school

district. For each county office of education, the allocation shall be made based on the historical split of base property tax revenue between the county office of education and school districts within the county. In no event shall any additional money be allocated from the Educational Revenue Augmentation Fund to a school district or county office of education upon that district or county office of education becoming an excess tax school entity. If, after determining the amount to be allocated to each school district and county office of education, the county superintendent of schools determines there are still additional funds to be allocated, the county superintendent of schools shall determine the remainder to be allocated in inverse proportion to the amounts of property tax revenue, excluding Educational Revenue Augmentation Fund moneys, per average daily attendance in each remaining school district, and on the basis of the historical split described above for each county office of education, that is not an excess tax school entity until all funds that would not result in a school district or county office of education becoming an excess tax school entity are allocated. The county superintendent of schools may determine the amounts to be allocated between each school district and county office of education to ensure that all funds that would not result in a school district or county office of education becoming an excess tax school entity are allocated.

(3) The county auditor shall, based on information provided by the Chancellor of the California Community Colleges pursuant to this paragraph, allocate that proportion of the revenue in the Educational Revenue Augmentation Fund to be allocated to community college districts only to those community college districts within the county that are not excess tax school entities, as defined in subdivision (n) of Section 95. The chancellor shall determine the amount to be allocated to each community college district in inverse proportion to the amounts of property tax revenue per funded full-time equivalent student in each community college district. In no event shall any additional money be allocated from the Educational Revenue Augmentation Fund to a community college district upon that district becoming an excess tax school entity.

(4) If, after making the allocation required pursuant to paragraph (2), the auditor determines that there are still additional funds to be allocated, the auditor shall allocate those excess funds pursuant to paragraph (3). If, after making the allocation pursuant to paragraph (3), the auditor determines that there are still additional funds to be allocated, the auditor shall allocate those excess funds pursuant to paragraph (2). If, after determining the amount to be allocated to each community college district, the Chancellor of the California Community Colleges determines that there are still additional funds to be allocated, the Chancellor of the California Community Colleges shall determine the remainder to be allocated to each community college district in inverse proportion to the amounts of property tax revenue, excluding Educational Revenue Augmentation Fund

moneys, per funded full-time equivalent student in each remaining community college district that is not an excess tax school entity until all funds that would not result in a community college district becoming an excess tax school entity are allocated.

(5) For purposes of allocations made pursuant to Section 96.1 for the 1994-95 fiscal year, the amounts allocated from the Educational Revenue Augmentation Fund pursuant to this subdivision, other than those amounts deposited in the Educational Revenue Augmentation Fund pursuant to any provision of the Health and Safety Code, shall be deemed property tax revenue allocated to the Educational Revenue Augmentation Fund in the prior fiscal year.

SEC. 8.3. Section 97.3 is added to Article 3 (commencing with Section 97) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code, to read:

97.3. Notwithstanding any other provision of this chapter, the computations and allocations made by each county pursuant to Section 96.1 or its predecessor section, as modified by Section 97.2 or its predecessor section for the 1992-93 fiscal year, shall be modified for the 1993-94 fiscal year pursuant to subdivisions (a) to (c), inclusive, as follows:

(a) The amount of property tax revenue deemed allocated in the prior fiscal year to each county and city and county shall be reduced by an amount to be determined by the Director of Finance in accordance with the following:

(1) The total amount of the property tax reductions for counties and cities and counties determined pursuant to this section shall be one billion nine hundred ninety-eight million dollars (\$1,998,000,000) in the 1993-94 fiscal year.

(2) The Director of Finance shall determine the amount of the reduction for each county or city and county as follows:

(A) The proportionate share of the property tax revenue reduction for each county or city and county that would have been imposed on all counties under the proposal specified in the "May Revision of the 1993-94 Governor's Budget" shall be determined by reference to the document entitled "Estimated County Property Tax Transfers Under Governor's May Revision Proposal," published by the Legislative Analyst's Office on June 1, 1993.

(B) Each county's or city and county's proportionate share of total taxable sales in all counties in the 1991-92 fiscal year shall be determined.

(C) An amount for each county and city and county shall be determined by applying its proportionate share determined pursuant to subparagraph (A) to the one billion nine hundred ninety-eight million dollar (\$1,998,000,000) statewide reduction for counties and cities and counties.

(D) An amount for each county and city and county shall be determined by applying its proportionate share determined pursuant to subparagraph (B) to the one billion nine hundred ninety-eight million dollar (\$1,998,000,000) statewide reduction for

counties and cities and counties.

(E) The Director of Finance shall add the amounts determined pursuant to subparagraphs (C) and (D) for each county and city and county, and divide the resulting figure by two. The amount so determined for each county and city and county shall be divided by a factor of 1.038. The resulting figure shall be the amount of property tax revenue to be subtracted from the amount of property tax revenue deemed allocated in the prior fiscal year.

(3) The Director of Finance shall, by July 15, 1993, report to the Joint Legislative Budget Committee its determination of the amounts determined pursuant to paragraph (2).

(4) On or before August 15, 1993, the Director of Finance shall notify the auditor of each county and city and county of the amount of property tax revenue reduction determined for each county and city and county.

(5) Notwithstanding any other provision of this subdivision, the amount of the reduction specified in paragraph (2) for any county or city and county that has first implemented, for the 1993-94 fiscal year, the alternative procedure for the distribution of property tax levies authorized by Chapter 2 (commencing with Section 4701) of Part 8 shall be reduced, for the 1993-94 fiscal year only, in the amount of any increased revenue allocated to each qualifying school entity that would not have been allocated for the 1993-94 fiscal year but for the implementation of that alternative procedure. For purposes of this paragraph, "qualifying school entity" means any school district, county office of education, or community college district that is not an excess tax school entity as defined in Section 95.1. Notwithstanding any other provision of this paragraph, the amount of any reduction calculated pursuant to this paragraph for any county or city and county shall not exceed the reduction calculated for that county or city and county pursuant to paragraph (2).

(b) The amount of property tax revenue deemed allocated in the prior fiscal year to each city shall be reduced by an amount to be determined by the Director of Finance in accordance with the following:

(1) The total amount of the property tax reductions determined for cities pursuant to this section shall be two hundred eighty-eight million dollars (\$288,000,000) in the 1993-94 fiscal year.

(2) The Director of Finance shall determine the amount of reduction for each city as follows:

(A) The amount of property tax revenue that is estimated to be attributable in the 1993-94 fiscal year to the amount of each city's state assistance payment received by that city pursuant to Chapter 282 of the Statutes of 1979 shall be determined.

(B) A factor for each city equal to the amount determined pursuant to subparagraph (A) for that city, divided by the total of the amounts determined pursuant to subparagraph (A) for all cities, shall be determined.

(C) An amount for each city equal to the factor determined

pursuant to subparagraph (B), multiplied by three hundred eighty-two million five hundred thousand dollars (\$382,500,000), shall be determined.

(D) In no event shall the amount for any city determined pursuant to subparagraph (C) exceed a per capita amount of nineteen dollars and thirty-one cents (\$19.31), as determined in accordance with that city's population on January 1, 1993, as estimated by the Department of Finance.

(E) The amount determined for each city pursuant to subparagraphs (C) and (D) shall be the amount of property tax revenue to be subtracted from the amount of property tax revenue deemed allocated in the prior year.

(3) The Director of Finance shall, by July 15, 1993, report to the Joint Legislative Budget Committee those amounts determined pursuant to paragraph (2).

(4) On or before August 15, 1993, the Director of Finance shall notify each county auditor of the amount of property tax revenue reduction determined for each city located within that county.

(c) (1) The amount of property tax revenue deemed allocated in the prior fiscal year to each special district, as defined pursuant to subdivision (m) of Section 95, shall be reduced by the amount determined for the district pursuant to paragraph (3) and increased by the amount determined for the district pursuant to paragraph (4). The total net amount of these changes is intended to equal two hundred forty-four million dollars (\$244,000,000) in the 1993-94 fiscal year.

(2) Notwithstanding any other provision of this subdivision, no reduction shall be made pursuant to this subdivision with respect to any of the following special districts:

(A) A local hospital district as described in Division 23 (commencing with Section 32000) of the Health and Safety Code.

(B) A water agency that does not sell water at retail, but not including an agency the primary function of which, as determined on the basis of total revenues, is flood control.

(C) A transit district.

(D) A police protection district formed pursuant to Part 1 (commencing with Section 20000) of Division 14 of the Health and Safety Code.

(E) A special district that was a multicounty special district as of July 1, 1979.

(3) (A) On or before September 15, 1993, the county auditor shall determine an amount for each special district equal to the amount of its allocation determined pursuant to Section 96 or 96.1, and Section 96.5 or their predecessor sections for the 1993-94 fiscal year multiplied by the ratio determined pursuant to paragraph (1) of subdivision (a) of former Section 98.6 as that section read on June 15, 1993. In those counties that were subject to former Sections 98.66, 98.67, and 98.68, as those sections read on that same date, the county auditor shall determine an amount for each special district that

represents the current amount of its allocation determined pursuant to Section 96 or 96.1, and Section 96.5 or their predecessor sections for the 1993-94 fiscal year that is attributed to the property tax shift from schools required by Chapter 282 of the Statutes of 1979. In determining these amounts, the county auditor shall adjust for the influence of increased assessed valuation within each district, including the effect of jurisdictional changes, and the reductions in property tax allocations required in the 1992-93 fiscal year by Chapters 699 and 1369 of the Statutes of 1992. In the case of a special district that has been consolidated or reorganized, the auditor shall determine the amount of its current property tax allocation that is attributable to the prior district's or districts' receipt of state assistance payments pursuant to Chapter 282 of the Statutes of 1979. Notwithstanding any other provision of this paragraph, for a special district that is governed by a city council or whose governing board has the same membership as a city council and that is a subsidiary district as defined in subdivision (e) of Section 16271 of the Government Code, the county auditor shall multiply the amount that otherwise would be calculated pursuant to this paragraph by 0.38 and the result shall be used in the calculations required by paragraph (5). In no event shall the amount determined by this paragraph be less than zero.

(B) Notwithstanding subparagraph (A), commencing with the 1994-95 fiscal year, in the County of Sacramento, the auditor shall determine the amount for each special district that represents the current amount of its allocations determined pursuant to Section 96, 96.1, 96.5, or 100.6 for the 1994-95 fiscal year that is attributed to the property tax shift from schools required by Chapter 282 of the Statutes of 1979.

(4) (A) On or before September 15, 1993, the county auditor shall determine an amount for each special district that is engaged in fire protection activities, as reported to the Controller for inclusion in the 1989-90 Edition of the Financial Transactions Report Concerning Special Districts under the heading of "Fire Protection," that is equal to the amount of revenue allocated to that special district from the Special District Augmentation Fund for fire protection activities in the 1992-93 fiscal year. In the case of a special district, other than a special district governed by the county board of supervisors or whose governing body is the same as the county board of supervisors, that is engaged in fire protection activities as reported to the Controller, the county auditor shall also determine the amount by which the district's amount determined pursuant to paragraph (3) exceeds the amount by which its allocation was reduced by operation of former Section 98.6 in the 1992-93 fiscal year. This amount shall be added to the amount otherwise determined for the district under this paragraph. In any county subject to former Section 98.65, 98.66, 98.67, or 98.68 in that same fiscal year, the county auditor shall determine for each special district that is engaged in fire protection activities an amount that is equal to the amount determined for that district

pursuant to paragraph (3).

(B) For purposes of this paragraph, a special district includes any special district that is allocated property tax revenue pursuant to this chapter and does not appear in the State Controller's Report on Financial Transactions Concerning Special Districts, but is engaged in fire protection activities and appears in the State Controller's Report on Financial Transactions Concerning Counties.

(5) The total amount of property taxes allocated to special districts by the county auditor as a result of paragraph (4) shall be subtracted from the amount of property tax revenues not allocated to special districts by the county auditor as a result of paragraph (3) to determine the amount to be deposited in the Education Revenue Augmentation Fund as specified in subdivision (d).

(6) On or before September 30, 1993, the county auditor shall notify the Director of Finance of the net amount determined for special districts pursuant to paragraph (5).

(d) (1) The amount of property tax revenues not allocated to the county, city and county, cities within the county, and special districts as a result of the reductions required by subdivisions (a), (b), and (c) shall instead be deposited in the Educational Revenue Augmentation Fund established in each county or city and county pursuant to Section 97.2. The amount of revenue in the Educational Revenue Augmentation Fund, derived from whatever source, shall be allocated pursuant to paragraphs (2) and (3) to school districts and county offices of education, in total, and to community college districts, in total, in the same proportion that property tax revenues were distributed to school districts and county offices of education, in total, and community college districts, in total, during the 1992-93 fiscal year.

(2) The county auditor shall, based on information provided by the county superintendent of schools pursuant to this paragraph, allocate that proportion of the revenue in the Educational Revenue Augmentation Fund to be allocated to school districts and county offices of education only to those school districts and county offices of education within the county that are not excess tax school entities, as defined in subdivision (n) of Section 95. The county superintendent of schools shall determine the amount to be allocated to each school district in inverse proportion to the amounts of property tax revenue per average daily attendance in each school district. For each county office of education, the allocation shall be made based on the historical split of base property tax revenue between the county office of education and school districts within the county. In no event shall any additional money be allocated from the Educational Revenue Augmentation Fund to a school district or county office of education upon that district or county office of education becoming an excess tax school entity. If, after determining the amount to be allocated to each school district and county office of education, the county superintendent of schools determines there are still additional funds to be allocated, the county superintendent

of schools shall determine the remainder to be allocated in inverse proportion to the amounts of property tax revenue, excluding Educational Revenue Augmentation Fund moneys, per average daily attendance in each remaining school district, and on the basis of the historical split described above for each county office of education, that is not an excess tax school entity until all funds that would not result in a school district or county office of education becoming an excess tax school entity are allocated. The county superintendent of schools may determine the amounts to be allocated between each school district and county office of education to ensure that all funds that would not result in a school district or county office of education becoming an excess tax school entity are allocated.

(3) The county auditor shall, based on information provided by the Chancellor of the California Community Colleges pursuant to this paragraph, allocate that proportion of the revenue in the Educational Revenue Augmentation Fund to be allocated to community college districts only to those community college districts within the county that are not excess tax school entities, as defined in subdivision (n) of Section 95. The chancellor shall determine the amount to be allocated to each community college district in inverse proportion to the amounts of property tax revenue per funded full-time equivalent student in each community college district. In no event shall any additional money be allocated from the Educational Revenue Augmentation Fund to a community college district upon that district becoming an excess tax school entity.

(4) If, after making the allocation required pursuant to paragraph (2), the auditor determines that there are still additional funds to be allocated, the auditor shall allocate those excess funds pursuant to paragraph (3). If, after making the allocation pursuant to paragraph (3), the auditor determines that there are still additional funds to be allocated, the auditor shall allocate those excess funds pursuant to paragraph (2). If, after determining the amount to be allocated to each community college district, the Chancellor of the California Community Colleges determines that there are still additional funds to be allocated, the Chancellor of the California Community Colleges shall determine the remainder to be allocated to each community college district in inverse proportion to the amounts of property tax revenue, excluding Educational Revenue Augmentation Fund moneys, per funded full-time equivalent student in each remaining community college district that is not an excess tax school entity until all funds that would not result in a community college district becoming an excess tax school entity are allocated.

(5) For purposes of allocations made pursuant to Section 96.1 for the 1994-95 fiscal year, the amounts allocated from the Educational Revenue Augmentation Fund pursuant to this subdivision, other than those amounts deposited in the Educational Revenue Augmentation Fund pursuant to any provision of the Health and Safety Code, shall be deemed property tax revenue allocated to the

Educational Revenue Augmentation Fund in the prior fiscal year.

SEC. 8.5. Section 97.3 is added to Article 3 (commencing with Section 97) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code, to read:

97.3. Notwithstanding any other provision of this chapter, the computations and allocations made by each county pursuant to Section 96.1 or its predecessor section, as modified by Section 97.2 or its predecessor section for the 1992-93 fiscal year, shall be modified for the 1993-94 fiscal year pursuant to subdivisions (a) to (c), inclusive, as follows:

(a) The amount of property tax revenue deemed allocated in the prior fiscal year to each county and city and county shall be reduced by an amount to be determined by the Director of Finance in accordance with the following:

(1) The total amount of the property tax reductions for counties and cities and counties determined pursuant to this section shall be one billion nine hundred ninety-eight million dollars (\$1,998,000,000) in the 1993-94 fiscal year.

(2) The Director of Finance shall determine the amount of the reduction for each county or city and county as follows:

(A) The proportionate share of the property tax revenue reduction for each county or city and county that would have been imposed on all counties under the proposal specified in the "May Revision of the 1993-94 Governor's Budget" shall be determined by reference to the document entitled "Estimated County Property Tax Transfers Under Governor's May Revision Proposal," published by the Legislative Analyst's Office on June 1, 1993.

(B) Each county's or city and county's proportionate share of total taxable sales in all counties in the 1991-92 fiscal year shall be determined.

(C) An amount for each county and city and county shall be determined by applying its proportionate share determined pursuant to subparagraph (A) to the one billion nine hundred ninety-eight million dollar (\$1,998,000,000) statewide reduction for counties and cities and counties.

(D) An amount for each county and city and county shall be determined by applying its proportionate share determined pursuant to subparagraph (B) to the one billion nine hundred ninety-eight million dollar (\$1,998,000,000) statewide reduction for counties and cities and counties.

(E) The Director of Finance shall add the amounts determined pursuant to subparagraphs (C) and (D) for each county and city and county, and divide the resulting figure by two. The amount so determined for each county and city and county shall be divided by a factor of 1.038. The resulting figure shall be the amount of property tax revenue to be subtracted from the amount of property tax revenue deemed allocated in the prior fiscal year.

(3) The Director of Finance shall, by July 15, 1993, report to the Joint Legislative Budget Committee its determination of the

amounts determined pursuant to paragraph (2).

(4) On or before August 15, 1993, the Director of Finance shall notify the auditor of each county and city and county of the amount of property tax revenue reduction determined for each county and city and county.

(5) Notwithstanding any other provision of this subdivision, the amount of the reduction specified in paragraph (2) for any county or city and county that has first implemented, for the 1993-94 fiscal year, the alternative procedure for the distribution of property tax levies authorized by Chapter 2 (commencing with Section 4701) of Part 8 shall be reduced, for the 1993-94 fiscal year only, in the amount of any increased revenue allocated to each qualifying school entity that would not have been allocated for the 1993-94 fiscal year but for the implementation of that alternative procedure. For purposes of this paragraph, "qualifying school entity" means any school district, county office of education, or community college district that is not an excess tax school entity as defined in Section 95.1. Notwithstanding any other provision of this paragraph, the amount of any reduction calculated pursuant to this paragraph for any county or city and county shall not exceed the reduction calculated for that county or city and county pursuant to paragraph (2).

(b) The amount of property tax revenue deemed allocated in the prior fiscal year to each city shall be reduced by an amount to be determined by the Director of Finance in accordance with the following:

(1) The total amount of the property tax reductions determined for cities pursuant to this section shall be two hundred eighty-eight million dollars (\$288,000,000) in the 1993-94 fiscal year.

(2) The Director of Finance shall determine the amount of reduction for each city as follows:

(A) The amount of property tax revenue that is estimated to be attributable in the 1993-94 fiscal year to the amount of each city's state assistance payment received by that city pursuant to Chapter 282 of the Statutes of 1979 shall be determined.

(B) A factor for each city equal to the amount determined pursuant to subparagraph (A) for that city, divided by the total of the amounts determined pursuant to subparagraph (A) for all cities, shall be determined.

(C) An amount for each city equal to the factor determined pursuant to subparagraph (B), multiplied by three hundred eighty-two million five hundred thousand dollars (\$382,500,000), shall be determined.

(D) In no event shall the amount for any city determined pursuant to subparagraph (C) exceed a per capita amount of nineteen dollars and thirty-one cents (\$19.31), as determined in accordance with that city's population on January 1, 1993, as estimated by the Department of Finance.

(E) The amount determined for each city pursuant to subparagraphs (C) and (D) shall be the amount of property tax

revenue to be subtracted from the amount of property tax revenue deemed allocated in the prior year.

(3) The Director of Finance shall, by July 15, 1993, report to the Joint Legislative Budget Committee those amounts determined pursuant to paragraph (2).

(4) On or before August 15, 1993, the Director of Finance shall notify each county auditor of the amount of property tax revenue reduction determined for each city located within that county.

(c) (1) The amount of property tax revenue deemed allocated in the prior fiscal year to each special district, as defined pursuant to subdivision (m) of Section 95, shall be reduced by the amount determined for the district pursuant to paragraph (3) and increased by the amount determined for the district pursuant to paragraph (4). The total net amount of these changes is intended to equal two hundred forty-four million dollars (\$244,000,000) in the 1993-94 fiscal year.

(2) (A) Notwithstanding any other provision of this subdivision, no reduction shall be made pursuant to this subdivision with respect to any of the following special districts:

(i) A local hospital district as described in Division 23 (commencing with Section 32000) of the Health and Safety Code.

(ii) A water agency that does not sell water at retail, but not including an agency the primary function of which, as determined on the basis of total revenues, is flood control.

(iii) A transit district.

(iv) A police protection district formed pursuant to Part 1 (commencing with Section 20000) of Division 14 of the Health and Safety Code.

(v) A special district that was a multicounty special district as of July 1, 1979.

(B) Notwithstanding any other provision of this subdivision, the first one hundred four thousand dollars (\$104,000) of the amount of any reduction that otherwise would be made under this subdivision with respect to a qualifying community services district shall be excluded. For purposes of this subparagraph, a "qualifying community services district" means a community service district that meets all of the following requirements:

(i) Was formed pursuant to Division 3 (commencing with Section 61000) of Title 6 of the Government Code.

(ii) Succeeded to the duties and properties of a police protection district upon the dissolution of that district.

(iii) Currently provides police protection services to substantially the same territory as did that district.

(iv) Is located within a county in which the board of supervisors has requested the Department of Finance that this subparagraph be operative in the county.

(3) (A) On or before September 15, 1993, the county auditor shall determine an amount for each special district equal to the amount of its allocation determined pursuant to Section 96 or 96.1, and

Section 96.5 or their predecessor sections for the 1993–94 fiscal year multiplied by the ratio determined pursuant to paragraph (1) of subdivision (a) of former Section 98.6 as that section read on June 15, 1993. In those counties that were subject to former Sections 98.66, 98.67, and 98.68, as those sections read on that same date, the county auditor shall determine an amount for each special district that represents the current amount of its allocation determined pursuant to Section 96 or 96.1, and Section 96.5 or their predecessor sections for the 1993–94 fiscal year that is attributed to the property tax shift from schools required by Chapter 282 of the Statutes of 1979. In that county subject to Section 100.4, the county auditor shall determine an amount for each special district that represents the current amount of its allocations determined pursuant to Section 96, 96.1, 96.5, or 100.4 or their predecessor sections for the 1993–94 fiscal year that is attributable to the property tax shift from schools required by Chapter 282 of the Statutes of 1979. In determining these amounts, the county auditor shall adjust for the influence of increased assessed valuation within each district, including the effect of jurisdictional changes, and the reductions in property tax allocations required in the 1992–93 fiscal year by Chapters 699 and 1369 of the Statutes of 1992. In the case of a special district that has been consolidated or reorganized, the auditor shall determine the amount of its current property tax allocation that is attributable to the prior district's or districts' receipt of state assistance payments pursuant to Chapter 282 of the Statutes of 1979. Notwithstanding any other provision of this paragraph, for a special district that is governed by a city council or whose governing board has the same membership as a city council and that is a subsidiary district as defined in subdivision (e) of Section 16271 of the Government Code, the county auditor shall multiply the amount that otherwise would be calculated pursuant to this paragraph by 0.38 and the result shall be used in the calculations required by paragraph (5). In no event shall the amount determined by this paragraph be less than zero.

(B) Notwithstanding subparagraph (A), commencing with the 1994–95 fiscal year, in the County of Sacramento, the auditor shall determine the amount for each special district that represents the current amount of its allocations determined pursuant to Section 96, 96.1, 96.5, or 100.6 for the 1994–95 fiscal year that is attributed to the property tax shift from schools required by Chapter 282 of the Statutes of 1979.

(4) (A) On or before September 15, 1993, the county auditor shall determine an amount for each special district that is engaged in fire protection activities, as reported to the Controller for inclusion in the 1989–90 Edition of the Financial Transactions Report Concerning Special Districts under the heading of "Fire Protection," that is equal to the amount of revenue allocated to that special district from the Special District Augmentation Fund for fire protection activities in the 1992–93 fiscal year. In the case of a special district, other than a special district governed by the county board of supervisors or whose

governing body is the same as the county board of supervisors, that is engaged in fire protection activities as reported to the Controller, the county auditor shall also determine the amount by which the district's amount determined pursuant to paragraph (3) exceeds the amount by which its allocation was reduced by operation of former Section 98.6 in the 1992-93 fiscal year. This amount shall be added to the amount otherwise determined for the district under this paragraph. In any county subject to former Section 98.65, 98.66, 98.67, or 98.68 in that same fiscal year, the county auditor shall determine for each special district that is engaged in fire protection activities an amount that is equal to the amount determined for that district pursuant to paragraph (3).

(B) For purposes of this paragraph, a special district includes any special district that is allocated property tax revenue pursuant to this chapter and does not appear in the State Controller's Report on Financial Transactions Concerning Special Districts, but is engaged in fire protection activities and appears in the State Controller's Report on Financial Transactions Concerning Counties.

(5) The total amount of property taxes allocated to special districts by the county auditor as a result of paragraph (4) shall be subtracted from the amount of property tax revenues not allocated to special districts by the county auditor as a result of paragraph (3) to determine the amount to be deposited in the Education Revenue Augmentation Fund as specified in subdivision (d).

(6) On or before September 30, 1993, the county auditor shall notify the Director of Finance of the net amount determined for special districts pursuant to paragraph (5).

(d) (1) The amount of property tax revenues not allocated to the county, city and county, cities within the county, and special districts as a result of the reductions required by subdivisions (a), (b), and (c) shall instead be deposited in the Educational Revenue Augmentation Fund established in each county or city and county pursuant to Section 97.2. The amount of revenue in the Educational Revenue Augmentation Fund, derived from whatever source, shall be allocated pursuant to paragraphs (2) and (3) to school districts and county offices of education, in total, and to community college districts, in total, in the same proportion that property tax revenues were distributed to school districts and county offices of education, in total, and community college districts, in total, during the 1992-93 fiscal year.

(2) The county auditor shall, based on information provided by the county superintendent of schools pursuant to this paragraph, allocate that proportion of the revenue in the Educational Revenue Augmentation Fund to be allocated to school districts and county offices of education only to those school districts and county offices of education within the county that are not excess tax school entities, as defined in subdivision (n) of Section 95. The county superintendent of schools shall determine the amount to be allocated to each school district in inverse proportion to the amounts of

property tax revenue per average daily attendance in each school district. For each county office of education, the allocation shall be made based on the historical split of base property tax revenue between the county office of education and school districts within the county. In no event shall any additional money be allocated from the Educational Revenue Augmentation Fund to a school district or county office of education upon that district or county office of education becoming an excess tax school entity. If, after determining the amount to be allocated to each school district and county office of education, the county superintendent of schools determines there are still additional funds to be allocated, the county superintendent of schools shall determine the remainder to be allocated in inverse proportion to the amounts of property tax revenue, excluding Educational Revenue Augmentation Fund moneys, per average daily attendance in each remaining school district, and on the basis of the historical split described above for each county office of education, that is not an excess tax school entity until all funds that would not result in a school district or county office of education becoming an excess tax school entity are allocated. The county superintendent of schools may determine the amounts to be allocated between each school district and county office of education to ensure that all funds that would not result in a school district or county office of education becoming an excess tax school entity are allocated.

(3) The county auditor shall, based on information provided by the Chancellor of the California Community Colleges pursuant to this paragraph, allocate that proportion of the revenue in the Educational Revenue Augmentation Fund to be allocated to community college districts only to those community college districts within the county that are not excess tax school entities, as defined in subdivision (n) of Section 95. The chancellor shall determine the amount to be allocated to each community college district in inverse proportion to the amounts of property tax revenue per funded full-time equivalent student in each community college district. In no event shall any additional money be allocated from the Educational Revenue Augmentation Fund to a community college district upon that district becoming an excess tax school entity.

(4) If, after making the allocation required pursuant to paragraph (2), the auditor determines that there are still additional funds to be allocated, the auditor shall allocate those excess funds pursuant to paragraph (3). If, after making the allocation pursuant to paragraph (3), the auditor determines that there are still additional funds to be allocated, the auditor shall allocate those excess funds pursuant to paragraph (2). If, after determining the amount to be allocated to each community college district, the Chancellor of the California Community Colleges determines that there are still additional funds to be allocated, the Chancellor of the California Community Colleges shall determine the remainder to be allocated to each community college district in inverse proportion to the amounts of property tax

revenue, excluding Educational Revenue Augmentation Fund moneys, per funded full-time equivalent student in each remaining community college district that is not an excess tax school entity until all funds that would not result in a community college district becoming an excess tax school entity are allocated.

(5) For purposes of allocations made pursuant to Section 96.1 for the 1994–95 fiscal year, the amounts allocated from the Educational Revenue Augmentation Fund pursuant to this subdivision, other than those amounts deposited in the Educational Revenue Augmentation Fund pursuant to any provision of the Health and Safety Code, shall be deemed property tax revenue allocated to the Educational Revenue Augmentation Fund in the prior fiscal year.

SEC. 9. Section 97.36 is added to Article 3 (commencing with Section 97) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code, to read:

97.36. Notwithstanding any other provision of this chapter, for the 1994–95 fiscal year, the amount of the revenue allocation reduction with respect to a qualified county that is attributable to the reduction determined for that county for the 1993–94 fiscal year pursuant to paragraph (1) of subdivision (a) of Section 97.3 or its predecessor section shall be reduced by the amount of any increased revenues, allocated in the 1994–95 fiscal year in that county to a “qualifying school entity” as defined in paragraph (5) of subdivision (a) of Section 97.3 or its predecessor section, that would not have been so allocated but for that county being a qualified county. For purposes of this section, a “qualified county” means a county or city or county that has first implemented for the 1994–95 fiscal year the alternative procedure for the distribution of property tax levies that is authorized by Chapter 2 (commencing with Section 4701) of Part 8.

SEC. 10. Section 97.37 is added to Article 3 (commencing with Section 97) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code, to read:

97.37. Notwithstanding any other provision of this chapter, for the 1994–95 fiscal year and each fiscal year thereafter, the amount of property tax revenue deemed allocated in the prior fiscal year to a county free library, or a library established as an independent special district, shall not be reduced for purposes of increasing the amount of property tax revenue to be allocated to another jurisdiction.

SEC. 11. Section 97.38 is added to Article 3 (commencing with Section 97) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code, to read:

97.38. Notwithstanding any contrary provision in paragraph (4) of subdivision (d) of Section 97.3 and for the County of Marin only, commencing with the 1993–94 fiscal year, if, after making the allocations pursuant to paragraph (2) as required by paragraph (4), the auditor determines that each community college district located entirely within that county is an excess school tax entity as defined in subdivision (n) of Section 95, the auditor shall then apply any

remaining funds to reduce the amounts of those reductions calculated pursuant to this section with respect to the county, cities, and special districts in proportion to the amount of the reduction otherwise calculated under this section for each of those agencies.

SEC. 12. Section 97.39 is added to Article 3 (commencing with Section 97) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code, to read:

97.39. (a) (1) Notwithstanding any other provision of this chapter, the amounts of the reductions determined for the Counties of Butte, Del Norte, Humboldt, Lassen, Mendocino, Merced, and Siskiyou for the 1993–94 fiscal year pursuant to subdivision (a) of Section 97.3 or its predecessor section shall be reduced by the amounts listed in the following schedule:

County	Amount
Butte	\$2,230,405
Del Norte	131,406
Humboldt	2,064,866
Lassen	381,679
Mendocino.....	1,841,576
Merced	5,946,882
Siskiyou	871,668

(2) Any reduction, resulting from the implementation of paragraph (1), in an amount of revenues deposited in an Educational Revenue Augmentation Fund, shall be applied exclusively to reduce the amount of revenues allocated from that fund to school districts and county offices of education, and shall in no event be applied to reduce the amount of revenues allocated from that fund to community college districts.

(b) The total amounts of property tax revenues that are allocated to jurisdictions for the 1993–94 fiscal year, with the modifications required by subdivision (a), shall be deemed, for purposes of property tax revenue allocations to those jurisdictions for the 1994–95 fiscal year, to be the total amounts of property tax revenues allocated to those jurisdictions in the prior fiscal year.

SEC. 13. Section 100.3 is added to Article 6 (commencing with Section 100) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code, to read:

100.3. Notwithstanding any other provision of this chapter, in the County of Santa Cruz, the auditor shall, for the 1993–94, 1994–95, 1995–96, and 1996–97 fiscal years only, deposit those property tax revenues that would otherwise be allocated to enterprise special districts in a Supplemental Allocation Fund. The county board of supervisors shall allocate moneys in the fund for the 1993–94, 1994–95, 1995–96, and 1996–97 fiscal years only to either enterprise special districts or the County Library Fund.

SEC. 14. Section 100.4 is added to Article 6 (commencing with Section 100) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and

Taxation Code, to read:

100.4. (a) Notwithstanding any other provision of this chapter, in the County of Contra Costa, for the 1994-95 fiscal year and for each fiscal year thereafter, if so directed by the board of supervisors, the auditor shall deposit, subject to subdivision (b), those property tax revenues, that otherwise would be allocated to enterprise special districts and correspond to those allocations as reported to the Controller for inclusion in the 1989-90 edition of the Financial Transactions Report Concerning Special Districts under the heading of "Waste Disposal and Water Utility," in a Supplemental Allocation Fund. The county board of supervisors shall, for the 1994-95 fiscal year and each fiscal year thereafter, allocate the moneys in that fund to either enterprise special districts or those community services districts or county service areas that are engaged in police protection activities as reported to the Controller for inclusion in the 1989-90 Edition of the Financial Transactions Report Concerning Special Districts under the heading of "Police Protection and Public Safety."

(b) The amount deposited in a Supplemental Allocation Fund pursuant to subdivision (a) shall not exceed two million two hundred thousand dollars (\$2,200,000) for the 1994-95 fiscal year, or that amount as adjusted for inflation for each subsequent fiscal year. The inflation factor to be applied in adjusting that amount for each subsequent fiscal year shall be the inflation factor adjustment as determined during that fiscal year by the Franchise Tax Board in accordance with paragraph (2) of subdivision (h) of Section 17041. The Franchise Tax Board shall provide this inflation factor adjustment to the auditor upon the auditor's request.

(c) A community services district or county service area to which the board of supervisors allocates money pursuant to this section shall spend that money exclusively for police protection and public safety and not to supplant money from its general fund.

(d) This section shall remain operative only until June 30, 1997, and as of January 1, 1998, is repealed.

SEC. 15. Section 100.5 is added to Article 6 (commencing with Section 100) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code, to read:

100.5. Notwithstanding any other provision of this chapter, in the County of Alameda, the auditor shall, if so directed by the board of supervisors, for the 1994-95 and 1995-96 fiscal years only, deposit into a Supplemental Allocation Fund those property tax revenues that would otherwise be allocated to multicounty enterprise special districts, other than a hospital district or transit district, in an amount not to exceed the amount determined pursuant to subdivision (b) of Section 97.04 with respect to property tax revenue transfers for the 1993-94 fiscal year. The board of supervisors may allocate moneys in the fund only for the 1994-95 and 1995-96 fiscal years, to either the enterprise special districts to whom those moneys would otherwise be allocated or to an extended police protection services area established under Chapter 2.2 (commencing with Section 25210.1) of

Part 2 of Division 2 of Title 3 of the Government Code.

SEC. 16. Section 100.6 is added to Article 6 (commencing with Section 100) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code, to read:

100.6. (a) For the 1989-90 and 1990-91 fiscal years, property tax revenue shall be allocated by the Sacramento County Auditor to special districts, as defined in subdivision (b), consistent with the holding of *American River Fire Protection District v. Board of Supervisors* (1989), 211 Cal. App. 3d 1076, and as implemented in *American River Fire Protection District, et al. v. Board of Supervisors of the County of Sacramento, et al.*, Sacramento Superior Court Case No. 431637, and for the 1991-92 fiscal year and each fiscal year thereafter, shall be allocated pursuant to subdivisions (c), (d), and (e).

(b) The amount allocated for the 1990-91 fiscal year and each fiscal year thereafter pursuant to Section 96 or 96.1 or their predecessor sections, and Section 96.5 or its predecessor section to a special district, as defined in Article 1 (commencing with Section 2201) of Chapter 3 of Part 4, including that portion of any multicounty district located within the County of Sacramento, and the amount allocated pursuant to Section 75.70 to a special district which is governed by the Board of Supervisors of Sacramento County or whose governing body is the same as the Board of Supervisors of Sacramento County, shall be governed by this section.

(c) For the 1991-92 fiscal year, the amount of property tax revenue that would otherwise be allocated to the special districts described in subdivision (b) pursuant to Section 75.70, or Section 96 or 96.1 or their predecessor sections, and Section 96.5 or its predecessor section, shall be reduced or otherwise adjusted by the difference between the following amounts:

(1) The reduction, if any, made to the amount of property tax revenues allocated to each special district pursuant to former Section 98.6 in the 1990-91 fiscal year as determined by the Sacramento County Auditor.

(2) The allocations approved by the Board of Supervisors of Sacramento County to each special district pursuant to former Section 98.6 in the 1990-91 fiscal year.

(d) Notwithstanding any other provision of law, for the 1992-93 fiscal year and each fiscal year thereafter, the Sacramento County Auditor shall allocate to the special districts described in subdivision (b) the total amount of property tax revenue allocated in the prior fiscal year as calculated in subdivisions (c) and (e).

(e) Notwithstanding subdivisions (a) and (b) of Section 96 or its predecessor section, for the 1991-92 fiscal year and each fiscal year thereafter, the annual tax increment as defined in subdivision (c) of Section 96.1 or its predecessor section for the special districts described in subdivision (b) in each tax rate area shall be the sum of the following amounts:

(1) Each special district's share of property tax revenues in each

of the tax rate areas within their respective jurisdictions without regard to this subdivision.

(2) The ratio of the amount determined for each special district in subdivision (c) and the special district's property tax revenue for the 1990-91 fiscal year, multiplied by the special district's share of property tax revenues in each tax rate area for the 1990-91 fiscal year.

(f) Notwithstanding any other provision of law, this section shall not be operative in the 1993-94 fiscal year.

SEC. 17. Section 10 of Chapter 155 of the Statutes of 1994 is amended to read:

Sec. 10. It is the intent of the Legislature that the amendments to Section 97.2 of the Revenue and Taxation Code or its predecessor section made by Section 4 of this act retroactively change the calculation of property tax revenue allocations for the 1992-93 fiscal year. However, any special district that was formed pursuant to Division 20 (commencing with Section 71000) of the Water Code in a county of the seventh class, and, in accordance with Chapter 1279 of the Statutes of 1993, has committed a stream of property tax revenues to service revenue bonds that were issued on or after the effective date of that act and prior to the effective date of Chapter 155 of the Statutes of 1994, may maintain that commitment until the subject bonds have been fully amortized.

SEC. 18. Section 7 of this bill shall only become operative if (1) both this bill and AB 2373 are enacted and become effective on January 1, 1995, (2) this bill adds Section 97.2 to the Revenue and Taxation Code and AB 2373 amends Section 97.03 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 2373, in which case Section 97.2 of the Revenue and Taxation Code, as added by Section 7 of this bill shall become operative, and Section 97.2 of the Revenue and Taxation Code, as added by Section 3 of this bill, shall not become operative.

SEC. 19. (a) Section 8 of this bill shall only become operative if (1) both this bill and AB 3304 are enacted and become effective January 1, 1995, (2) this bill adds Section 97.3 to the Revenue and Taxation Code and AB 3304 amends Section 97.035 of the Revenue and Taxation Code, (3) AB 413 is not enacted or as enacted does not amend Section 97.035 of the Revenue and Taxation Code, and (4) this bill is enacted after AB 3304, in which case Section 97.3 of the Revenue and Taxation Code as added by Section 8 of this bill shall become operative, Section 97.3 of the Revenue and Taxation Code as added by Section 3, 8.3 and 8.5 of this bill shall not become operative.

(b) Section 8.3 of this bill shall only become operative if (1) both this bill and AB 413 are enacted and become effective on January 1, 1995, (2) this bill adds Section 97.3 to the Revenue and Taxation Code and AB 413 amends Section 97.035 of the Revenue and Taxation Code, (3) AB 3304 is not enacted or as enacted does not amend Section 97.035 of the Revenue and Taxation Code, and (4) this bill is enacted after AB 413 in which case Section 97.3 of the Revenue and

Taxation Code as added by Section 8.3 of this bill shall become operative, Section 97.3 of the Revenue and Taxation Code as added by Section 3, 8, and 8.5 of this bill shall not become operative.

(c) Section 8.5 of this bill shall only become operative if (1) this bill, AB 3304, and AB 413 are all enacted and become effective on January 1, 1995, (2) this bill adds Section 97.3 to the Revenue and Taxation Code and AB 3304 and AB 413 each amend Section 97.035 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 3304 and AB 413, in which case Section 8.5 of this bill shall become operative, Section 97.3 of the Revenue and Taxation Code as added by Section 3, 8, and 8.3 of the bill shall not become operative.

SEC. 20. (a) Section 6 of this bill shall only become operative if (1) both this bill and AB 786 are enacted and become operative on or before January 1, 1995, (2) this bill adds Section 95.3 to the Revenue and Taxation Code and AB 786 amends Section 97.5 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 786, in which case Section 97.5 of the Revenue and Taxation Code, as amended by AB 786, shall remain operative only until the operative date of this bill, at which time Section 95.3 of the Revenue and Taxation Code, as added by Section 6 of this bill, shall become operative, and Section 95.3 of the Revenue and Taxation Code, as added by Section 3 of this bill shall not become operative.

(b) Section 9 of this bill shall only become operative if (1) both this bill and AB 786 are enacted and become effective on or before January 1, 1995, (2) this bill adds Section 97.36 to the Revenue and Taxation Code and AB 786 adds Section 97.032 to the Revenue and Taxation Code, and (3) this bill is enacted after AB 786, in which case Section 97.032 of the Revenue and Taxation Code, as added by AB 786, shall remain operative only until the operative date of this bill, at which time Section 9 of this bill shall become operative.

(c) Section 11 of this bill shall only become operative if (1) both this bill and AB 786 are enacted and become effective on or before January 1, 1995, (2) this bill adds Section 97.38 to the Revenue and Taxation Code and AB 786 adds Section 97.033 to the Revenue and Taxation Code, and (3) this bill is enacted after AB 786, in which case Section 97.033 of the Revenue and Taxation Code, as added by AB 786, shall remain operative only until the operative date of this bill, at which time Section 11 of this bill shall become operative.

SEC. 21. Section 10 of this bill shall only become operative if (1) both this bill and SB 1648 are enacted and become effective on January 1, 1995, (2) this bill adds Section 97.37 to the Revenue and Taxation Code and SB 1648 adds Section 97.031 to the Revenue and Taxation Code, and (3) this bill is enacted after SB 1648.

SEC. 22. Section 12 of this bill shall only become operative if (1) both this bill and SB 348 are enacted and become effective on or before January 1, 1995, (2) this bill adds Section 97.39 to the Revenue and Taxation Code and SB 348 adds Section 97.037 to the Revenue and Taxation Code, and (3) this bill is enacted after SB 348, in which case Section 97.037 of the Revenue and Taxation Code, as added by

SB 348, shall remain operative only until the operative date of this bill, at which time Section 12 of this bill shall become operative.

SEC. 23. Section 13 of this bill shall only become operative if (1) both this bill and AB 1905 are enacted and become effective on January 1, 1995, (2) this bill adds Section 100.3 to the Revenue and Taxation Code and AB 1905 amends Section 97.09 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 1905.

SEC. 24. Section 14 of this bill shall only become operative if (1) both this bill and AB 1905 are enacted and become effective on January 1, 1995, (2) this bill adds Section 100.4 to the Revenue and Taxation Code and AB 1905 adds Section 97.091 to the Revenue and Taxation Code, and (3) this bill is enacted after AB 1905.

SEC. 25. Section 15 of this bill shall only become operative if (1) both this bill and SB 929 are enacted and become effective on January 1, 1995, (2) this bill adds Section 100.5 to the Revenue and Taxation Code and SB 929 adds Section 97.092 to the Revenue and Taxation Code, and (3) this bill is enacted after SB 929.

SEC. 26. Section 16 of this bill shall only become operative if (1) both this bill and AB 413 are enacted and become effective on January 1, 1995, (2) this bill adds Section 100.6 to the Revenue and Taxation Code and AB 413 adds Section 98.65 to the Revenue and Taxation Code, and (3) this bill is enacted after AB 413.

SEC. 27. Section 17 of this bill shall only become operative if (1) both this bill and SB 496 are enacted and become operative on or before January 1, 1995, (2) both bills amend Section 10 of Chapter 155 of the Statutes of 1994, and (3) this bill is enacted after SB 496, in which case Section 10 of Chapter 155 of the Statutes of 1994, as amended by SB 496, shall remain operative only until the operative date of this bill, at which time Section 10 of Chapter 155 of the Statutes of 1994, as amended by Section 17 of this bill, shall become operative, and Section 4 of this bill shall not become operative.

SEC. 28. It is the intent of the Legislature in enacting this act only to clarify and reorganize those statutes with respect to the allocation of property tax revenues, and to eliminate portions of those statutes that have been fully implemented or are no longer applicable. This act shall not be construed to invalidate or otherwise affect any otherwise proper action taken under the authority of Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation Code prior to the operative date of this act, or any requirement of that chapter as that chapter read prior to the operative date of this act.

CHAPTER 1168

An act to amend Section 33492.27 of, and to add Article 6 (commencing with Section 33492.90) to Chapter 4.5 of Part 1 of Division 24 of, the Health and Safety Code, relating to redevelopment.

[Approved by Governor September 29, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 33492.27 of the Health and Safety Code is amended to read:

33492.27. For the purposes of this chapter, "affected taxing entity" means any governmental taxing agency that levied a property tax on all or any portion of the property located in the proposed project area in the fiscal year prior to submission of the plan to the committee. In areas where there is no prior property tax assessment, an "affected taxing entity" shall include any local governmental taxing agency that will have service and administrative responsibilities within the proposed taxing area.

SEC. 2. Article 6 (commencing with Section 33492.90) is added to Chapter 4.5 of Part 1 of Division 24 of the Health and Safety Code, to read:

Article 6. Mare Island Redevelopment Project Area

33492.90. With the enactment of this article, it is the intent of the Legislature to provide for precise and specific means to mitigate the very serious economic effects of the closure of the Mare Island Naval Shipyard on the City of Vallejo and surrounding communities by enabling the City of Vallejo to facilitate the planning and implementation of the reuse and redevelopment of the lands comprising Mare Island Naval Shipyard and surrounding areas, in accordance with the city's land use plans and facilities financing plans, through the redevelopment process and prior to the disposition of lands by the federal government to public entities and private parties.

33492.91. (a) (1) The redevelopment plan for the Mare Island Redevelopment Project Area need not include either of the following:

(A) The information required pursuant to subdivision (d) of Section 33324 relative to the contents of the preliminary plan.

(B) The finding required pursuant to paragraph (4) of subdivision (d) of Section 33367 relative to the conformity of the redevelopment plan to the community's general plan.

(2) The redevelopment agency shall not expend any tax increment funds allocated to it from the project area for expenses

related to carrying out the project unless and until the City of Vallejo finds that the redevelopment plan conforms to the general plan of the city, including the housing element thereof.

(b) Notwithstanding Section 33328, the report required by that section need only be as complete as the information then available will permit.

(c) Notwithstanding Section 33344.5, the preliminary report required by that section need only be as complete as the information then available will permit and need not contain the information required by subdivision (c) of Section 33344.5.

(d) The report submitted by the redevelopment agency to the legislative body pursuant to Section 33352, need not contain the items listed in subdivisions (b), (c), (d), (h), (j), (k), (l), and (m) of Section 33352, as modified by subdivision (b) of this section, and the ordinance adopted by the legislative body pursuant to Section 33367 need not contain the items listed in paragraphs (4) and (12) of subdivision (d) of Section 33367.

33492.92. (a) This section shall apply to a redevelopment project area that is adopted pursuant to this article and the territory of which includes the Mare Island Naval Shipyard.

(b) Notwithstanding any other provision of law, the redevelopment agency shall make payments to affected taxing entities required by subdivision (a) of Section 33607.5, except that each of the time periods governing the payments shall be calculated from the date the county auditor makes the certification to the Director of Finance pursuant to Section 33492.9 instead of from the first fiscal year in which the agency receives tax-increment revenue.

33492.93. (a) The territory of the Mare Island Redevelopment Project Area shall include all of Mare Island except for the following areas:

- (1) All wetlands and dredge ponds, active or inactive.
- (2) Subarea 12.
- (3) The expanded golf course (Subarea 11).
- (4) The recreation/open-space area (Subarea 13).
- (5) The residential areas of Farragut and Coral Sea Villages (Subareas 6 and 8).

(b) As used in this section:

(1) "Subarea 6" means an area bounded on the east by Cedar Avenue and Oak Avenue; on the south by the Rifle Range (Area 7), and the Building 866 parking area; on the north by Third Street; and on the west by the wetlands.

(2) "Subarea 8" means an area bounded on the south by Club Drive; on the east by Suisun Avenue; and on the north and west by Mesa Road.

(3) "Subarea 11" means an area bounded on the west, east, and south by Regional Park; and on the north by Coral Sea Village, Young Drive, and Recreation Wall.

(4) "Subarea 12" means an area bounded on the south by Carquinez Strait; on the west by the wetlands and the dredge ponds;

on the east by Mare Island Strait and Railroad Avenue; and on the north by the golf course, Young Drive, and Recreation Wall.

(5) "Subarea 13" means an area surrounded by other excluded areas (wetlands and dredge ponds).

33492.94. (a) Notwithstanding Section 21090 of the Public Resources Code, the redevelopment agency for the City of Vallejo or the legislative body of the City of Vallejo may determine at a noticed public hearing that the adoption of a redevelopment plan for the Mare Island Redevelopment Project Area pursuant to this article is not subject to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), except that projects implementing the redevelopment plan, including specific plans, rezonings, and ministerial projects that may have a significant effect on the environment, shall be subject to the California Environmental Quality Act. The environmental document for any implementing project shall include an analysis and mitigation of potential cumulative impacts that otherwise will not be known until an environmental impact report for the redevelopment plan is certified.

(b) The notice of the public hearing required pursuant to subdivision (a) shall include the date, time, and place of the hearing, a brief description of the proposed project and its location, the date when notice will be provided pursuant to Section 21092 of the Public Resources Code, and the address where copies of the notice of exemption are available for review.

(c) The notice required by this section shall be given to all organizations and individuals who have previously requested notice pursuant to the California Environmental Quality Act, and shall be given by publication, no fewer times than required by Section 6061 of the Government Code, by the public agency in a newspaper of general circulation in the area affected by the proposed project.

(d) If the redevelopment agency for the City of Vallejo or the legislative body of the City of Vallejo determines, pursuant to subdivision (a), that the adoption of a redevelopment plan is not subject to the California Environmental Quality Act, the redevelopment agency shall prepare and certify an environmental impact report for the redevelopment plan within 18 months after the effective date of the ordinance adopting the redevelopment plan. An environmental impact report prepared and certified jointly with the preparation of the environmental impact statement by the federal lead agency pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321, et seq.) shall satisfy the requirement of this subdivision.

33492.95. For purposes of this article, a blighted area within the boundaries of the Mare Island Redevelopment Project Area is either of the following:

(a) An area in which the combination of two or more of the conditions set forth in subdivision (a) or (b) of Section 33492.11 are so prevalent and so substantial that it causes a reduction of, or a lack

of, proper utilization of the area to an extent that constitutes a serious physical and economic burden on the community that cannot reasonably be expected to be reversed or alleviated by private enterprise or governmental action, or both, without redevelopment.

(b) An area that contains one or more of the conditions described in subdivision (b) of Section 33492.11, the effect of which are so prevalent and so substantial that it causes a reduction of, or a lack of, proper utilization of the area to an extent that constitutes a serious physical and economic burden on the community that cannot reasonably be expected to be reversed or alleviated by private enterprise or governmental action, or both, without redevelopment, and is in addition characterized by the existence of inadequate public improvements, public facilities, and utilities, that cannot be remedied by private or governmental action, without redevelopment.

SEC. 3. The Legislature finds and declares that, because of the unique circumstances applicable only to the City of Vallejo and its redevelopment agency due to the closure of Mare Island Naval Shipyard, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution. Therefore, this special statute is necessary.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act is in accordance with the request of a local agency or school district which desired legislative authority to carry out the program specified in this act. Notwithstanding Section 17580 of the Government Code unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1169

An act to amend Sections 53317, 67678, and 67679 of, and to add Sections 67575.9, 67679.5, and 67686 to, the Government Code, to amend Section 33492.27 of, and to add Article 4 (commencing with Section 33492.70) to Chapter 4.5 of Part 1 of Division 24 of, the Health and Safety Code, relating to redevelopment.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 53317 of the Government Code is amended to read:

53317. Unless the context otherwise requires, the definitions contained in this article shall govern the construction of this chapter.

(a) "Clerk" means the clerk of the legislative body of a local

agency.

(b) "Community facilities district" means a legally constituted governmental entity established pursuant to this chapter for the sole purpose of financing facilities and services.

(c) "Cost" means the expense of constructing or purchasing the public facility and of related land, right-of-way, easements, including incidental expenses, and the cost of providing authorized services, including incidental expenses.

(d) "Debt" means any binding obligation to pay or repay a sum of money, including obligations in the form of bonds, certificates of participation, long-term leases, loans from government agencies, or loans from banks, other financial institutions, private businesses, or individuals, or long-term contracts.

(e) "Incidental expense" includes all of the following:

(1) The cost of planning and designing public facilities to be financed pursuant to this chapter, including the cost of environmental evaluations of those facilities.

(2) The costs associated with the creation of the district, issuance of bonds, determination of the amount of taxes, collection of taxes, payment of taxes, or costs otherwise incurred in order to carry out the authorized purposes of the district.

(3) Any other expenses incidental to the construction, completion, and inspection of the authorized work.

(f) "Landowner" or "owner of land" means any person shown as the owner of land on the last equalized assessment roll or otherwise known to be the owner of the land by the legislative body. The legislative body has no obligation to obtain other information as to the ownership of the land, and its determination of ownership shall be final and conclusive for the purposes of this chapter. A public agency is not a landowner or owner of land for purposes of this chapter, unless the land owned by a public agency would be subject to a special tax pursuant to Section 53340.1, or unless the land owned by a public agency is within the territory of a military base that is closed or is being closed.

(g) "Legislative body" means the legislative body or governing board of any local agency.

(h) "Local agency" means any city or county, whether general law or chartered, special district, school district, joint powers entity created pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1, redevelopment agency, or any other municipal corporation, district, or political subdivision of the state.

(i) "Rate" means a single rate of tax or a schedule of rates.

(j) "Services" means the provision of police and fire protection services, recreation programs, library services, operation and maintenance of museums and cultural facilities, the operation and maintenance of parks and parkways, and the provision of flood and storm protection services, including, but not limited to, the operation and maintenance of storm drainage systems. "Services" includes the performance by employees of functions, operations, maintenance,

and repair activities.

SEC. 1.5. Section 67575.9 is added to the Government Code, to read:

67575.9. If an environmental impact statement on the closure and reuse of Fort Ord has been prepared and filed pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.), the board may proceed in the following manner:

(a) A notice of the preparation of an environmental impact report on the Fort Ord Reuse Plan shall be prepared pursuant to either Section 21080.4 or 21080.6 of the Public Resources Code, and shall include a description of the reuse plan and a copy of the environmental impact statement. The notice shall indicate that the board intends to utilize the environmental impact statement as a draft environmental impact report and requests comments on whether, and to what extent, the environmental impact statement provides adequate information to serve as a draft environmental impact report, and what specific additional information, if any, is necessary to comply with this division. The notice shall also indicate the address to which written comments may be sent and the deadline for submitting comments.

(b) Upon the close of the comment period on the notice of preparation, the board may proceed with preparation of the environmental impact report on the reuse plan. The board shall, to the greatest extent feasible, avoid duplication and utilize information in the environmental impact statement consistent with this division. The draft environmental impact report shall consist of all or part of the environmental impact statement and any additional information that is necessary to prepare a draft environmental impact report in compliance with this division.

(c) In all other respects, the environmental impact report for the reuse plan shall be completed in compliance with this division.

SEC. 2. Section 67678 of the Government Code, as added by Chapter 64 of the Statutes of 1994, is amended to read:

67678. (a) The board shall be the principal local public agent for the acquisition, lease disposition, and sale of real property transferred pursuant to the "Pryor Amendment", except as otherwise provided in this section. The board may take title to property transferred pursuant to the "Pryor Amendment" within the area of the base that is either turned over to the board by the federal government at no cost or that is purchased. The board may sell, lease, or otherwise dispose of this property at full market value or at less than full market value in order to facilitate the rapid and successful transition of the base to civilian use. In any transaction involving the transfer of federal property, the board shall fully satisfy all conditions, requirements, and understandings with the federal government with respect to the use and disposal of that property. In the sale, lease, or disposition of real property, the board shall follow the procedures and make those determinations that are required of redevelopment agencies pursuant to Article 11 (commencing with

Section 33430) of Chapter 4 of Part 1 of Division 24 of the Health and Safety Code.

(b) (1) The board shall transfer all real and personal property received pursuant to this section and intended for municipal or county use, except for property subject to paragraph (4), within a reasonable period of time after receiving title to the property to the city or county with jurisdiction over the property, and all transfers pursuant to this paragraph shall be at no cost to the city or county except for the reasonable costs incurred by the board as a result of the transfer, management, servicing, maintenance, and enhancement of the property, and except for any payments required to be made to the federal government as a result of the transfer.

(2) The board shall transfer or lease all real and personal property received pursuant to this section and which is intended for private use, except for uses specified in paragraph (3), within a reasonable period of time after receiving title to the property. Any proceeds received by the board each year as a result of the sale or lease of the property, net of all costs incurred by the board as a result of the sale, management, servicing, maintenance, and enhancement of the property, and net of all payments made to the federal government due to the property, shall be divided as follows: 50 percent of the net proceeds received each year shall be paid to the city or county with jurisdiction over the property, and 50 percent of the proceeds shall be retained by the board to help finance its responsibilities for the reuse of Fort Ord, unless otherwise agreed upon by the city or county with jurisdiction over the property and the board.

(3) The board shall transfer or lease all real or personal property received pursuant to this section and which is intended for public utility use within a reasonable period of time, consistent with the orderly and economical provision of utility services to the area of Fort Ord, under terms and conditions the board may determine.

(4) Notwithstanding any other paragraph of this subdivision, the board may retain real or personal property received pursuant to this section as long as both of the following occur:

(i) The board determines that retention of the property is necessary or convenient to carrying out the authority's responsibilities pursuant to law.

(ii) The board determines that its retention of the property will not cause significant financial hardship to the city or county with jurisdiction over the property.

(c) The board may mediate and resolve conflicts between local agencies concerning the uses of federal land to be transferred for public benefit purposes or other uses.

(d) The provisions of this title shall not preclude negotiations between the federal government and any local telecommunication, water, gas, electric, or cable provider for the transfer to any utility or provider of federally owned distribution systems and related facilities serving Fort Ord.

(e) This title shall not be construed to limit the rights of the

California State University or the University of California to acquire, hold, and use real property at Fort Ord, including locating or developing educationally related or research oriented facilities on this property.

(f) Except for property transferred to the California State University, or to the University of California, and that is used for educational or research purposes, and except for property transferred to the California Department of Parks and Recreation, all property transferred from the federal government to any user or purchaser, whether public or private, shall be used only in a manner consistent with the plan adopted or revised pursuant to Section 67675.

SEC. 3. Section 67679 of the Government Code, as added by Chapter 64 of the Statutes of 1994, is amended to read:

67679. (a) (1) The board shall identify those basewide public capital facilities described in the Fort Ord Reuse Plan, including, but not limited to, roads, freeway ramps, air transportation facilities, and freight hauling and handling facilities; sewage and water conveyance and treatment facilities; school, library, and other educational facilities; and recreational facilities, that serve residents or will serve future residents of the base territory and could most efficiently or conveniently be planned, negotiated, financed, constructed, or repaired, remodeled, or replaced by the board to further the integrated future use of the base. The board shall undertake to plan for and arrange the provision of those facilities, including arranging for their financing and construction or repair, remodeling, or replacement. The board may plan, design, construct, repair, remodel, or replace and finance these public capital facilities, or delegate any of those powers to one or more member agencies. Notwithstanding any other provision of law, no permit or permission of any kind from any city or county shall be required for any project undertaken by the board pursuant to this section.

(2) The board shall identify significant local public capital facilities, as distinguished from the basewide public capital facilities identified in the paragraph (1) which are described in the Fort Ord Reuse Plan. Local public capital facilities shall be the responsibility of the city or county with land use jurisdiction or the redevelopment agency if the facilities are located within an established project area and the board of the redevelopment agency determines that it will assume responsibility.

(3) The board may construct or otherwise act to improve a local public capital facility only with the consent of the city or county with land use authority over the area where the facility is or will be located. A city or county or a local redevelopment agency may construct or otherwise act to improve a basewide public capital facility only with the consent of the board.

(b) If all or any portion of the Fritzsche Army Air Field is transferred to the City of Marina, the board shall not consider those portions of the air field that continue to be used as an airport to be

basewide capital facilities, except with the consent of the legislative body of the city. If all or any portion of the two Army golf courses within the territory of Seaside are transferred to the City of Seaside, the board shall not consider those portions of the golf courses that continue in use as golf courses to be basewide capital facilities, except with the consent of the legislative body of the city.

(c) The board may seek state and federal grants and loans or other assistance to help fund public facilities.

(d) The board may, in any year, levy assessments, reassessments, or special taxes and issue bonds to finance these basewide public facilities in accordance with, and pursuant to, any of the following:

(1) The Improvement Act of 1911 (Division 7 (commencing with Section 5000) of the Streets and Highways Code).

(2) The Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code).

(3) The Municipal Improvement Act of 1913 (Division 12 (commencing with Section 10000) of the Streets and Highways Code).

(4) The Benefit Assessment Act of 1982 (Chapter 6.4 (commencing with Section 54703)).

(5) The Landscape and Lighting Act of 1972 (Part 2 (commencing with Section 22500) of Division 15 of the Streets and Highways Code).

(6) The Integrated Financing District Act (Chapter 1.5 (commencing with Section 53175) of Division 2 of Title 5).

(7) The Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5).

(8) The Infrastructure Financing District Act (Chapter 2.8 (commencing with Section 53395) of Division 2 of Title 5).

(9) The Marks-Roos Local Bond Pooling Act of 1985 (Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1).

(10) The Revenue Bond Act of 1941 (Chapter 6 (commencing with Section 54300) of Division 2 of Title 5).

(11) Fire suppression assessments levied pursuant to Article 3.6 (commencing with Section 50078) of Chapter 1 of Part 1 of Division 1 of Title 5.

(12) The Habitat Maintenance Funding Act (Chapter 11 (commencing with Section 2900) of Division 3 of the Fish and Game Code).

Notwithstanding any other provision of law, the board may create any of these financing districts within the area of Fort Ord to finance basewide public facilities without the consent of any city or county. In addition, until January 1, 2000, the board may, but is not obligated to create, within the area of Fort Ord, any of these financing districts which authorize financing for public services and may levy authorized assessments or special taxes in order to pass through

funding for these services to the local agencies. Notwithstanding any other provision of law, no city or county with jurisdiction over any area of the base, whether now or in the future, shall create any land-based financing district or levy any assessment or tax secured by a lien on real property within the area of the base without the consent of the board, except that the city or county may create these financing districts for the purposes and subject to any financing limitations that may be specified in the capital improvement program prepared pursuant to Section 67675.

(e) The board may levy development fees on development projects within the area of the base. Any development fees shall comply with the requirements of Chapter 5 (commencing with Section 66000) of Division 1 of Title 5. No local agency shall issue any building permit for any development within the area of Fort Ord until the board has certified that all development fees that it has levied with respect to the development project have been paid or otherwise satisfied.

SEC. 4. Section 67679.5 is added to the Government Code, to read:

67679.5. The board may, by ordinance, establish in the area of Fort Ord a public body, corporate and politic, known as the Redevelopment Agency of Fort Ord. This agency may transact business and exercise its powers as a redevelopment agency upon the effective date of the establishing ordinance. The provisions of the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code), including, but not limited to, Article 4 (commencing with Section 33492.70) thereof, shall apply to the Redevelopment Agency of Fort Ord, and this agency shall have all powers of a redevelopment agency as provided in that part.

SEC. 5. Section 67686 is added to the Government Code, to read:

67686. A city or county receiving subventions from the state based on the military population residing at Fort Ord, shall continue to receive those subventions based on the 1990 Census of the Population until the earlier of:

(a) The release of the new population figures for the city or county based on the decennial United States Census for the year 2000.

(b) Certification by the Department of Finance that the population of Fort Ord is greater than the population calculated based on the decennial United States Census for the year 1990.

SEC. 6. Section 33492.27 of the Health and Safety Code is amended to read:

33492.27. For the purposes of this chapter, "affected taxing entity" means any governmental taxing agency that levied a property tax on all or any portion of the property located in the proposed project area in the fiscal year prior to submission of the plan to the committee. In areas where there is no prior property tax assessment, an "affected taxing entity" shall include any local

governmental taxing agency which will have service and administrative responsibilities within the proposed project area.

SEC. 7. Article 4 (commencing with Section 33492.70) is added to Chapter 4.5 of Part 1 of Division 24 of the Health and Safety Code, to read:

Article 4. Redevelopment Agency of Fort Ord

33492.70. (a) (1) This article shall govern the establishment and operation of all redevelopment project areas created within the area previously known as Fort Ord.

(2) It is the intent of the Legislature that the redevelopment of the territory of Fort Ord be conducted jointly, in part by redevelopment project areas established by cities and the county with jurisdiction over parts of the territory of what was previously known as Fort Ord, and in part by the Fort Ord Reuse Authority. It is further the intent of the Legislature that this joint redevelopment include the sharing of tax increment revenues pursuant to this article. The joint division of tax increment will enable the local redevelopment agencies to finance redevelopment activities which primarily affect their own jurisdictions, and the authority will have a revenue source to assist in financing redevelopment of facilities of base-wide significance.

(b) The board of the Fort Ord Reuse Authority, as established by Title 7.85 (commencing with Section 67650) of the Government Code, may, by ordinance, establish in the area of Fort Ord a public body, corporate and politic, known as the Redevelopment Agency of Fort Ord. This agency may transact business and exercise its powers as a redevelopment agency upon the effective date of the establishing ordinance. The provisions of the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24), as modified by Chapter 4.5 (commencing with Section 33492) thereof, shall apply to the Redevelopment Agency of Fort Ord, and this agency shall have all powers of a redevelopment agency as provided in this part.

(c) In addition to the powers of an agency, the Redevelopment Agency of Fort Ord shall also act as the legislative body and the planning commission for all approvals and actions required and authorized by this part for the adoption and implementation of a redevelopment plan. However, subject to the consistency and appeal provision of Title 7.85 (commencing with Section 67650) of the Government Code and other applicable provisions of state law, all planning, zoning, and permitting decisions with regard to the land within the project area shall continue to be under the control and jurisdiction of each of the respective local legislative bodies, as applicable.

(d) For purposes of this article, "board" means the governing board of the Fort Ord Reuse Authority, as defined in Title 7.85 (commencing with Section 67650) of the Government Code.

“Legislative body,” as used elsewhere in this part, shall, for the purposes of this article when relating to the Redevelopment Agency of Fort Ord, also refer to the governing board of the Fort Ord Reuse Authority.

(e) The board may create a project area to include all or a portion or portions of the area of Ford Ord, except that the board shall not create a project area which overlays any territory included within a project area established by the redevelopment agency of a city or the county.

(f) A city or county redevelopment agency may establish a project area which includes any or all of the territory within the jurisdiction of the city or county which is also within the territory of Fort Ord, but only pursuant to the provisions of this section.

33492.71. (a) This section shall apply to each redevelopment project area created pursuant to this article with a redevelopment plan that contains the provisions required by Section 33670. All amounts calculated pursuant to this section shall be calculated after the amount required to be deposited in the Low and Moderate Income Housing Fund pursuant to Section 33334.2, 33334.3, 33334.6, and 33492.76, and the amounts required to be paid by school and community college districts pursuant to Section 33492.78 have been deducted from the local tax increment funds received by the agency in the applicable fiscal year.

(b) The payments made pursuant to this section shall be in addition to any amounts the affected taxing entities receive pursuant to subdivision (a) of Section 33670. The agency shall reduce its payments pursuant to this section to the authority or an affected taxing entity by any amount the agency has paid, directly or indirectly, pursuant to Section 33445 and with the agreement of the authority or the affected taxing entity, or pursuant to any other provision of law other than this section for, or in connection with a public facility owned or leased by the authority or that affected taxing entity and with the agreement of the authority or that affected taxing entity.

(c) Commencing in the first fiscal year in which a redevelopment agency receives tax-increment revenue from a project area created pursuant to this article, the agency shall pay the following amounts to the following entities, and the agency shall not be obligated to pay any additional sums to any taxing entities pursuant to Section 33607.5 and subdivision (b) of Section 33676:

(1) (A) Thirty-five percent of the tax-increment revenue received by the agency after the amount required to be deposited in the Low and Moderate Income Housing Fund pursuant to Sections 33334.2, 33334.3, and 33334.6, as modified by Section 33492.76, has been deducted each fiscal year shall be paid to the authority to finance in whole or in part its responsibilities in providing for the reuse of Fort Ord.

(B) Thirty-five percent of the tax-increment revenue received by the agency after the amount required to be deposited in the Low and

Moderate Income Housing Fund pursuant to Section 33334.2, 33334.3, and 33334.6 of, as modified by Section 33492.76, has been deducted each fiscal year shall be paid to or retained by the redevelopment agency of the city or county in which the project area is located, to finance, in whole or in part, its responsibilities in providing for the reuse of Fort Ord.

(C) Of the amount referenced in subparagraph (B), each city may elect to receive from its agency, and the agency shall pay, an amount not to exceed 25 percent of the tax-increment revenue generated from a project area established pursuant to this article, to alleviate the financial burden and detriment incurred as a result of the adoption of the redevelopment plan in each year until the sixth fiscal year after the year in which the agency is first allocated one hundred thousand dollars (\$100,000) or more in tax-increment revenues.

(D) Upon dissolution of the authority, the amount allocated pursuant to this section shall continue to be paid to the accounts of the authority insofar as needed to pay principal and interest or other amounts on debt which was incurred by the authority. Funds which would be allocated pursuant to this section which exceed the amounts necessary to pay debt service on authority debt shall be divided as follows: 54 percent shall be allocated to the city or county redevelopment agency which establishes the project area; 38 percent shall be allocated to the county; and 8 percent shall be allocated to other affected taxing entities.

(2) (A) Twenty-five percent of the tax-increment revenue received by the agency after the amount required to be deposited in the Low and Moderate Income Housing Fund pursuant to Sections 33334.2, 33334.3, and 33334.6, as modified by Section 33492.76, has been deducted each fiscal year shall be paid to the county to alleviate the financial burden and detriment to the county incurred because of the establishment of the project area.

(3) Not to exceed five percent of the tax-increment revenue received by the agency after the amount required to be deposited in the Low and Moderate Income Housing Fund pursuant to Sections 33334.2, 33334.3, and 33334.6, as modified by Section 33492.76, has been deducted each fiscal year shall be paid to other affected taxing entities as defined in Section 33492.27, but excluding the entities specified in paragraphs (1) and (2), and excluding school and community college districts, in order to alleviate the financial burden and detriment incurred by those affected taxing entities because of the establishment of the project area. If the total payments made pursuant to this paragraph are less than 5 percent of the tax increment revenue received by the agency pursuant to this article, the remaining portion of the revenue available as a result of this paragraph shall be allocated as follows: 37 percent to the agency, 37 percent to the authority, and 26 percent to the county.

(d) Notwithstanding subdivision (c), through and including the second fiscal year after the certification date established pursuant to

Section 33492.9, the amount of tax increment revenue the redevelopment agencies of the Cities of Marina and Seaside or the County of Monterey are required to pay to other entities as prescribed in paragraph (1) shall be modified as follows:

(1) For each of those fiscal years, the board shall determine an amount equal to 100 percent of the revenue payable to the city or county establishing the project area from all ad valorem property taxes, including allocations of property tax increment revenues pursuant to subdivision (c), sales taxes, utility users taxes, business license taxes, real property transfer taxes, franchise taxes, transient occupancy taxes, and payments received as a result of vehicle and trailer coach registration, and cigarette and gasoline taxes except for payments received as a result of vehicle registrations because of military personnel occupying Fort Ord, attributable to the property, population, and economic activity which is within the jurisdiction of each local entity which has established a redevelopment project area pursuant to this subdivision and is also within the area of Fort Ord.

(2) If the amount determined pursuant to paragraph (1) for a fiscal year is less than four hundred thousand dollars (\$400,000), the redevelopment agency of the local entity which established the project area shall retain tax-increment revenue received because of the project area so that the sum of the retained tax-increment revenue, exclusive of required deposits to the Low and Moderate Income Housing Fund and the amount of revenue determined pursuant to paragraph (1), equals four hundred thousand dollars (\$400,000), but in no event exceeding 100 percent of the tax-increment revenue received for the project area for that fiscal year. Any tax-increment revenue received by the redevelopment agency which established the project area which exceeds the amount necessary to bring the total of the amount calculated pursuant to paragraph (1), plus the tax increment retained by the agency pursuant to this subdivision to four hundred thousand dollars (\$400,000) shall be distributed pursuant to subdivision (c).

(e) The board may increase or decrease the qualified minimum level of increment funding set in paragraph (2) of subdivision (d) above four hundred thousand dollars (\$400,000), if the board determines, based on substantial evidence, that the costs of providing police and fire protection services to the area of Fort Ord within the local agency's redevelopment agency's project area exceed or are less than this amount. In the event that any city which does not now have jurisdiction over territory within the area of Fort Ord subsequently annexes territory within the area of Fort Ord, the board may provide for a qualified minimum level of increment funding at a level that it determines, based on substantial evidence as to the cost of providing police and fire protection services to the area of Fort Ord within the local agency's redevelopment agency's project area is appropriate for a period not to exceed three years, but is under no obligation to do so.

(f) Because this article provides for an allocation of tax-increment

revenue arising from the redevelopment of the area of Fort Ord among the affected taxing entities for the purpose of alleviating any financial burden or detriment that is caused by the redevelopment plan, the consultations with the affected taxing entities, as required by Section 33492.19, shall not include the payment of supplemental moneys, but may only include the discussion of possible modifications in the redevelopment plan, including, but not limited to, the timing of projects, selection of projects, scope of projects, and the type of financing that is being considered for the projects.

(g) (1) All moneys received by the authority from a redevelopment agency shall be deposited in a separate fund from all other moneys of the authority.

(2) The authority shall annually report on the total amount of moneys deposited into the fund during the year; the specific project and programs which were financed with the moneys, including amounts expended per project and program; and the beginning and ending balance of the fund.

(3) The moneys in the fund shall be exclusively expended for the purpose of financing the development and redevelopment of basewide facilities as identified in the basewide public capital facilities plan adopted pursuant to Section 67675 of the Government Code.

(4) The authority shall have an independent financial audit annually prepared on the fund in accordance with generally accepted auditing standards and rules of governing auditing reports promulgated by the State Board of Accountancy.

(h) Notwithstanding any other provision of law, no tax increment moneys, including moneys paid from a redevelopment agency to Fort Ord Reuse Authority or any affected taxing entity, shall directly or indirectly finance the development or redevelopment of facilities owned or operated by the California State University or the University of California or for facilities or infrastructure which is for the primary benefit of the California State University or the University of California.

33492.72. (a) Prior to incurring any loans, or other indebtedness, except loans or advances from the local agency or the authority, the agency which established the redevelopment project area, or the board, may subordinate to the loans or other indebtedness the amounts required to be paid to all other local agencies pursuant to this section, provided that the agency or the board has approved these subordinations pursuant to this subdivision.

(b) At the time the agency or the board requests any other entity receiving tax-increment revenues pursuant to this section to subordinate the amount to be paid to it, the agency or the board seeking permission for subordination, shall provide the affected taxing entity with substantial evidence that sufficient funds will be available to pay both the debt service and the payments required by this section, when due.

(c) Within 45 days after receipt of the agency's or the board's

request, the entities receiving tax-increment revenues pursuant to this section shall approve or disapprove the request for subordination. An entity other than the redevelopment agency or the board may disapprove a request for subordination only if it finds, based upon substantial evidence, that after the agency or the board pays the debt payments, the agency will not have sufficient funds to pay the amounts required to be paid to other entities pursuant to this section. The agency or the board may also disapprove a request for subordination if it finds that subordination would interfere with its ability to issue debt as needed to carry out its responsibilities. If an entity, the agency, or the board does not act within 45 days after receipt of the agency's request, the request to subordinate shall be deemed approved and shall be final and conclusive.

33492.73. Any redevelopment or implementation plan prepared in conjunction with establishment or operation of a project area, and any subsequent amendment, update, or other modification of that plan or those plans, shall take effect only upon certification by the board of the consistency of that plan or those plans with the Fort Ord Reuse Plan in the same manner as for the local agency's general plan pursuant to Chapter 4 (commencing with Section 67675) of Title 7.85 of the Government Code.

33492.74. (a) For purposes of this article, a blighted area may be a military base in which the combination of two or more of the conditions set forth in subdivision (b) or (c) of this section are so prevalent and so substantial that it causes a reduction of, or a lack of, proper utilization of the area to an extent that constitutes a serious physical and economic burden on the community that cannot reasonably be expected to be reversed or alleviated by private enterprise or governmental action, or both, without redevelopment.

(b) This subdivision, for purposes of this article, describes physical conditions that cause blight.

(1) Buildings in which it is unsafe or unhealthy for persons to live or work. These conditions can be caused by serious building code violations, dilapidation and deterioration, defective design or physical construction, faulty or inadequate infrastructure, or other similar factors.

(2) Factors that prevent or substantially hinder the economically viable reuse or capacity of buildings or areas. This condition can be caused by a substandard design; buildings that are too large or too small given present standards and market conditions; and age, obsolescence, deterioration, dilapidation, or other physical conditions that could prevent the highest and best uses of the property. This condition can also be caused by buildings that will have to be demolished or buildings or areas that have a lack of parking.

(3) Adjacent or nearby uses that are incompatible with each other and that prevent the economic development of those parcels or other portions of the project area.

(4) Buildings on land that, when subdivided or when

infrastructure is installed, will not comply with normal subdivision, zoning, or planning regulations.

(c) This subdivision, for purposes of this article, describes economic conditions that cause blight:

(1) Land that contains materials, including, but not necessarily limited to, materials for airport runways that will have to be removed to allow development.

(2) Properties that contain hazardous wastes that may benefit from the use of agency authority as specified in Article 12.5 (commencing with Section 33459) of Chapter 4 in order to be developed by either the private or public sector or in order to comply with applicable federal or state standards. Notwithstanding any other provision of law, all redevelopment agencies with authority under this act are specifically prohibited from accepting responsibility for, or using agency authority on behalf of, hazardous waste sites that are the responsibility of the federal government.

(d) For purposes of this article, a blighted area also may be one that contains one or more of the conditions described in subdivision (c) and is, in addition, characterized by the existence of inadequate public improvements, public facilities, and utilities, where these conditions are so prevalent and so substantial that it causes a reduction of, or a lack of, proper utilization of the area to an extent that it constitutes a serious physical and economic burden on the community that cannot reasonably be expected to be reversed or alleviated by private enterprise or governmental action, or both, without redevelopment.

33492.75. (a) For purposes of adoption of a project area, the preliminary report prepared pursuant to Section 33344.5 is not required to contain the material identified in paragraphs (2), (3), and (4) of subdivision (c) of Section 33344.5.

(b) For purposes of adoption of a project area, the report prepared pursuant to Section 33352 shall be modified to require that the blight conditions specified in Section 33492.74 exist.

(c) A redevelopment plan adopted for a project area shall contain the limitations set forth in Section 33492.13, and shall not be subject to the limitations set forth in Section 33333.2.

(d) For purposes of redevelopment project areas within the area of Fort Ord, calculation of the amount determined pursuant to subdivision (a) of Section 33670 shall be based on the assessment roll used in connection with property within the project area last equalized prior to the date on which the board of the Fort Ord Reuse Authority adopts a Fort Ord Reuse Plan pursuant to Section 67675 of the Government Code, which shall be deemed to be a redevelopment plan for the area of the base, or the effective date of the ordinance approving a redevelopment plan for a specific project area within the area of Fort Ord, whichever occurs first for any project area.

33492.76. (a) Notwithstanding Section 33334.2 or any other provision of law, a redevelopment agency established or governed

pursuant to this article may annually waive the requirement to allocate 20 percent of the total annual tax increment revenue from any project area to the Low and Moderate Income Housing Fund for a period of up to five years after the date on which the county auditor makes the certification pursuant to Section 33492.9. The agency may not waive its allocation in any year unless it first adopts a finding, based on substantial evidence, that the vacancy rate for rental housing affordable to lower income households is greater than 6 percent.

(b) Notwithstanding Section 33413, the redevelopment agency shall not be required to replace removed or demolished military barracks, which are located, as of January 1, 1995, within the boundaries of Fort Ord.

33492.78. (a) The provisions of Section 33607.5 shall not apply to an agency created pursuant to this article. For purposes of Sections 42238, 84750, and 84751 of the Education Code, funds allocated pursuant to this section shall be treated as if they were allocated pursuant to Section 33607.5.

(1) The provisions of this section shall apply to each redevelopment project area created pursuant to a redevelopment plan which contains the provisions required by Section 33670 and is created pursuant to this article. All the amounts calculated pursuant to this section shall be calculated after the amount required to be deposited in the Low and Moderate Income Housing Fund pursuant to Sections 33334.2, 33334.3, and 33334.6, as modified by Section 33492.76, has been deducted from the total amount of tax-increment funds received by the agency in the applicable fiscal year.

(2) The payments made pursuant to this section shall be in addition to any amounts the school district or districts and community college district or districts receive pursuant to subdivision (a) of Section 33670. The agency shall reduce its payments pursuant to this section to an affected school or community college district by any amount the agency has paid, directly or indirectly, pursuant to Section 33445, 33445.5, or 33446, or any provision of law other than this section for, or in connection with, a public facility owned or leased by that affected school or community college district.

(3) (A) Of the total amount paid each year pursuant to this section to school districts, 43.9 percent shall be considered to be property taxes for the purposes of paragraph (1) of subdivision (h) of Section 42238 of the Education Code, and 56.1 percent shall not be considered to be property taxes for the purposes of that section, and shall be available to be used for educational facilities.

(B) Of the total amount paid each year pursuant to this section to community college districts, 47.5 percent shall be considered to be property taxes for the purposes of Section 84750 of the Education Code, and 52.5 percent shall not be considered to be property taxes for the purposes of that section, and shall be available to be used for educational facilities.

(C) Of the total amount paid each year pursuant to this section to county offices of education, 19 percent shall be considered to be property taxes for the purposes of paragraph (1) of subdivision (h) of Section 42238 of the Education Code, and 81 percent shall not be considered to be property taxes for the purposes of that section, and shall be available to be used for educational facilities.

(D) Of the total amount paid each year pursuant to this section to special education, 19 percent shall be considered to be property taxes for the purposes of paragraph (1) of subdivision (h) of Section 42238 of the Education Code, and 81 percent shall not be considered to be property taxes for the purposes of that section, and shall be available to be used for educational facilities.

(4) Local education agencies that use funds received pursuant to this section for educational facilities shall spend these funds at schools that are any one of the following:

(A) Within the project area.

(B) Attended by students from the project area.

(C) Attended by students generated by projects that are assisted directly by the redevelopment agency.

(D) Determined by a local education agency to be of benefit to the project area.

(b) Commencing with the first fiscal year in which the agency receives tax increments, and continuing through the last fiscal year in which the agency receives tax increments, a redevelopment agency created pursuant to this article shall pay to each affected school and community college district an amount equal to the product of 25 percent times the percentage share of total property taxes collected which are allocated to each affected school or community college district, including any amount allocated to each district pursuant to Sections 97.03 and 97.035 of the Revenue and Taxation Code times the total of the tax increments received by the agency after the amount required to be deposited in the Low and Moderate Income Housing Fund has been deducted.

(c) Commencing with the 11th fiscal year in which the agency receives tax increments and continuing through the last fiscal year in which the agency receives tax increments, a redevelopment agency created pursuant to this article shall pay to each affected school and community college district, in addition to the amounts paid pursuant to subdivision (b), an amount equal to the product of 21 percent times the percentage share of total property taxes collected which are allocated to each affected school or community college district, including any amount allocated to each district pursuant to Sections 97.03 and 97.035 of the Revenue and Taxation Code times the total of the first adjusted tax increments received by the agency after the amount required to be deposited in the Low and Moderate Income Housing Fund has been deducted. The first adjusted tax increments received by the agency shall be calculated by applying the tax rate against the amount of assessed value by which the current year assessed value exceeds the first adjusted base

year assessed value. The first adjusted base year assessed value is the assessed value of the project area in the 10th fiscal year in which the agency receives tax increment.

(d) Commencing with the 31st fiscal year in which the agency receives tax increments and continuing through the last fiscal year in which the agency receives tax increments, a redevelopment agency shall pay to the affected school and community college districts, in addition to the amounts paid pursuant to subdivisions (b) and (c), an amount equal to 14 percent times the percentage share of total property taxes collected which are allocated to each affected school or community college district, including any amount allocated to each district pursuant to Sections 97.03 and 97.035 of the Revenue and Taxation Code times the total of the second adjusted tax increments received by the agency after the amount required to be deposited in the Low and Moderate Income Housing Fund has been deducted. The second adjusted tax increments received by the agency shall be calculated by applying the tax rate against the amount of assessed value by which the current year assessed value exceeds the second adjusted base year assessed value. The second adjusted base year assessed value is the assessed value of the project area in the 30th fiscal year in which the agency receives tax increments.

(g) (1) The Legislature finds and declares both of the following:

(A) The payments made pursuant to this section are necessary in order to alleviate the financial burden and detriment that affected school and community college districts may incur as a result of the adoption of a redevelopment plan, and payments made pursuant to this section will benefit redevelopment project areas.

(B) The payments made pursuant to this section are the exclusive payments that are required to be made by a redevelopment agency to affected school and community college districts during the term of a redevelopment plan.

(2) Notwithstanding any other provision of law, a redevelopment agency shall not be required, either directly or indirectly, as a measure to mitigate a significant environmental effect or as part of any settlement agreement or judgment brought in any action to contest the validity of a redevelopment plan pursuant to Section 33501, to make any other payments to affected school or community college districts, or to pay for public facilities that will be owned or leased to an affected school or community college district.

(h) As used in this section, a "local education agency" includes a school district, a community college district, or a county office of education.

SEC. 8. The Legislature finds and declares that, because of the unique circumstances, set forth in Sections 67651 and 67652 of the Government Code and applicable only to communities within the County of Monterey due to the closure of Fort Ord, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California

Constitution. The enactment of this special statute is therefore necessary.

SEC. 9. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1170

An act to amend Section 33492.27 of, and to add Article 5 (commencing with Section 33492.80) to Chapter 4.5 of Part 1 of Division 24 of, the Health and Safety Code, relating to redevelopment.

[Approved by Governor September 29, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 33492.27 of the Health and Safety Code is amended to read:

33492.27. For the purposes of this chapter, "affected taxing entity" means any governmental taxing agency that levied a property tax on all or any portion of the property located in the proposed project area in the fiscal year prior to submission of the plan to the committee. In areas where there is no prior property tax assessment, an "affected taxing entity" shall include any local governmental taxing agency which will have service and administrative responsibilities within the proposed project area.

SEC. 2. Article 5 (commencing with Section 33492.80) is added to Chapter 4.5 of Part 1 of Division 24 of the Health and Safety Code, to read:

Article 5. March Joint Powers Redevelopment Agency

33492.80. For purposes of this article, it is the intent of the Legislature to provide a means of mitigating the economic and social degradation facing communities impacted by the realignment of March Air Force Base.

33492.81. (a) The March Joint Powers Authority, a public entity

created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, and composed of the Cities of Moreno Valley, Perris, and Riverside and the County of Riverside, is hereby authorized to establish the March Joint Powers Redevelopment Agency, with all of the powers, authority, and duties granted to it under this part, as a public body, corporate and politic, for the exclusive purpose of establishing the March Air Force Base Redevelopment Project Area pursuant to this article.

(b) The March Joint Powers Redevelopment Agency shall act as the legislative body and planning commission for all approvals and actions required or authorized for the adoption and implementation of a redevelopment plan. However, all land use planning and development decisions with regard to the land within the project area shall continue to be under the control and jurisdiction of each of the respective local legislative bodies or planning commissions, as applicable.

33492.82. (a) For purposes of this article, a blighted area within the boundaries of March Air Force Base, as those boundaries exist on January 1, 1995, is either one of the following:

(1) An area in which the combination of two or more of the conditions set forth in subdivision (a) or (b) of Section 33492.83 are so prevalent and so substantial that it causes a reduction of, or a lack of, proper utilization of the area to an extent that constitutes a serious physical and economic burden on the community that cannot reasonably be expected to be reversed or alleviated by private enterprise or governmental action, or both, without redevelopment.

(2) An area that contains one or more of the conditions described in subdivision (b) of Section 33492.83, the effect of which are so prevalent, and so substantial that it causes a reduction of, or a lack of, proper utilization of the area to an extent that constitutes a serious physical and economic burden on the community that cannot reasonably be expected to be reversed or alleviated by private enterprise, or governmental action, or both, without redevelopment, and is, in addition, characterized by the existence of inadequate public improvements, public facilities, and utilities that cannot be remedied by private or governmental action without redevelopment.

(b) For the purposes of this article, a blighted area outside the boundaries of March Air Force Base, as those boundaries exist on January 1, 1995, shall be an area that meets the requirements of Section 33030.

33492.83. (a) This subdivision, for purposes of this article, describes physical conditions that cause blight.

(1) Buildings in which it is unsafe or unhealthy for persons to live or work. These conditions can be caused by serious building code violations, dilapidation and deterioration, defective design or physical construction, faulty or inadequate infrastructure, or other similar factors.

(2) Factors that prevent or substantially hinder the economically viable reuse or capacity of buildings or areas. This condition can be caused by a substandard design; buildings that are too large or too small given present standards and market conditions; and age, obsolescence, deterioration, dilapidation, or other physical conditions that could prevent the highest and best uses of the property. This condition can also be caused by buildings that will have to be demolished or buildings or areas that have a lack of parking.

(3) Adjacent or nearby uses that are incompatible with each other and that prevent the economic development of those parcels or other portions of the project area.

(4) Buildings on land that, when subdivided or when infrastructure is installed, will not comply with normal subdivision, zoning, or planning regulations.

(b) This subdivision, for purposes of this article, describes economic conditions that cause blight:

(1) Land that contains materials or facilities, including, but not necessarily limited to, materials for airport runways that will have to be removed to allow development.

(2) Properties that contain hazardous wastes that may benefit from the use of agency authority as specified in Article 12.5 (commencing with Section 33459) of Chapter 4 in order to be developed by either the private or public sector or in order to comply with applicable federal or state standards. Notwithstanding any other provision of law, the March Joint Powers Redevelopment Agency is specifically prohibited from accepting responsibility for, or using agency authority on behalf of, hazardous waste sites that are the responsibility of the federal government.

(c) Pursuant to Section 33321, a project area need not be restricted to buildings, improvements, or lands which are not detrimental or inimical to the public health, safety, or welfare, but may consist of an area in which these conditions predominate and injuriously affect the entire area. A project area may include lands, buildings, or improvements which are not detrimental to the public health, safety, or welfare, but whose inclusion is found necessary for the effective redevelopment of the area of which they are a part. Each area included under this section shall be necessary for effective redevelopment and shall not be included for the purpose of obtaining the allocation of tax-increment revenue from the area pursuant to Section 33670 without other substantial justification for its inclusion.

33492.84. For purposes of this article, the terms "redevelopment agency" and "agency" refer to the March Joint Powers Redevelopment Agency, which is hereby authorized to engage in the redevelopment activities included in and referenced by this article.

33492.85. (a) A redevelopment plan for March Air Force Base, adopted pursuant to this chapter and containing the provisions set

forth in Section 33670, shall contain all of the following limitations:

(1) (A) A time limit on the establishing of loans, advances, and indebtedness to be paid with the proceeds of property taxes received pursuant to Section 33670 to finance in whole or in part the redevelopment project, which may not exceed 20 years from the date the county auditor certifies pursuant to Section 33492.9, except by amendment of the redevelopment plan as authorized by subparagraph (B). The loans, advances, or indebtedness may be repaid over a period of time longer than the time limit as provided in this section. No loans, advances, or indebtedness to be repaid from the allocation of taxes shall be established or incurred by the agency beyond this time limitation.

(B) The time limitation established by subparagraph (A) may be extended only by amendment of the redevelopment plan after the agency finds, based on substantial evidence, that (i) substantial blight remains within the project area; (ii) this blight cannot be eliminated without the establishment of additional debt; and (iii) the elimination of blight cannot reasonably be accomplished by private enterprise acting alone or by the legislative body's use of financing alternatives other than tax increment financing. However, this amended time limitation may not exceed 30 years from the date the county auditor certifies pursuant to Section 33492.9.

(2) A time limit, not to exceed 30 years from the date the county auditor certifies pursuant to Section 33492.9, on the effectiveness of the redevelopment plan. After the time limit on the effectiveness of the redevelopment plan, the agency shall have no authority to act pursuant to the redevelopment plan except to pay previously incurred indebtedness and enforce existing covenants or contracts.

(3) A time limit, not to exceed 45 years from the date the county auditor certifies pursuant to Section 33492.9, to repay indebtedness with the proceeds of property taxes received pursuant to Section 33670. After the time limit established pursuant to this paragraph, an agency may not receive property taxes pursuant to Section 33670.

(b) (1) A redevelopment plan, adopted pursuant to this chapter, that does not contain the provisions set forth in Section 33670 shall contain the limitations in paragraph (2).

(2) A time limit, not to exceed 12 years from the date the county auditor certifies pursuant to Section 33492.9, for commencement of eminent domain proceedings to acquire property within the project area. This time limitation may be extended only by amendment of the redevelopment plan.

33492.86. (a) This section shall apply to a redevelopment project area whose territory includes March Air Force Base, that is adopted pursuant to a redevelopment plan that contains the provisions required by Section 33670, and that is adopted pursuant to this chapter. The redevelopment agency shall make the payments to affected school districts and community college districts required by subdivision (a) of Section 33607.5, except that each of the time periods governing the payments shall be calculated from the date the

county auditor makes the certification to the Director of Finance pursuant to Section 33492.9 instead of from the first fiscal year in which the agency receives tax-increment revenue.

(b) (1) Pursuant to Section 33492.3, the March Air Force Base Project Area adopted pursuant to this article may include all, or any portion of, property within the military base that the federal Base Closure and Realignment Commission has voted to realign when that action has been sustained by the President and the Congress of the United States, regardless of the percentage of urbanized land, as defined in Section 33320.1, within the military base.

(2) (A) Pursuant to Section 33492.3, the March Air Force Base Project Area may include territory outside the military base. The project area shall be entirely contained within a one-mile perimeter of the boundaries of March Air Force Base, as those boundaries exist on January 1, 1995. At no time shall the aggregate acreage of the project area outside the boundaries of March Air Force Base, as those boundaries exist on January 1, 1995, exceed 2 percent of the total acreage contained within that one-mile perimeter, and these areas may only be included in the project area upon a finding of benefit to the March Air Force Base Project Area and with the concurrence of the legislative bodies of the County of Riverside, the City of Moreno Valley, the City of Perris, and the City of Riverside.

(B) The agency for the March Air Force Base Project Area may, with the concurrence of the relevant legislative body pursuant to subparagraph (B), pay for all or a part of the value of land and the cost of the installation and construction of any structure or facility or other improvement that is publicly owned outside the jurisdiction of the agency, if the legislative body of the agency determines both the following:

(i) That the structure, facility, or other improvement is of benefit to the project area.

(ii) That no other reasonable means of financing the facilities, structures, or improvements, are available to the community.

(iii) That the payment of funds for the acquisition of land or the cost of facilities, structures, or other improvements will assist in the elimination of one or more blight conditions, as identified pursuant to Section 33492.83, inside the project area, or provide housing for low- or moderate-income persons.

(C) Concurrence of the relevant legislative body shall be demonstrated by the adoption of an ordinance by the community where the structure, facility, or other improvement is to be located which authorizes the redevelopment of the area within its territorial limits by the redevelopment agency for March Air Force Base Project Area.

(D) All projects authorized by this subdivision shall be within communities which are contiguous to the March Air Force Base Project Area.

33492.87. (a) (1) Notwithstanding Section 33334.2 or any other provision of law, the redevelopment agency established or governed

pursuant to this article may annually defer the requirement to allocate 20 percent of tax-increment revenue to the Low and Moderate Income Housing Fund for a period of up to 5 years after the date on which the county auditor makes the certification pursuant to Section 33492.9.

(2) The agency shall not defer its allocation in any year unless it first adopts a finding based on substantial evidence that the vacancy rate for rental housing affordable to lower income households within the jurisdiction of the members of the agency is greater than 4 percent.

(3) The amount of the deferral, if any, shall be considered an indebtedness of the agency and shall be paid into the Low and Moderate Income Housing Fund no later than the end of the 10th fiscal year after the date on which the county auditor makes the certification pursuant to Section 33492.9. If the indebtedness is not eliminated by the end of the 10th fiscal year, the county auditor or controller shall, no later than March 15 of the 11th year, withhold an amount equal to the indebtedness and deposit those funds into a separate Low and Moderate Income Housing Fund for use by the redevelopment agency to meet its affordable housing requirements pursuant to this part.

(b) (1) Notwithstanding Section 33413, the redevelopment agency shall not be required to replace barracks or dormitory-style housing that is adaptively reused, demolished, or removed within the boundaries of March Air Force Base.

(2) All other dwelling units demolished or removed by activities of the redevelopment agency, or as part of a project pursuant to written agreement with, or a project receiving financial assistance from, the agency within the boundaries of March Air Force Base, shall be replaced not later than 15 years after the demolition or removal of the unit. Seventy-five percent of the replacement units shall be affordable to very low, low-, and moderate-income households in the same proportion as the weighted proportion of very low, low-, and moderate-income housing units allocated by the regional fair share allocation pursuant to Section 65584 of the Government Code each city and county that is a member of the March Joint Powers Authority. The agency may receive credit toward the remaining 25 percent for any dwelling units developed by entities other than the agency within the territory of the March Joint Powers Authority members. Replacement units shall be affordable for the longest feasible time, but in no event less than the period of time equal to the total duration of the redevelopment plan from adoption to expiration.

(3) Notwithstanding any other provision of law, the tax increment funds and revenues of redevelopment agencies within the jurisdiction of any of the cities or county that are members of the March Joint Powers Authority, including low- and moderate-income housing funds of those agencies, may be used for the development of low- and moderate-income replacement units for any units

removed or demolished from within the boundaries of March Air Force Base and, if so used, may be expended on replacement units developed outside the project area of each respective agency.

(c) The agency may assign, upon approval of the affected redevelopment agency, the obligation to replace units removed or demolished from within the boundaries of the base. The area in which units may be replaced may include any territory within the boundaries of each city and county that is a member of the March Joint Powers Authority.

33492.88. Notwithstanding any other provision of law, as part of an agreement that provides for the development, rehabilitation, or improvement of buildings, structures, or facilities within the project area, the redevelopment agency may use any available funds, including moneys received pursuant to Section 33670, to provide credit enhancements, including, but not limited to, the ability to buy down interest rates, that are necessary for the project. Prior to entering into an agreement for a development that would be assisted pursuant to this section, the agency shall find, after a public hearing, that the assistance is necessary for the economic feasibility of the development and that the assistance cannot be obtained on economically feasible terms in the private sector.

33492.89. Notwithstanding any other provision of law, the March Joint Powers Redevelopment Agency shall not expend any tax-increment funds allocated to it for expenses related to carrying out the project until and unless the City of Perris adopts a housing element, pursuant to Section 65585 of the Government Code, that substantially complies with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

SEC. 3. The Legislature finds and declares that, because of the unique circumstances with regard to the particular conditions of blight intrinsic to the realignment of March Air Force Base, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution. The enactment of a special statute is therefore necessary.

CHAPTER 1171

An act to amend Sections 8235, 8236, and 8263 of, to add Section 8450 to, the Education Code, relating to child care.

[Approved by Governor September 29, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 8235 of the Education Code is amended to read:

8235. (a) The Superintendent of Public Instruction shall administer all state preschool programs in accordance with the funding priorities set forth in Section 8236. Those programs shall include, but not be limited to, part-day and preschool appropriate programs for prekindergarten children three to five years of age in educational development, health services, social services, nutritional services, parent education and parent participation, evaluation, and staff development. Preschool programs for which federal reimbursement is not available shall be funded as prescribed by the Legislature in the Budget Act, and unless otherwise specified by the Legislature, shall not utilize federal funds made available through Title XX of the Social Security Act (42 U.S.C. Sec. 1397).

(b) Federal Headstart funds used to provide services to families receiving state preschool services shall be deemed nonrestricted funds.

(c) Priority for receiving state preschool services shall be given to low-income families who meet the eligibility standards as established by the Superintendent of Public Instruction, in accordance with the priorities set forth in Section 8236.

(d) Reimbursement for state preschool programs shall be on a per capita basis, as determined by the Superintendent of Public Instruction.

(e) Any agency described in subdivision (c) of Section 8208 as an "applicant or contracting agency" is eligible to contract to operate a state preschool program.

SEC. 2. Section 8236 of the Education Code is amended to read:

8236. (a) For purposes of this section, the following definitions apply:

(1) "Eligible children" means children who are currently eligible for the state preschool program.

(2) "Local educational agency" means a school district, a county office of education, a community college district, or a school district on behalf of one or more schools within the school district.

(3) "Superintendent" means the Superintendent of Public Instruction.

(4) "Four-year-old children" means those children who will have their fourth birthday on or before December 2 of the fiscal year in

which they are enrolled in a state preschool program.

(5) "Three-year-old children" means those children who will have their third birthday on or before December 2 of the fiscal year in which they are enrolled in a state preschool program.

(b) (1) Each applicant or contracting agency funded pursuant to Section 8235 shall give first priority to neglected or abused children who are recipients of child protective services, or recipients who are at risk of being neglected or abused, upon written referral from a legal, medical, or social service agency. If an agency is unable to enroll a child in this first priority category, the agency shall refer the child's parent or guardian to local resource and referral services so that services for the child can be located.

(2) After children in the first priority category set forth in paragraph (1) are served, each agency funded pursuant to Section 8235 shall serve eligible four-year-old children prior to serving eligible three-year-old children. Each agency shall certify to the superintendent that enrollment priority is being given to eligible four-year-old children.

(3) Each agency shall report annually to the superintendent the numbers of four-year-old and three-year-old children enrolled in its state preschool programs at a point in time to be determined by the superintendent. The data shall be submitted in a manner and form prescribed by the superintendent. The superintendent shall annually transmit this information to the Legislature and the Governor by December 1 of each fiscal year.

(c) For state preschool programs operating with funding that was initially allocated in a prior fiscal year, at least half the children enrolled at a preschool site shall be four-year-olds. Any exception to this requirement shall be approved by the superintendent. The superintendent shall inform the Secretary of Child Development and Education of any exceptions that have been granted.

(d) The following provisions apply to the award of any new funding for the expansion of the state preschool program that is appropriated by the Legislature for that purpose in any fiscal year:

(1) In an application for those expansion funds, an agency shall furnish the superintendent with an estimate of the number of four-year-old and three-year-old children that it plans to serve in the following fiscal year with those expansion funds. The agency also shall furnish documentation that indicates the basis of those estimates.

(2) In awarding contracts for expansion pursuant to this subdivision, the superintendent, after taking into account the geographic criteria established pursuant to Section 8289, and the headquarters preferences and eligibility criteria relating to fiscal or programmatic noncompliance established pursuant to Section 8261, shall give priority to applicant agencies that, in expending the expansion funds, will be serving the highest percentage of four-year-old children.

(3) Agencies that receive funding for the expansion of a state

preschool program shall enroll children in the following priority order:

(A) Neglected or abused children who are recipients of child protective services, or recipients who are at risk of being neglected or abused, upon written referral from a legal, medical, or social services agency.

(B) Four-year-old children who are eligible for the state preschool program.

Otherwise, children shall be enrolled based on other statutory and regulatory priorities for the state preschool program.

(e) Nothing in this section shall be deemed to preclude a local educational agency from subcontracting with an appropriate public or private agency to operate a state preschool program and to apply for funds made available for the purposes of this section. If a school district chooses not to operate or subcontract for a state preschool program, the superintendent shall work with the county office of education and other eligible agencies to explore possible opportunities in contracting or alternative subcontracting to provide a state preschool program.

(f) Nothing in this section shall prevent eligible children who are currently receiving services from continuing to receive those services in future years pursuant to this chapter.

SEC. 3. Section 8263 of the Education Code is amended to read:

8263. (a) The Superintendent of Public Instruction shall adopt rules and regulations on eligibility, enrollment, and priority of services needed to implement this chapter. In order to be eligible for federal and state subsidized child development services, families shall meet at least one requirement in each of the following areas:

(1) A family is (A) a current aid recipient, (B) income eligible, (C) homeless, or (D) one whose children are recipients of protective services, or whose children have been identified as being abused, neglected, or exploited, or at risk of being abused, neglected, or exploited.

(2) A family needs the child care service because the child is identified by a legal, medical, social service agency, or emergency shelter as (A) a recipient of protective services, (B) being neglected, abused, or exploited, or at risk of neglect, abuse, or exploitation, or (C) having a medical or psychiatric special need which cannot be met without provision of child day care, or the parents are (i) engaged in vocational training leading directly to a recognized trade, paraprofession, or profession, (ii) employed or seeking employment, (iii) seeking permanent housing for family stability, or (iv) incapacitated, including a medical or psychiatric special need which cannot be met without provision of child day care.

(b) Priority for state and federally subsidized child development services is as follows:

(1) First priority shall be given to neglected or abused children who are recipients of child protective services, or recipients who are at risk of being neglected or abused, upon written referral from a

legal, medical, or social service agency. When an agency is unable to enroll a child in the first priority category, the agency shall refer the family to local resource and referral services to locate services for the child.

(2) Second priority shall be equally given to eligible families, regardless of the number of parents in the home, who are income eligible. Within this priority, families with the lowest gross monthly income in relation to family size, as determined by a schedule adopted by the superintendent, shall be admitted first. When two or more families are in the same priority in relation to income, the family that has been on the waiting list for the longest amount of time shall be admitted first. For purposes of determining order of admission, the grants of public assistance recipients shall be counted as income.

(3) The superintendent shall set criteria for, and may grant specific waivers of, the priorities established in this subdivision for agencies that wish to serve specific populations, including disabled children or children of prisoners. These new waivers shall not include proposals to avoid appropriate fee schedules or admit ineligible families, but may include proposals to accept members of special populations in other than strict income order, as long as appropriate fees are paid.

(c) Notwithstanding any other provision of law, in order to promote continuity of services, a family enrolled in a state or federally funded child care and development program whose services would otherwise be terminated because the family no longer meets the program income, eligibility, or need criteria may continue to receive child development services if the contractor is able to transfer the family's enrollment to another program for which the family continues to be eligible prior to the date of termination of services. The transfer of enrollment may be to another program within the same administrative agency or to another agency that administers state or federally funded child care and development programs within that county.

(d) A physical examination and evaluation, including age-appropriate immunization, shall be required prior to, or within six weeks of, enrollment. No standard, rule, or regulation shall require medical examination or immunization for admission to a child care and development program of a child whose parent or guardian files a letter with the governing board of the child care and development program stating that the medical examination or immunization is contrary to his or her religious beliefs, or provide for the exclusion of a child from the program because a parent or guardian has filed the letter. However, whenever there is good cause to believe that a child is suffering from a recognized contagious or infectious disease, the child shall be temporarily excluded from the program until the governing board of the child care and development program is satisfied that any contagious or infectious disease does not exist.

(e) Regulations formulated and promulgated pursuant to this section shall include the recommendations of the State Department of Health Services relative to health care screening and the provision of health care services. The superintendent shall seek the advice and assistance of these health authorities in situations where service under this chapter includes or requires care of ill or disabled children.

(f) The superintendent shall establish a fee schedule for families utilizing child care and development services pursuant to this chapter, which shall include, but not be limited to, the following restrictions:

(1) No fees shall be assessed for families whose children are enrolled in the state preschool program.

(2) A contractor or provider may require parents to provide diapers. A contractor or provider offering field trips either may include the cost of the field trips within the service rate charged to the parent or may charge parents an additional fee. No federal or state money shall be used to reimburse parents for the costs of field trips if those costs are charged as an additional fee. A contractor or provider that charges parents an additional fee for field trips shall inform parents, prior to enrolling the child, that a fee may be charged and that no reimbursement will be available. A contractor or provider may charge parents for field trips or require parents to provide diapers only under the following circumstances:

(A) The provider has a written policy that is adopted by the agency's governing board that includes parents in the decisionmaking process regarding both of the following:

(i) Whether or not, and how much, to charge for field trip expenses.

(ii) Whether or not to require parents to provide diapers.

(B) The maximum total of charges per child in a contract year does not exceed twenty-five dollars (\$25).

(C) No child is denied participation in a field trip due to the parent's inability or refusal to pay the charge. No adverse action shall be taken against any parent for that inability or refusal.

Each contractor or provider shall establish a payment system that prevents the identification of children based on whether or not their parents have paid a field trip charge.

Expenses incurred and income received for field trips pursuant to this section, shall be reported to the State Department of Education. The income received for field trips shall be reported specifically as restricted income.

(g) The superintendent shall establish guidelines for the collection of employer-sponsored child care benefit payments from any parent whose child receives subsidized child care and development services. These guidelines shall provide for the collection of the full amount of the benefit payment, not to exceed the actual cost of child care and development services provided, notwithstanding the applicable fee based on the fee schedule.

(h) The superintendent shall establish guidelines according to which the director or a duly authorized representative of the child care and development program will certify children as eligible for state reimbursement pursuant to this section.

(i) No public funds shall be paid directly or indirectly to any agency that does not pay at least the minimum wage to each of its employees.

SEC. 3.3. Section 8263 of the Education Code is amended to read:

8263. (a) The Superintendent of Public Instruction shall adopt rules and regulations on eligibility, enrollment, and priority of services needed to implement this chapter. In order to be eligible for federal and state subsidized child development services, families shall meet at least one requirement in each of the following areas:

(1) A family is (A) a current aid recipient, (B) income eligible, (C) homeless, or (D) one whose children are recipients of protective services, or whose children have been identified as being abused, neglected, or exploited, or at risk of being abused, neglected, or exploited.

(2) (A) A family needs the child care service because the child is identified by a legal, medical, or social service agency, or emergency shelter as (i) a recipient of protective services, (ii) being neglected, abused, or exploited, or at risk of neglect, abuse, or exploitation, or (iii) having a medical or psychiatric special need which cannot be met without provision of child day care.

(B) A family needs the child care services because the parent or relative caregiver is (i) engaged in vocational training leading directly to a recognized trade, paraprofession, or profession, (ii) employed or seeking employment, (iii) seeking permanent housing for family stability, (iv) incapacitated, including a medical or psychiatric special need which cannot be met without provision of child day care, or (v) the service is essential to family preservation and support.

(b) Priority for state and federally subsidized child development services is as follows:

(1) First priority shall be given to neglected or abused children who are recipients of child protective services, or recipients who are at risk of being neglected or abused, upon written referral from a legal, medical, or social service agency. When an agency is unable to enroll a child in the first priority category, the agency shall refer the family to local resource and referral services to locate services for the child.

(2) Second priority shall be equally given to eligible families, regardless of the number of parents in the home, who are income eligible. Within this priority, families with the lowest gross monthly income in relation to family size, as determined by a schedule adopted by the superintendent, shall be admitted first. When two or more families are in the same priority in relation to income, the family that has been on the waiting list for the longest amount of time shall be admitted first. For purposes of determining order of

admission, the grants of public assistance recipients shall be counted as income.

(3) The superintendent shall set criteria for, and may grant specific waivers of, the priorities established in this subdivision for agencies that wish to serve specific populations, including disabled children, children of prisoners, or children being cared for by grandparents or other relatives. These new waivers shall not include proposals to avoid appropriate fee schedules or admit ineligible families, but may include proposals to accept members of special populations in other than strict income order, as long as appropriate fees are paid.

(c) Notwithstanding any other provision of law, in order to promote continuity of services, a family enrolled in a state or federally funded child care and development program whose services would otherwise be terminated because the family no longer meets the program income, eligibility, or need criteria may continue to receive child development services if the contractor is able to transfer the family's enrollment to another program for which the family continues to be eligible prior to the date of termination of services. The transfer of enrollment may be to another program within the same administrative agency or to another agency that administers state or federally funded child care and development programs within that county.

(d) A physical examination and evaluation, including age-appropriate immunization, shall be required prior to, or within six weeks of, enrollment. No standard, rule, or regulation shall require medical examination or immunization for admission to a child care and development program of a child whose parent or guardian files a letter with the governing board of the child care and development program stating that the medical examination or immunization is contrary to his or her religious beliefs, or provide for the exclusion of a child from the program because a parent or guardian has filed the letter. However, whenever there is good cause to believe that a child is suffering from a recognized contagious or infectious disease, the child shall be temporarily excluded from the program until the governing board of the child care and development program is satisfied that any contagious or infectious disease does not exist.

(e) Regulations formulated and promulgated pursuant to this section shall include the recommendations of the State Department of Health Services relative to health care screening and the provision of health care services. The superintendent shall seek the advice and assistance of these health authorities in situations where service under this chapter includes or requires care of ill or disabled children.

(f) The superintendent shall establish a fee schedule for families utilizing child care and development services pursuant to this chapter which shall include, but not be limited to, the following restrictions:

(1) No fees shall be assessed for families whose children are enrolled in the state preschool program.

(2) A contractor or provider may require parents to provide diapers. A contractor or provider offering field trips either may include the cost of the field trips within the service rate charged to the parent or may charge parents an additional fee. No federal or state money shall be used to reimburse parents for the costs of field trips if those costs are charged as an additional fee. A contractor or provider that charges parents an additional fee for field trips shall inform parents, prior to enrolling the child, that a fee may be charged and that no reimbursement will be available. A contractor or provider may charge parents for field trips or require parents to provide diapers only under the following circumstances:

(A) The provider has a written policy that is adopted by the agency's governing board that includes parents in the decisionmaking process regarding both of the following:

(i) Whether or not, and how much, to charge for field trip expenses.

(ii) Whether or not to require parents to provide diapers.

(B) The maximum total of charges per child in a contract year does not exceed twenty-five dollars (\$25).

(C) No child is denied participation in a field trip due to the parent's inability or refusal to pay the charge. No adverse action shall be taken against any parent for that inability or refusal.

Each contractor or provider shall establish a payment system that prevents the identification of children based on whether or not their parents have paid a field trip charge.

Expenses incurred and income received for field trips pursuant to this section, shall be reported to the State Department of Education. The income received for field trips shall be reported specifically as restricted income.

(g) The superintendent shall establish guidelines for the collection of employer-sponsored child care benefit payments from any parent whose child receives subsidized child care and development services. These guidelines shall provide for the collection of the full amount of the benefit payment, but not to exceed the actual cost of child care and development services provided, notwithstanding the applicable fee based on the fee schedule.

(h) The superintendent shall establish guidelines according to which the director or a duly authorized representative of the child care and development program will certify children as eligible for state reimbursement pursuant to this section.

(i) No public funds shall be paid directly or indirectly to any agency that does not pay at least the minimum wage to each of its employees.

(j) For purposes of this section, "relative caregiver" means an adult head of the household who cares for one or more minor children whose parents are absent who is related to the minor or

minors by blood or affinity, including all relatives whose status is preceded by the words "step," "great," "great-great," or "grand."

(k) The State Department of Education shall report, by January 1, 1997, on both of the following:

(1) The number of families who have qualified for child care and development services pursuant to clause (v) of subparagraph (B) of paragraph (2) of subdivision (a).

(2) The number of families, if any, who otherwise would have received services pursuant to this section, but did not, because of the addition of clause (v) to subparagraph (B) of paragraph (2) of subdivision (a).

SEC. 3.5. Section 8263 of the Education Code is amended to read:

8263. (a) The Superintendent of Public Instruction shall adopt rules and regulations on eligibility, enrollment, and priority of services needed to implement this chapter. In order to be eligible for federal and state subsidized child development services, families shall meet at least one requirement in each of the following areas:

(1) A family is (A) a current aid recipient, (B) income eligible, (C) homeless, or (D) one whose children are recipients of protective services, or whose children have been identified as being abused, neglected, or exploited, or at risk of being abused, neglected, or exploited.

(2) A family needs the child care service because the child is identified by a legal, medical, social service agency, or emergency shelter as (A) a recipient of protective services, (B) being neglected, abused, or exploited, or at risk of neglect, abuse, or exploitation, or (C) having a medical or psychiatric special need which cannot be met without provision of child day care, or the parents are (i) engaged in vocational training leading directly to a recognized trade, paraprofession, or profession, (ii) employed or seeking employment, (iii) seeking permanent housing for family stability, or (iv) incapacitated, including a medical or psychiatric special need which cannot be met without provision of child day care.

(b) Priority for state and federally subsidized child development services is as follows:

(1) First priority shall be given to neglected or abused children who are recipients of child protective services, or recipients who are at risk of being neglected or abused, upon written referral from a legal, medical, or social service agency. When an agency is unable to enroll a child in the first priority category, the agency shall refer the family to local resource and referral services to locate services for the child.

(2) Second priority shall be equally given to eligible families, regardless of the number of parents in the home, who are income eligible. Within this priority, families with the lowest gross monthly income in relation to family size, as determined by a schedule adopted by the superintendent, shall be admitted first. When two or more families are in the same priority in relation to income, the family that has been on the waiting list for the longest amount of time

shall be admitted first. For purposes of determining order of admission, the grants of public assistance recipients shall be counted as income.

(3) The superintendent shall set criteria for, and may grant specific waivers of, the priorities established in this subdivision for agencies that wish to serve specific populations, including disabled children or children of prisoners. These new waivers shall not include proposals to avoid appropriate fee schedules or admit ineligible families, but may include proposals to accept members of special populations in other than strict income order, as long as appropriate fees are paid.

(c) Notwithstanding any other provision of law, in order to promote continuity of services, a family enrolled in a state or federally funded child care and development program whose services would otherwise be terminated because the family no longer meets the program income, eligibility, or need criteria may continue to receive child development services in another state or federally funded child care and development program if the contractor is able to transfer the family's enrollment to another program for which the family is eligible prior to the date of termination of services or to exchange the family's existing enrollment with the enrollment of a family in another program, provided that both families satisfy the eligibility requirements for the program in which they are being enrolled. The transfer of enrollment may be to another program within the same administrative agency or to another agency that administers state or federally funded child care and development programs within that county.

(d) A physical examination and evaluation, including age-appropriate immunization, shall be required prior to, or within six weeks of, enrollment. No standard, rule, or regulation shall require medical examination or immunization for admission to a child care and development program of a child whose parent or guardian files a letter with the governing board of the child care and development program stating that the medical examination or immunization is contrary to his or her religious beliefs, or provide for the exclusion of a child from the program because a parent or guardian has filed the letter. However, whenever there is good cause to believe that a child is suffering from a recognized contagious or infectious disease, the child shall be temporarily excluded from the program until the governing board of the child care and development program is satisfied that any contagious or infectious disease does not exist.

(e) Regulations formulated and promulgated pursuant to this section shall include the recommendations of the State Department of Health Services relative to health care screening and the provision of health care services. The superintendent shall seek the advice and assistance of these health authorities in situations where service under this chapter includes or requires care of ill or disabled children.

(f) The superintendent shall establish a fee schedule for families utilizing child care and development services pursuant to this chapter, which shall include, but not be limited to, the following restrictions:

(1) No fees shall be assessed for families whose children are enrolled in the state preschool program.

(2) A contractor or provider may require parents to provide diapers. A contractor or provider offering field trips either may include the cost of the field trips within the service rate charged to the parent or may charge parents an additional fee. No federal or state money shall be used to reimburse parents for the costs of field trips if those costs are charged as an additional fee. A contractor or provider that charges parents an additional fee for field trips shall inform parents, prior to enrolling the child, that a fee may be charged and that no reimbursement will be available. A contractor or provider may charge parents for field trips or require parents to provide diapers only under the following circumstances:

(A) The provider has a written policy that is adopted by the agency's governing board that includes parents in the decisionmaking process regarding both of the following:

(i) Whether or not, and how much, to charge for field trip expenses.

(ii) Whether or not to require parents to provide diapers.

(B) The maximum total of charges per child in a contract year does not exceed twenty-five dollars (\$25).

(C) No child is denied participation in a field trip due to the parent's inability or refusal to pay the charge. No adverse action shall be taken against any parent for that inability or refusal.

Each contractor or provider shall establish a payment system that prevents the identification of children based on whether or not their parents have paid a field trip charge.

Expenses incurred and income received for field trips pursuant to this section, shall be reported to the State Department of Education. The income received for field trips shall be reported specifically as restricted income.

(g) The superintendent shall establish guidelines for the collection of employer-sponsored child care benefit payments from any parent whose child receives subsidized child care and development services. These guidelines shall provide for the collection of the full amount of the benefit payment, but not to exceed the actual cost of child care and development services provided, notwithstanding the applicable fee based on the fee schedule.

(h) The superintendent shall establish guidelines according to which the director or a duly authorized representative of the child care and development program will certify children as eligible for state reimbursement pursuant to this section.

(i) No public funds shall be paid directly or indirectly to any agency that does not pay at least the minimum wage to each of its

employees.

SEC. 3.7. Section 8263 of the Education Code is amended to read:

8263. (a) The Superintendent of Public Instruction shall adopt rules and regulations on eligibility, enrollment, and priority of services needed to implement this chapter. In order to be eligible for federal and state subsidized child development services, families shall meet at least one requirement in each of the following areas:

(1) A family is (A) a current aid recipient, (B) income eligible, (C) homeless, or (D) one whose children are recipients of protective services, or whose children have been identified as being abused, neglected, or exploited, or at risk of being abused, neglected, or exploited.

(2) (A) A family needs the child care service because the child is identified by a legal, medical, or social service agency, or emergency shelter as (i) a recipient of protective services, (ii) being neglected, abused, or exploited, or at risk of neglect, abuse, or exploitation, or (iii) having a medical or psychiatric special need which cannot be met without provision of child day care.

(B) A family needs the child care services because the parent or relative caregiver is (i) engaged in vocational training leading directly to a recognized trade, paraprofession, or profession, (ii) employed or seeking employment, (iii) seeking permanent housing for family stability, or (iv) incapacitated, including a medical or psychiatric special need which cannot be met without provision of child day care, or (v) the service is essential to family preservation and support.

(b) Priority for state and federally subsidized child development services is as follows:

(1) First priority shall be given to neglected or abused children who are recipients of child protective services, or recipients who are at risk of being neglected or abused, upon written referral from a legal, medical, or social service agency. When an agency is unable to enroll a child in the first priority category, the agency shall refer the family to local resource and referral services to locate services for the child.

(2) Second priority shall be equally given to eligible families, regardless of the number of parents in the home, who are income eligible. Within this priority, families with the lowest gross monthly income in relation to family size, as determined by a schedule adopted by the superintendent, shall be admitted first. When two or more families are in the same priority in relation to income, the family that has been on the waiting list for the longest amount of time shall be admitted first. For purposes of determining order of admission, the grants of public assistance recipients shall be counted as income.

(3) The superintendent shall set criteria for, and may grant specific waivers of, the priorities established in this subdivision for agencies that wish to serve specific populations, including disabled children, children of prisoners, or children being cared for by

grandparents or other relatives. These new waivers shall not include proposals to avoid appropriate fee schedules or admit ineligible families, but may include proposals to accept members of special populations in other than strict income order, as long as appropriate fees are paid.

(c) Notwithstanding any other provision of law, in order to promote continuity of services, a family enrolled in a state or federally funded child care and development program whose services would otherwise be terminated because the family no longer meets the program income, eligibility, or need criteria may continue to receive child development services in another state or federally funded child care and development program if the contractor is able to transfer the family's enrollment to another program for which the family is eligible prior to the date of termination of services or to exchange the family's existing enrollment with the enrollment of a family in another program provided that both families satisfy the eligibility requirements for the program in which they are being enrolled. The transfer of enrollment may be to another program within the same administrative agency or to another agency that administers state or federally funded child care and development programs within that county.

(d) A physical examination and evaluation, including age-appropriate immunization, shall be required prior to, or within six weeks of, enrollment. No standard, rule, or regulation shall require medical examination or immunization for admission to a child care and development program of a child whose parent or guardian files a letter with the governing board of the child care and development program stating that the medical examination or immunization is contrary to his or her religious beliefs, or provide for the exclusion of a child from the program because a parent or guardian has filed the letter. However, whenever there is good cause to believe that a child is suffering from a recognized contagious or infectious disease, the child shall be temporarily excluded from the program until the governing board of the child care and development program is satisfied that any contagious or infectious disease does not exist.

(e) Regulations formulated and promulgated pursuant to this section shall include the recommendations of the State Department of Health Services relative to health care screening and the provision of health care services. The superintendent shall seek the advice and assistance of these health authorities in situations where service under this chapter includes or requires care of ill or disabled children.

(f) The superintendent shall establish a fee schedule for families utilizing child care and development services pursuant to this chapter, which shall include, but not be limited to, the following restrictions:

(1) No fees shall be assessed for families whose children are enrolled in the state preschool program.

(2) A contractor or provider may require parents to provide diapers. A contractor or provider offering field trips either may include the cost of the field trips within the service rate charged to the parent or may charge parents an additional fee. No federal or state money shall be used to reimburse parents for the costs of field trips if those costs are charged as an additional fee. A contractor or provider that charges parents an additional fee for field trips shall inform parents, prior to enrolling the child, that a fee may be charged and that no reimbursement will be available. A contractor or provider may charge parents for field trips or require parents to provide diapers only under the following circumstances:

(A) The provider has a written policy that is adopted by the agency's governing board that includes parents in the decisionmaking process regarding both of the following:

(i) Whether or not, and how much, to charge for field trip expenses.

(ii) Whether or not to require parents to provide diapers.

(B) The maximum total of charges per child in a contract year does not exceed twenty-five dollars (\$25).

(C) No child is denied participation in a field trip due to the parent's inability or refusal to pay the charge. No adverse action shall be taken against any parent for that inability or refusal.

Each contractor or provider shall establish a payment system that prevents the identification of children based on whether or not their parents have paid a field trip charge.

Expenses incurred and income received for field trips pursuant to this section, shall be reported to the State Department of Education. The income received for field trips shall be reported specifically as restricted income.

(g) The superintendent shall establish guidelines for the collection of employer-sponsored child care benefit payments from any parent whose child receives subsidized child care and development services. These guidelines shall provide for the collection of the full amount of the benefit payment, but not to exceed the actual cost of child care and development services provided, notwithstanding the applicable fee based on the fee schedule.

(h) The superintendent shall establish guidelines according to which the director or a duly authorized representative of the child care and development program will certify children as eligible for state reimbursement pursuant to this section.

(i) No public funds shall be paid directly or indirectly to any agency that does not pay at least the minimum wage to each of its employees.

(j) For purposes of this section, "relative caregiver" means an adult head of the household who cares for one or more minor children whose parents are absent who is related to the minor or minors by blood or affinity, including all relatives whose status is preceded by the words "step," "great," "great-great," or "grand."

(k) The State Department of Education shall report, by January 1, 1997, on both of the following:

(1) The number of families who have qualified for child care and development services pursuant to clause (v) of subparagraph (B) of paragraph (2) of subdivision (a).

(2) The number of families, if any, who otherwise would have received services pursuant to this section, but did not, because of the addition of clause (v) to subparagraph (B) of paragraph (2) of subdivision (a).

SEC. 4. Section 8450 is added to the Education Code, to read:

8450. (a) All child development contractors are encouraged to develop and maintain a reserve within the child development fund, derived from earned but unexpended funds. For the purpose of this section, "earned funds" are those for which the required number of eligible service units have been provided.

(b) In calculating the amount of final reimbursement for each contractor, the State Department of Education shall include all actual and allowable net costs, plus the amount of earned but unexpended funds added to the reserve fund in that fiscal year, as specified in subdivision (c). The total of actual and allowable net costs, plus that addition to the reserve fund, shall not exceed the maximum reimbursable amount of the contract or the contracted rate per unit of service, multiplied by the actual total services provided.

(c) A contractor may retain a reserve fund balance equal to 2 percent of the sum of the maximum reimburseable amounts of all contracts to which the contractor is a party, or two thousand dollars (\$2,000), whichever is greater. This subdivision does not apply to resource and referral programs or to alternative payment model and certificate child care contracts.

(d) Notwithstanding subdivisions (a) and (b), a contractor may retain a reserve fund balance for a resource and referral program, separate from the balance retained pursuant to subdivision (c), not to exceed 3 percent of the contract amount.

(e) Notwithstanding subdivisions (a) and (b), a contractor may retain a reserve fund for alternative payment model and certificate child care contracts, separate from the reserve fund retained pursuant to subdivisions (c) and (d), in an amount equal to either of the following, whichever is greater:

(1) Two percent of the sum of the parts of each contract to which that contractor is a party that is allowed for administration pursuant to Section 8276.7 and that is allowed for supportive services pursuant to the provisions of the contract.

(2) One thousand dollars (\$1,000).

(f) Each contractor's audit shall identify any funds earned by the contractor for each contract through the provision of contracted services in excess of funds expended.

(g) Any interest earned on reserve funds shall be included in the fund balance of the reserve. This reserve fund shall be maintained

in an interest-bearing account.

(h) Moneys in a contractor's reserve fund shall be used only for expenses which are reimbursable allowable expenses under Section 8265.

(i) Any reserve fund balance in excess of the amount authorized pursuant to subdivisions (c) and (d) shall be returned to the State Department of Education pursuant to procedures established by the department and reappropriated as second-year funds consistent with Section 8278.

(j) Upon termination of all child development contracts between a contractor and the State Department of Education, all moneys in a contractor's reserve fund shall be returned to the department pursuant to procedures established by the department, and reappropriated as second-year funds consistent with Section 8278.

(k) Expenditures from, additions to, and balances in, the reserve fund shall be included in the agency's annual financial statements and audit.

SEC. 5. (a) Section 3.3 of this bill incorporates amendments to Section 8263 of the Education Code proposed by both this bill and AB 2869. It shall only become operative if (1) both bills are enacted and become effective January 1, 1995, (2) each bill amends Section 8263 of the Education Code, and (3) AB 2971 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2869, in which case Sections 3, 3.5, and 3.7 of this bill shall not become operative.

(b) Section 3.5 of this bill incorporates amendments to Section 8263 of the Education Code proposed by both this bill and AB 2971. It shall only become operative if (1) both bills are enacted and become effective January 1, 1995, (2) each bill amends Section 8263 of the Education Code, (3) AB 2869 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2971, in which case Sections 3, 3.3, and 3.7 of this bill shall not become operative.

(c) Section 3.7 of this bill incorporates amendments to Section 8263 of the Education Code proposed by this bill, AB 2869, and AB 2971. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1995, (2) all three bills amend Section 8263 of the Education Code, and (3) this bill is enacted after AB 2869 and AB 2971, in which case Sections 3, 3.3, and 3.5 of this bill shall not become operative.

CHAPTER 1172

An act to amend Sections 8208, 8250.5, 8263, 42267, 46010, 46010.2, 46010.5, and 52048 of, to add Section 52335.8 to, to add Article 4.5 (commencing with Section 48987) to Chapter 6 of Part 27 of, to repeal Sections 37673 and 56366.1 of, and to repeal and add Sections 2550.4, 42238.8, 56365, 56366, 56366.2, and 56740 of, the Education Code, to amend Section 11008.19 of the Welfare and Institutions Code, and to amend Items 6110-161-001 and 6110-230-001 of Section 2.00 of the Budget Act of 1994, relating to education, and making an appropriation therefor.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 2550.4 of the Education Code is repealed.

SEC. 2. Section 2550.4 is added to the Education Code, to read:

2550.4. Any county superintendent of schools may request permission from the Superintendent of Public Instruction to calculate the days of attendance in schools and classes maintained by that county superintendent of schools, for the 1994–95 fiscal year, or any later fiscal year, and the succeeding fiscal years thereafter, as provided in Section 46010.2. The Superintendent of Public Instruction shall, subject to the approval of the Director of Finance, approve the request and verify the percentages that are determined pursuant to subdivision (b) of Section 46010.2 for schools and classes maintained by the county superintendent that has made the request.

SEC. 3. Section 8208 of the Education Code is amended to read: 8208. As used in this chapter:

(a) “Assigned reimbursement rate” is that rate established by the contract with the agency and is derived by dividing the total dollar amount of the contract by the minimum child day of average daily enrollment level of service required.

(b) “Alternative payments” includes payments that are made by one child care agency to another agency or child care provider for the provision of child care and development services, and payments that are made by an agency to a parent for the parent’s purchase of child care and development services.

(c) “Applicant or contracting agency” means a school district, community college district, college or university, county superintendent of schools, county, city, public agency, private non-tax-exempt agency, private tax-exempt agency, or other entity that is authorized to establish, maintain, or operate services pursuant to this chapter. Private agencies and parent cooperatives, duly licensed by law, shall receive the same consideration as any other authorized entity with no loss of parental decisionmaking prerogatives as consistent with the provisions of this chapter.

(d) "Attendance" means the number of children present at a child care and development facility. "Attendance," for the purposes of reimbursement, includes excused absences by children because of illness, quarantine, illness or quarantine of their parent, family emergency, or to spend time with a parent or other relative as required by a court of law or that is clearly in the best interest of the child.

(e) "Capital outlay" means the amount paid for the renovation and repair of child care and development facilities to comply with state and local health and safety standards, and the amount paid for the state purchase of relocatable child care and development facilities for lease to qualifying contracting agencies.

(f) "Caregiver" means a person who provides direct care, supervision, and guidance to children in a child care and development facility.

(g) "Child care and development facility" means any residence or building or part thereof in which child care and development services are provided.

(h) "Child care and development programs" means those programs that offer a full range of services for children from infancy to 14 years of age, for any part of a day, by a public or private agency, in centers and family child care homes. These programs include, but are not limited to, all of the following:

- (1) Campus child care and development.
- (2) General child care and development.
- (3) Intergenerational child care and development.
- (4) Migrant child care and development.
- (5) Schoolage parenting and infant development.
- (6) State preschool.
- (7) Resource and referral.
- (8) Severely handicapped.
- (9) Family day care.
- (10) Alternative payment.
- (11) Child abuse protection and prevention services.
- (12) Schoolage community child care.

(i) "Short-term respite child care" means child care service to assist families whose children have been identified through written referral from a legal, medical, social service agency, or emergency shelter as being neglected, abused, exploited, or homeless, or at risk of being neglected, abused, exploited, or homeless. Child care is provided for less than 24 hours per day in child care centers, treatment centers for abusive parents, family child care homes, or in the child's own home.

(j) "Child care and development services" means those services designed to meet a wide variety of needs of children and their families, while their parents or guardians are working, in training, seeking employment, incapacitated, or in need of respite. These services include direct care and supervision, instructional activities, resource and referral programs, and alternative payment

arrangements.

(k) "Children at risk of abuse, neglect, or exploitation" means children who are so identified in a written referral from a legal, medical, or social service agency, or emergency shelter.

(l) "Children with exceptional needs" means children who have been determined to be eligible for special education and related services by an individualized education program team according to the special education requirements contained in Part 30 (commencing with Section 56000), and meeting eligibility criteria described in Section 56026 and Sections 56333 to 56338, inclusive, and Sections 3030 and 3031 of Title 5 of the California Code of Regulations. These children have an active individualized education program, and are receiving appropriate special education and services, unless they are under three years of age and permissive special education programs are available. These children may be mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multihandicapped, or children with specific learning disabilities, who require the special attention of adults in a child care setting.

(m) "Children with special needs" includes infants and toddlers under the age of three years; limited-English-speaking-proficient children; children with exceptional needs; limited-English-proficient handicapped children; and children at risk of neglect, abuse, or exploitation.

(n) "Closedown costs" means reimbursements for all approved activities associated with the closing of operations at the end of each growing season for migrant child development programs only.

(o) "Cost" includes, but is not limited to, expenditures that are related to the operation of child development programs. "Cost" may include a reasonable amount for state and local contributions to employee benefits, including approved retirement programs, agency administration, and any other reasonable program operational costs.

(p) "Elementary school," as contained in Section 425 of Title 20 of the United States Code (the National Defense Education Act of 1958, Public Law 85-864, as amended), includes early childhood education programs and all child development programs, for the purpose of the cancellation provisions of loans to students in institutions of higher learning.

(q) "Severely handicapped children" are children who require instruction and training in programs serving pupils with the following profound disabilities: autism, blindness, deafness, severe orthopedic impairments, serious emotional disturbance, or severe mental retardation. These children, ages birth to 21 years, inclusive, may be assessed by public school special education staff, regional center staff, or another appropriately licensed clinical professional.

(r) "Health services" includes, but is not limited to, all of the following:

(1) Referral, whenever possible, to appropriate health care providers able to provide continuity of medical care.

(2) Health screening and health treatment, including a full range of immunization recorded on the appropriate state immunization form to the extent provided by the Medi-Cal Act (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code) and the Child Health and Disability Prevention Program (Article 3.4 (commencing with Section 320) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code), but only to the extent that ongoing care cannot be obtained utilizing community resources.

(3) Health education and training for children, parents, staff, and providers.

(4) Followup treatment through referral to appropriate health care agencies or individual health care professionals.

(s) "Higher educational institutions" means the Regents of the University of California, the Trustees of the California State University, the Board of Governors of the California Community Colleges, and the governing bodies of any accredited private nonprofit institution of postsecondary education.

(t) "Intergenerational staff" means persons of various generations.

(u) "Limited-English-speaking-proficient and non-English-speaking-proficient children" means children who are unable to benefit fully from an English-only child care and development program as a result of either of the following:

(1) Having used a language other than English when they first began to speak.

(2) Having a language other than English predominantly or exclusively spoken at home.

(v) "Parent" means any person living with a child who has responsibility for the care and welfare of the child.

(w) "Program director" means a person who, pursuant to Sections 8244 and 8360.1, is qualified to serve as a program director.

(x) A "proprietary child care agency" means an organization or facility providing child care, which is operated for profit.

(y) "Resource and referral programs" means programs that provide information to parents, including referrals and coordination of community resources for parents and public or private providers of care. Services frequently include, but are not limited to: technical assistance for providers, toy-lending libraries, equipment-lending libraries, toy- and equipment-lending libraries, staff development programs, health and nutrition education, and referrals to social services.

(z) "Site supervisor" means a person who, regardless of his or her title, has operational program responsibility for a child care and development program at a single site. A site supervisor shall hold a regular children's center instructional permit, and shall have completed not less than six units of administration and supervision

of early childhood education or child development, or both. The Superintendent of Public Instruction may waive the requirements of this subdivision if the superintendent determines that the existence of compelling need is appropriately documented.

In respect to state preschool programs, a site supervisor may qualify under any of the provisions in this subdivision, or may qualify by holding an administrative credential or an administrative services credential. A person who meets the qualifications of a site supervisor under both Section 8244 and subdivision (e) of Section 8360.1 is also qualified under this subdivision.

(aa) "Standard reimbursement rate" means that rate established by the Superintendent of Public Instruction pursuant to Section 8265.

(bb) "Startup costs" means those expenses an agency incurs in the process of opening a new or additional facility prior to the full enrollment of children.

(cc) "State preschool services" means part-day educational programs for low-income or otherwise disadvantaged prekindergarten-age children.

(dd) "Support services" means those services which, when combined with child care and development services, help promote the healthy physical, mental, social, and emotional growth of children. Support services include, but are not limited to: protective services, parent training, provider and staff training, transportation, parent and child counseling, child development resource and referral services, and child placement counseling.

(ee) "Teacher" means a person with the appropriate certificate who provides program supervision and instruction which includes supervision of a number of aides, volunteers, and groups of children.

(ff) "Workday" means the time that the parent requires temporary care for a child for any of the following reasons:

- (1) To undertake training in preparation for a job.
- (2) To undertake or retain a job.
- (3) To undertake other activities that are essential to maintaining or improving the social and economic function of the family, are beneficial to the community, or are required because of health problems in the family.

SEC. 4. Section 8250.5 of the Education Code is amended to read:
8250.5. A contractor providing services pursuant to a general child care contract, a campus child care contract, a migrant child care contract, or an alternative payment child care contract is subject to the requirements of the Americans with Disabilities Act (42 U.S.C. Sec. 12101, et seq.).

SEC. 5. Section 8263 of the Education Code is amended to read:
8263. (a) The Superintendent of Public Instruction shall adopt rules and regulations on eligibility, enrollment, and priority of services needed to implement this chapter. In order to be eligible for federal and state subsidized child development services, families shall meet at least one requirement in each of the following areas:

- (1) A family shall be (A) a current aid recipient, (B) income

eligible, (C) homeless, or (D) one whose children are recipients of protective services, or whose children have been identified as being abused, neglected, or exploited, or at risk of being abused, neglected, or exploited.

(2) A family shall need the child care service because the child is identified by a legal, medical, social service agency, or emergency shelter as being (A) a recipient of protective services, (B) being neglected, abused, or exploited, or at risk of neglect, abuse, or exploitation, or (C) having a medical or psychiatric special need which cannot be met without provision of child day care, or the parents are (i) engaged in vocational training leading directly to a recognized trade, paraprofession, or profession, (ii) employed or seeking employment, (iii) seeking permanent housing for family stability, or (iv) incapacitated, including a medical or psychiatric special need which cannot be met without provision of child day care.

(b) Priority for state and federally subsidized child development services shall be as follows:

(1) First priority shall be given to recipients of child protective services for children who are neglected or abused, or at risk of being neglected or abused, upon written referral from a legal, medical, or social service agency. When an agency is unable to enroll a child in the first priority category, the agency shall refer the family to local resource and referral services to locate services for the child.

(2) Second priority shall be equally given to eligible families, regardless of the number of parents in the home, who are income eligible. Within this priority, families with the lowest gross monthly income in relation to family size, as determined by a schedule adopted by the superintendent, shall be admitted first. When two or more families are in the same priority in relation to income, the family which has been on the waiting list for the longest amount of time shall be admitted first. For purposes of determining order of admission, the grants of public assistance recipients shall be counted as income.

(3) The superintendent shall set criteria for and may grant specific waivers of the priorities established in this subdivision for agencies that wish to serve specific populations, including handicapped children or children of prisoners. These new waivers shall not include proposals to avoid appropriate fee schedules or admit ineligible families, but may include proposals to accept members of special populations in other than strict income order, as long as appropriate fees are paid.

(4) Notwithstanding any other provision of law, in order to promote continuity of services, a family enrolled in a state or federally funded child care and development program whose services would otherwise be terminated because the family no longer meets the program income, eligibility, or need criteria may continue to receive child development services in another state or federally funded child care and development program if the contractor is able

to transfer the family's enrollment to another program for which the family is eligible prior to the date of termination of services or to exchange the family's existing enrollment with the enrollment of a family in another program, providing both families satisfy the eligibility requirements for the program in which they are being enrolled. The transfer of enrollment may be to another program within the same administrative agency or to another agency that administers state or federally funded child care and development programs within that county.

(c) A physical examination and evaluation, including age-appropriate immunization, shall be required prior to, or within six weeks of, enrollment. No standard, rule, or regulation shall require medical examination or immunization for admission to a child care and development program of a child whose parent or guardian files a letter with the governing board of the child care and development program stating that the medical examination or immunization is contrary to his or her religious beliefs, or provide for the exclusion of a child from the program because of a parent or guardian having filed the letter. However, whenever there is good cause to believe that a child is suffering from a recognized contagious or infectious disease, the child shall be temporarily excluded from the program until the governing board of the child care and development program is satisfied that any contagious or infectious disease does not exist.

(d) Regulations formulated and promulgated pursuant to this section shall include the recommendations of the State Department of Health Services relative to health care screening and the provision of health care services. The superintendent shall seek the advice and assistance of these health authorities in situations where service under this chapter includes or requires care of ill or disabled children.

(e) The superintendent shall establish a fee schedule for families utilizing child care and development services pursuant to this chapter. No fees shall be assessed for families whose children are enrolled in the state preschool program.

(f) The superintendent shall establish guidelines for the collection of employer-sponsored child care benefit payments from any parent whose child receives subsidized child care and development services. These guidelines shall provide for the collection of the full amount of the benefit payment, but not to exceed the actual cost of child care and development services provided, notwithstanding the applicable fee based on the fee schedule.

(g) The superintendent shall establish guidelines according to which the director or a duly authorized representative of the child care and development program will certify children as eligible for state reimbursement pursuant to this section.

(h) No public funds shall be paid directly or indirectly to any agency which does not pay at least the minimum wage to each of its employees.

SEC. 5.3. Section 8263 of the Education Code is amended to read: 8263. (a) The Superintendent of Public Instruction shall adopt rules and regulations on eligibility, enrollment, and priority of services needed to implement this chapter. In order to be eligible for federal and state subsidized child development services, families shall meet at least one requirement in each of the following areas:

(1) A family is (A) a current aid recipient, (B) income eligible, (C) homeless, or (D) one whose children are recipients of protective services, or whose children have been identified as being abused, neglected, or exploited, or at risk of being abused, neglected, or exploited.

(2) A family needs the child care service because the child is identified by a legal, medical, social service agency, or emergency shelter as (A) a recipient of protective services, (B) being neglected, abused, or exploited, or at risk of neglect, abuse, or exploitation, or (C) having a medical or psychiatric special need which cannot be met without provision of child day care, or the parents are (i) engaged in vocational training leading directly to a recognized trade, paraprofession, or profession, (ii) employed or seeking employment, (iii) seeking permanent housing for family stability, or (iv) incapacitated, including a medical or psychiatric special need which cannot be met without provision of child day care.

(b) Priority for state and federally subsidized child development services is as follows:

(1) First priority shall be given to neglected or abused children who are recipients of child protective services, or recipients who are at risk of being neglected or abused, upon written referral from a legal, medical, or social service agency. When an agency is unable to enroll a child in the first priority category, the agency shall refer the family to local resource and referral services to locate services for the child.

(2) Second priority shall be equally given to eligible families, regardless of the number of parents in the home, who are income eligible. Within this priority, families with the lowest gross monthly income in relation to family size, as determined by a schedule adopted by the superintendent, shall be admitted first. When two or more families are in the same priority in relation to income, the family that has been on the waiting list for the longest amount of time shall be admitted first. For purposes of determining order of admission, the grants of public assistance recipients shall be counted as income.

(3) The superintendent shall set criteria for and may grant specific waivers of the priorities established in this subdivision for agencies that wish to serve specific populations, including disabled children or children of prisoners. These new waivers shall not include proposals to avoid appropriate fee schedules or admit ineligible families, but may include proposals to accept members of special populations in other than strict income order, as long as appropriate fees are paid.

(c) Notwithstanding any other provision of law, in order to promote continuity of services, a family enrolled in a state or federally funded child care and development program whose services would otherwise be terminated because the family no longer meets the program income, eligibility, or need criteria may continue to receive child development services in another state or federally funded child care and development program if the contractor is able to transfer the family's enrollment to another program for which the family is eligible prior to the date of termination of services or to exchange the family's existing enrollment with the enrollment of a family in another program, provided that both families satisfy the eligibility requirements for the program in which they are being enrolled. The transfer of enrollment may be to another program within the same administrative agency or to another agency that administers state or federally funded child care and development programs within that county.

(d) A physical examination and evaluation, including age-appropriate immunization, shall be required prior to, or within six weeks of, enrollment. No standard, rule, or regulation shall require medical examination or immunization for admission to a child care and development program of a child whose parent or guardian files a letter with the governing board of the child care and development program stating that the medical examination or immunization is contrary to his or her religious beliefs, or provide for the exclusion of a child from the program because of a parent or guardian having filed the letter. However, whenever there is good cause to believe that a child is suffering from a recognized contagious or infectious disease, the child shall be temporarily excluded from the program until the governing board of the child care and development program is satisfied that any contagious or infectious disease does not exist.

(e) Regulations formulated and promulgated pursuant to this section shall include the recommendations of the State Department of Health Services relative to health care screening and the provision of health care services. The superintendent shall seek the advice and assistance of these health authorities in situations where service under this chapter includes or requires care of ill or disabled children.

(f) The superintendent shall establish a fee schedule for families utilizing child care and development services pursuant to this chapter, which shall include, but not be limited to, the following restrictions:

(1) No fees shall be assessed for families whose children are enrolled in the state preschool program.

(2) A contractor or provider may require parents to provide diapers. A contractor or provider offering field trips either may include the cost of the field trips within the service rate charged to the parent or may charge parents an additional fee. No federal or state money shall be used to reimburse parents for the costs of field

trips if those costs are charged as an additional fee. A contractor or provider that charges parents an additional fee for field trips shall inform parents, prior to enrolling the child, that a fee may be charged and that no reimbursement will be available. A contractor or provider may charge parents for field trips or require parents to provide diapers only under the following circumstances:

(A) The provider has a written policy that is adopted by the agency's governing board that includes parents in the decisionmaking process regarding both of the following:

(i) Whether or not, and how much, to charge for field trip expenses.

(ii) Whether or not to require parents to provide diapers.

(B) The maximum total of charges per child in a contract year does not exceed twenty-five dollars (\$25).

(C) No child is denied participation in a field trip due to the parent's inability or refusal to pay the charge. No adverse action shall be taken against any parent for that inability or refusal.

Each contractor or provider shall establish a payment system that prevents the identification of children based on whether or not their parents have paid a field trip charge.

Expenses incurred and income received for field trips pursuant to this section, shall be reported to the State Department of Education. The income received for field trips shall be reported specifically as restricted income.

(g) The superintendent shall establish guidelines for the collection of employer-sponsored child care benefit payments from any parent whose child receives subsidized child care and development services. These guidelines shall provide for the collection of the full amount of the benefit payment, but not to exceed the actual cost of child care and development services provided, notwithstanding the applicable fee based on the fee schedule.

(h) The superintendent shall establish guidelines according to which the director or a duly authorized representative of the child care and development program will certify children as eligible for state reimbursement pursuant to this section.

(i) No public funds shall be paid directly or indirectly to any agency that does not pay at least the minimum wage to each of its employees.

SEC. 5.5. Section 8263 of the Education Code is amended to read:

8263. (a) The Superintendent of Public Instruction shall adopt rules and regulations on eligibility, enrollment, and priority of services needed to implement this chapter. In order to be eligible for federal and state subsidized child development services, families shall meet at least one requirement in each of the following areas:

(1) A family is (A) a current aid recipient, (B) income eligible, (C) homeless, or (D) one whose children are recipients of protective services, or whose children have been identified as being abused, neglected, or exploited, or at risk of being abused, neglected, or

exploited.

(2) (A) A family needs the child care service because the child is identified by a legal, medical, social service agency, or emergency shelter as (i) a recipient of protective services, (ii) being neglected, abused, or exploited, or at risk of neglect, abuse, or exploitation, or (iii) having a medical or psychiatric special need which cannot be met without provision of child day care.

(B) A family needs the child care service because the parent or relative caregiver is (i) engaged in vocational training leading directly to a recognized trade, paraprofession, or profession, (ii) employed or seeking employment, (iii) seeking permanent housing for family stability, (iv) incapacitated, including a medical or psychiatric special need which cannot be met without provision of child day care, or (v) the service is essential to family preservation and support.

(b) Priority for state and federally subsidized child development services shall be as follows:

(1) First priority shall be given to recipients of child protective services for children who are neglected or abused, or at risk of being neglected or abused, upon written referral from a legal, medical, or social service agency. When an agency is unable to enroll a child in the first priority category, the agency shall refer the family to local resource and referral services to locate services for the child.

(2) Second priority shall be equally given to eligible families, regardless of the number of parents in the home, who are income eligible. Within this priority, families with the lowest gross monthly income in relation to family size, as determined by a schedule adopted by the superintendent, shall be admitted first. When two or more families are in the same priority in relation to income, the family which has been on the waiting list for the longest amount of time shall be admitted first. For purposes of determining order of admission, the grants of public assistance recipients shall be counted as income.

(3) The superintendent shall set criteria for and may grant specific waivers of the priorities established in this subdivision for agencies that wish to serve specific populations, including handicapped children, children of prisoners, or children being cared for by grandparents or other relatives. These new waivers shall not include proposals to avoid appropriate fee schedules or admit ineligible families, but may include proposals to accept members of special populations in other than strict income order, as long as appropriate fees are paid.

(c) Notwithstanding any other provision of law, in order to promote continuity of services, a family enrolled in a state or federally funded child care and development program whose services would otherwise be terminated because the family no longer meets the program income, eligibility, or need criteria may continue to receive child development services in another state or federally funded child care and development program if the contractor is able

to transfer the family's enrollment to another program for which the family is eligible prior to the date of termination of services or to exchange the family's existing enrollment with the enrollment of a family in another program, provided that both families satisfy the eligibility requirements for the program in which they are being enrolled. The transfer of enrollment may be to another program within the same administrative agency or to another agency that administers state or federally funded child care and development programs within that county.

(d) A physical examination and evaluation, including age-appropriate immunization, shall be required prior to, or within six weeks of, enrollment. No standard, rule, or regulation shall require medical examination or immunization for admission to a child care and development program of a child whose parent or guardian files a letter with the governing board of the child care and development program stating that the medical examination or immunization is contrary to his or her religious beliefs, or provide for the exclusion of a child from the program because of a parent or guardian having filed the letter. However, whenever there is good cause to believe that a child is suffering from a recognized contagious or infectious disease, the child shall be temporarily excluded from the program until the governing board of the child care and development program is satisfied that any contagious or infectious disease does not exist.

(e) Regulations formulated and promulgated pursuant to this section shall include the recommendations of the State Department of Health Services relative to health care screening and the provision of health care services. The superintendent shall seek the advice and assistance of these health authorities in situations where service under this chapter includes or requires care of ill or disabled children.

(f) The superintendent shall establish a fee schedule for families utilizing child care and development services pursuant to this chapter. No fees shall be assessed for families whose children are enrolled in the state preschool program.

(g) The superintendent shall establish guidelines for the collection of employer-sponsored child care benefit payments from any parent whose child receives subsidized child care and development services. These guidelines shall provide for the collection of the full amount of the benefit payment, but not to exceed the actual cost of child care and development services provided, notwithstanding the applicable fee based on the fee schedule.

(h) The superintendent shall establish guidelines according to which the director or a duly authorized representative of the child care and development program will certify children as eligible for state reimbursement pursuant to this section.

(i) No public funds shall be paid directly or indirectly to any agency which does not pay at least the minimum wage to each of its

employees.

(j) For purposes of this section, "relative caregiver" means an adult head of the household who cares for one or more minor children whose parents are absent who is related to the minor or minors by blood or affinity, including all relatives whose status is preceded by the words "step," "great," "great-great," or "grand."

(k) The State Department of Education shall report, by January 1, 1997, on both of the following:

(1) The number of families who have qualified for child care and development services pursuant to clause (v) of subparagraph (B) of paragraph (2) of subdivision (a).

(2) The number of families, if any, who otherwise would have received services pursuant to this section, but did not, because of the addition of clause (v) to subparagraph (B) of paragraph (2) of subdivision (a).

SEC. 5.7. Section 8263 of the Education Code is amended to read:

8263. (a) The Superintendent of Public Instruction shall adopt rules and regulations on eligibility, enrollment, and priority of services needed to implement this chapter. In order to be eligible for federal and state subsidized child development services, families shall meet at least one requirement in each of the following areas:

(1) A family is (A) a current aid recipient, (B) income eligible, (C) homeless, or (D) one whose children are recipients of protective services, or whose children have been identified as being abused, neglected, or exploited, or at risk of being abused, neglected, or exploited.

(2) (A) A family needs the child care service because the child is identified by a legal, medical, social service agency, or emergency shelter as (i) a recipient of protective services, (ii) being neglected, abused, or exploited, or at risk of neglect, abuse, or exploitation, or (iii) having a medical or psychiatric special need which cannot be met without provision of child day care.

(B) A family needs the child care service because the parent or relative caregiver is (i) engaged in vocational training leading directly to a recognized trade, paraprofession, or profession, (ii) employed or seeking employment, (iii) seeking permanent housing for family stability, (iv) incapacitated, including a medical or psychiatric special need which cannot be met without provision of child day care, or (v) the service is essential to family preservation and support.

(b) Priority for state and federally subsidized child development services is as follows:

(1) First priority shall be given to neglected or abused children who are recipients of child protective services, or recipients who are at risk of being neglected or abused, upon written referral from a legal, medical, or social service agency. When an agency is unable to enroll a child in the first priority category, the agency shall refer the family to local resource and referral services to locate services for the child.

(2) Second priority shall be equally given to eligible families, regardless of the number of parents in the home, who are income eligible. Within this priority, families with the lowest gross monthly income in relation to family size, as determined by a schedule adopted by the superintendent, shall be admitted first. When two or more families are in the same priority in relation to income, the family that has been on the waiting list for the longest amount of time shall be admitted first. For purposes of determining order of admission, the grants of public assistance recipients shall be counted as income.

(3) The superintendent shall set criteria for, and may grant specific waivers of, the priorities established in this subdivision for agencies that wish to serve specific populations, including disabled children, children of prisoners, or children being cared for by grandparents or other relatives. These new waivers shall not include proposals to avoid appropriate fee schedules or admit ineligible families, but may include proposals to accept members of special populations in other than strict income order, as long as appropriate fees are paid.

(c) Notwithstanding any other provision of law, in order to promote continuity of services, a family enrolled in a state or federally funded child care and development program whose services would otherwise be terminated because the family no longer meets the program income, eligibility, or need criteria may continue to receive child development services in another state or federally funded child care and development program if the contractor is able to transfer the family's enrollment to another program for which the family is eligible prior to the date of termination of services or to exchange the family's existing enrollment with the enrollment of a family in another program, provided that both families satisfy the eligibility requirements for the program in which they are being enrolled. The transfer of enrollment may be to another program within the same administrative agency or to another agency that administers state or federally funded child care and development programs within that county.

(d) A physical examination and evaluation, including age-appropriate immunization, shall be required prior to, or within six weeks of, enrollment. No standard, rule, or regulation shall require medical examination or immunization for admission to a child care and development program of a child whose parent or guardian files a letter with the governing board of the child care and development program stating that the medical examination or immunization is contrary to his or her religious beliefs, or provide for the exclusion of a child from the program because a parent or guardian has filed the letter. However, whenever there is good cause to believe that a child is suffering from a recognized contagious or infectious disease, the child shall be temporarily excluded from the program until the governing board of the child care and development program is satisfied that any contagious or infectious

disease does not exist.

(e) Regulations formulated and promulgated pursuant to this section shall include the recommendations of the State Department of Health Services relative to health care screening and the provision of health care services. The superintendent shall seek the advice and assistance of these health authorities in situations where service under this chapter includes or requires care of ill or disabled children.

(f) The superintendent shall establish a fee schedule for families utilizing child care and development services pursuant to this chapter which shall include, but not be limited to, the following restrictions:

(1) No fees shall be assessed for families whose children are enrolled in the state preschool program.

(2) A contractor or provider may require parents to provide diapers. A contractor or provider offering field trips either may include the cost of the field trips within the service rate charged to the parent or may charge parents an additional fee. No federal or state money shall be used to reimburse parents for the costs of field trips if those costs are charged as an additional fee. A contractor or provider that charges parents an additional fee for field trips shall inform parents, prior to enrolling the child, that a fee may be charged and that no reimbursement will be available. A contractor or provider may charge parents for field trips or require parents to provide diapers only under the following circumstances:

(A) The provider has a written policy that is adopted by the agency's governing board that includes parents in the decisionmaking process regarding both of the following:

(i) Whether or not, and how much, to charge for field trip expenses.

(ii) Whether or not to require parents to provide diapers.

(B) The maximum total of charges per child in a contract year does not exceed twenty-five dollars (\$25).

(C) No child is denied participation in a field trip due to the parent's inability or refusal to pay the charge. No adverse action shall be taken against any parent for that inability or refusal.

Each contractor or provider shall establish a payment system that prevents the identification of children based on whether or not their parents have paid a field trip charge.

Expenses incurred and income received for field trips pursuant to this section, shall be reported to the State Department of Education. The income received for field trips shall be reported specifically as restricted income.

(g) The superintendent shall establish guidelines for the collection of employer-sponsored child care benefit payments from any parent whose child receives subsidized child care and development services. These guidelines shall provide for the collection of the full amount of the benefit payment, not to exceed the actual cost of child care and development services provided,

notwithstanding the applicable fee based on the fee schedule.

(h) The superintendent shall establish guidelines according to which the director or a duly authorized representative of the child care and development program will certify children as eligible for state reimbursement pursuant to this section.

(i) No public funds shall be paid directly or indirectly to any agency that does not pay at least the minimum wage to each of its employees.

(j) For purposes of this section, "relative caregiver" means an adult head of the household who cares for one or more minor children whose parents are absent who is related to the minor or minors by blood or affinity, including all relatives whose status is preceded by the words "step," "great," "great-great," or "grand."

(k) The State Department of Education shall report, by January 1, 1997, on both of the following:

(1) The number of families who have qualified for child care and development services pursuant to clause (v) of subparagraph (B) of paragraph (2) of subdivision (a).

(2) The number of families, if any, who otherwise would have received services pursuant to this section, but did not, because of the addition of clause (v) to subparagraph (B) of paragraph (2) of subdivision (a).

SEC. 6. Section 37673 of the Education Code is repealed.

SEC. 7. Section 42238.8 of the Education Code is repealed.

SEC. 8. Section 42238.8 is added to the Education Code, to read:

42238.8. Any school district may request permission from the Superintendent of Public Instruction to calculate the days of attendance in schools and classes maintained by that school district, for the 1993-94 fiscal year, or any later fiscal year, and the succeeding fiscal years thereafter, as provided in Section 46010.2. The Superintendent of Public Instruction shall, subject to the approval of the Director of Finance, approve the request and verify the percentages determined pursuant to subdivision (b) of Section 46010.2 for the schools and classes maintained by the school district.

SEC. 9. Section 42267 of the Education Code is amended to read:

42267. (a) Each school district that receives funding for a schoolsite pursuant to Section 42263 for any fiscal year shall report to the Superintendent of Public Instruction, no later than June 30 of that fiscal year, the number of pupils enrolled for the schoolsite in excess of the capacity of the schoolsite, as determined by State Allocation Board or court-mandated pupil loading standards.

(b) The amount of funding otherwise calculated for a schoolsite for any fiscal year pursuant to Section 42263 shall be reduced by the superintendent to reflect the extent to which the number of pupils estimated for that schoolsite for the prior fiscal year is greater than the number of pupils certified in excess of the capacity of the schoolsite for that prior fiscal year. If the amount of that reduction exceeds the funding entitlement for that schoolsite for the current fiscal year, the superintendent shall reduce the first principal

apportionment to that school district in the current fiscal year by the amount of that excess.

(c) If the number of pupils estimated for a schoolsite for the prior fiscal year is less than the number of pupils certified in excess of the capacity of the schoolsite for that prior fiscal year, the school district may elect to increase accordingly the number of pupils it subsequently claims for the prior fiscal year. In that event, the superintendent shall increase the district's funding entitlement under Section 42263 for the schoolsite for the current fiscal year, and the district's building area eligibility under Chapter 22 (commencing with Section 17700) shall be reduced accordingly pursuant to Section 17746.8.

SEC. 10. Section 46010 of the Education Code is amended to read:

46010. (a) The total days of attendance of a pupil upon the schools and classes maintained by a school district, or schools or classes maintained by the county superintendent of schools during the fiscal year shall be the number of days school was actually taught for not less than the minimum schooldays during the fiscal year less the sum of his or her absences.

(b) The absence of a pupil from school or class shall be excused for the purposes of Section 48260 and shall not, in any county office of education or school district that has not had a request pursuant to Section 2550.4 or 42238.8, respectively, to calculate its days of attendance as provided in Section 46010.2 approved, be deemed an absence in computing the attendance of a pupil if that absence was:

- (1) Due to his or her illness.
- (2) Due to quarantine under the direction of a county or city health officer.
- (3) For the purpose of having medical, dental, optometrical, or chiropractic services rendered.
- (4) For the purpose of attending the funeral services of a member of his or her immediate family, so long as the absence is not more than one day if the service is conducted in California and not more than three days if the service is conducted outside California.
- (5) For the purpose of jury duty in the manner provided for by law.
- (6) Due to exclusion from school pursuant to Section 3381 of the Health and Safety Code, so long as the absence is not more than five schooldays pursuant to Section 46010.5.

"Immediate family," as used in this subdivision, has the same meaning as that set forth in Section 45194 except that references therein to "employee" shall be deemed to be references to "pupil."

This subdivision shall not apply in the case of pupils attending summer school, adult schools, and classes, or regional occupational centers and programs other than pupils concurrently enrolled in a regular high school program and a regional occupational center or program.

(c) For purposes of reporting pupil attendance for any purpose to an agency of the federal government, the phrase "total days of

attendance of a pupil” shall be defined only as set forth in subdivision (a).

SEC. 11. Section 46010.2 of the Education Code is amended to read:

46010.2. In county offices of education and school districts that have had a request pursuant to Section 2550.4 or 42238.8, respectively, to calculate their days of attendance as provided in this section approved, the following shall apply:

(a) For the purpose of determining “changes in enrollment” pursuant to subdivision (b) of Section 8 of Article XVI of the California Constitution, as required by subdivision (d) of Section 41204, the total days of attendance by pupils in schools and classes maintained by a county office of education or school district shall, in the initial fiscal year for which their days of attendance are calculated as provided in this section, be separately calculated both as if subdivision (b) of Section 46010 did and did not apply to them. The amount resulting from the application of subdivision (b) of Section 46010 shall be used in comparison with the year prior to the initial year. The amount calculated without applying subdivision (b) of Section 46010 shall be used in comparison with the year subsequent to that initial fiscal year.

(b) For purposes other than determining changes in enrollment as provided in subdivision (a), the total days of attendance by pupils in schools and classes maintained by a county office of education or school district shall first be calculated according to subdivision (a) of Section 46010, and then increased by the same percentage of apportionable absences authorized pursuant to subdivision (b) of Section 46010 for that county office of education or school district in the fiscal year prior to the initial fiscal year for which the days of attendance are calculated as provided in this section. This amount shall not exceed the corresponding statewide average in the 1990–91 fiscal year, for county offices of education or elementary school districts, high school districts, or unified school districts, as applicable, of the number of days of attendance by pupils in the 1990–91 school year, calculated as provided in subdivision (a) of Section 46010.

SEC. 12. Section 46010.5 of the Education Code is amended to read:

46010.5. The county office of education or the governing board of the school district of attendance shall exclude any pupil who has not been immunized properly pursuant to Chapter 7 (commencing with Section 3380) of Division 4 of the Health and Safety Code. In any county office of education or school district that has not had a request pursuant to Section 2550.4 or Section 42238.8, respectively, to calculate its days of instruction as provided in Section 46010.2 approved, the first five schooldays of the exclusion shall not be deemed an absence in computing average daily attendance if the following conditions are complied with:

(a) The governing board of the district notifies the parent or

guardian of the pupil that they have two weeks to supply evidence either that the pupil has been properly immunized, or that the pupil is exempted from the immunization requirement pursuant to Section 3385 or Section 3386 of the Health and Safety Code.

(b) The governing board of the district, in that notice, refers the parent or guardian of the pupil to the pupil's usual source of medical care to obtain the immunization, or if no usual source exists, either refers the parent or guardian to the county health department, or notifies the parent that the immunizations will be administered at a school of the district.

SEC. 13. Article 4.5 (commencing with Section 48987) is added to Chapter 6 of Part 27 of the Education Code, to read:

Article 4.5. Guidelines for Filing Complaint of Child Abuse

48987. The governing board of a school district or county office of education shall upon request disseminate the guidelines adopted by the State Department of Education pursuant to Section 33308.1 to parents or guardians of minor pupils in the primary language of the parent or guardian. The governing board of a school district or county office of education is encouraged to inform a parent or guardian, that desires to file a complaint against a school employee or other person that commits an act of child abuse as defined in Section 11165.6 of the Penal Code against a pupil at a schoolsite, of the procedures for filing the complaint with local child protective agencies pursuant to the Child Abuse and Neglect Reporting Act, established pursuant to Chapter 1444 of the Statutes of 1987. In the case of oral communications with the parent or guardian whose primary language is other than English, concerning that guideline or the procedures for filing child abuse complaints, the governing board shall provide an interpreter for that parent or guardian.

SEC. 14. Section 52048 of the Education Code is amended to read:

52048. (a) It is the intent of the Legislature that the funding system for school improvement programs, as prescribed by Section 52046, be simplified and equalized to the end that all districts have available for ongoing efforts one hundred six dollars (\$106) per pupil enrolled in kindergarten and grades 1 to 6, inclusive, adjusted in the 1985-86 fiscal year and each fiscal year thereafter by the same percentage increase made in base revenue limits for unified school districts with over 1,500 units of average daily attendance.

(b) In order to promote this intent, the Superintendent of Public Instruction shall allocate any cost-of-living adjustment for school improvement programs in a kindergarten and grades 1 to 6, inclusive, as follows:

(1) For any school district which received an allocation in the prior year, compute the product of one hundred six dollars (\$106), adjusted for increases in base revenue limits as specified in subdivision (a), multiplied by 80 percent of the prior year enrollment in kindergarten and grades 1 to 6, inclusive.

(2) For any district which received an allocation for kindergarten and grades 1 to 6, inclusive, in the prior year which was less than the product computed in paragraph (1), allocate funds to the district equivalent to the percentage increase approved by the Legislature as the cost-of-living adjustment for school improvement, except that the allocation to the district for kindergarten and grades 1 to 6, inclusive, shall not exceed the amount computed in paragraph (1).

(c) The governing board of any school district receiving funds for school improvement programs in kindergarten and grades 1 to 6, inclusive, may elect to allocate those funds, excluding carryover reserves, on an equal per pupil basis to any school or schools in the district for use in kindergarten and grades 1 to 6, inclusive, for the operation of school improvement programs in accordance with the provisions of this chapter, provided that the allocation to any school shall not be reduced to less than 80 percent of the school's prior year enrollment in kindergarten and grades 1 to 6, inclusive, multiplied by one hundred six dollars (\$106) adjusted pursuant to subdivision (a).

(d) Any funds appropriated by the Legislature for a cost-of-living adjustment for school improvement programs for kindergarten and grades 1 to 6, inclusive, which are not allocated by the Superintendent of Public Instruction as a result of the implementation of subdivision (b) shall be allocated by the superintendent in accordance with subdivision (e).

(e) The Superintendent of Public Instruction shall allocate any additional funds appropriated by the Legislature for the implementation of school improvement programs in kindergarten and grades 1 to 6, inclusive, plus any funds remaining unallocated pursuant to subdivision (d), to school districts on an application basis. Such funds shall be allocated to school districts in accordance with criteria established by the State Board of Education in order to promote the simplification and equalization of school improvement funding in kindergarten and grades 1 to 6, inclusive. No funds shall be allocated pursuant to this subdivision to a school district which is receiving school improvement funding for kindergarten and grades 1 to 6, inclusive, in an amount equal to or greater than the amount computed in paragraph (1) of subdivision (b).

(f) The Superintendent of Public Instruction may waive the planning requirements prescribed pursuant to subdivision (a) of Section 52046, if the school district certifies that school improvement funds may be utilized effectively without preplanning. Nothing in this subdivision shall be construed to allow the use of school improvement funds in any school without a school level plan developed pursuant to this chapter.

The provisions of this section shall become operative July 1, 1984.

SEC. 15. Section 52335.8 is added to the Education Code, to read: 52335.8. For the 1993-94 and 1994-95 fiscal years only, the Superintendent of Public Instruction shall use, for the purposes of Section 52335.2, the same base average daily attendance for each

ROC/P that was used for the 1992-93 fiscal year.

SEC. 16. Section 56365 of the Education Code, as amended by Section 16 of Chapter 1296 of the Statutes of 1993, is repealed.

SEC. 17. Section 56365 of the Education Code, as amended by Section 16.1 of Chapter 1296 of the Statutes of 1993, is repealed.

SEC. 18. Section 56365 is added to the Education Code, to read:
56365. (a) Nonpublic, nonsectarian school services, including services by nonpublic, nonsectarian agencies shall be available. These services shall be provided pursuant to Section 56366 under contract with the district, special education local plan area, or county office to provide the appropriate special educational facilities, special education, or designated instruction and services required by the individual with exceptional needs when no appropriate public education program is available.

(b) Pupils enrolled in nonpublic, nonsectarian schools and agencies under this section shall be deemed to be enrolled in public schools for all purposes of Chapter 4 (commencing with Section 41600) of Part 24 and Section 42238. The district, special education local plan area, or county office shall be eligible to receive allowances under Chapter 7 (commencing with Section 56700) for services that are provided to individuals with exceptional needs pursuant to the contract.

(c) If the state participates in the federal program of assistance for state operated or state supported programs for children with disabilities (P.L. 89-313, Sec. 6), pupils enrolled in nonpublic, nonsectarian schools shall be deemed to be enrolled in state supported institutions for all purposes of that program and shall be eligible to receive allowances under Chapter 7 (commencing with Section 56700) for supplemental services provided to individuals with exceptional needs pursuant to a contract with a district, special education local plan area, or county office of education. In order to participate in the federal program, the state must find that participation will not result in any additional expenditures from the General Fund.

(d) The district, special education local plan area, or county office shall pay to the nonpublic, nonsectarian school or agency the full amount of the tuition for individuals with exceptional needs that are enrolled in programs provided by the nonpublic, nonsectarian school pursuant to the contract.

(e) Before contracting with a nonpublic, nonsectarian school or agency outside of this state, efforts shall be documented by the district, special education local plan area, or county office to utilize public schools, or to locate an appropriate nonpublic, nonsectarian school or agency program, or both, within the state. If an appropriate public school program or nonpublic, nonsectarian school or agency placement is not available, the district, special education local plan area, or county office shall submit a waiver request pursuant to Section 56101. The waiver request shall include information about the special education and related services provided by the

out-of-state program placement and the costs of the special education and related services provided as specified in subdivisions (a) and (b) of Section 56741 and shall indicate the efforts of the local educational agency to locate an appropriate public school or nonpublic, nonsectarian school or agency, or a combination thereof, within the state. The board shall approve or deny the waiver upon receipt of the waiver request from the local education agency at the next scheduled meeting of the board.

(f) All waivers shall be resubmitted to the board no later than March 30 each year for reapproval of the pupil's out-of-state placement for the following fiscal year. In addition to the information required as part of the initial waiver request, the district, special education local plan area, or county office shall indicate the anticipated date for the return of the pupil to a public or nonpublic, nonsectarian school or agency placement, or a combination thereof, located in the state and shall document efforts during the previous placement year to return the pupil.

(g) In addition to meeting the requirements of Section 56366.1, a nonpublic, nonsectarian school or agency that operates a program outside of this state shall be certified or licensed by that state to provide, respectively, special education and related services to pupils under the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.).

SEC. 18.5. Section 56365 is added to the Education Code, to read:

56365. (a) Nonpublic, nonsectarian school services, including services by nonpublic, nonsectarian agencies shall be available. These services shall be provided pursuant to Section 56366 under contract with the district, special education local plan area, or county office to provide the appropriate special educational facilities, special education, or designated instruction and services required by the individual with exceptional needs when no appropriate public education program is available.

(b) Pupils enrolled in nonpublic, nonsectarian schools and agencies under this section shall be deemed to be enrolled in public schools for all purposes of Chapter 4 (commencing with Section 41600) of Part 24 and Section 42238. The district, special education local plan area, or county office shall be eligible to receive allowances under Chapter 7 (commencing with Section 56700) for services that are provided to individuals with exceptional needs pursuant to the contract.

(c) If the state participates in the federal program of assistance for state-operated or state-supported programs for children with disabilities (P.L. 89-313, Sec. 6), pupils enrolled in nonpublic, nonsectarian schools shall be deemed to be enrolled in state-supported institutions for all purposes of that program and shall be eligible to receive allowances under Chapter 7 (commencing with Section 56700) for supplemental services provided to individuals with exceptional needs pursuant to a contract with a district, special education local plan area, or county office of

education. In order to participate in the federal program, the state must find that participation will not result in any additional expenditures from the General Fund.

(d) The district, special education local plan area, or county office shall pay to the nonpublic, nonsectarian school or agency the full amount of the tuition for individuals with exceptional needs that are enrolled in programs provided by the nonpublic, nonsectarian school pursuant to the contract.

(e) Before contracting with a nonpublic, nonsectarian school or agency outside of this state, the district, special education local plan area, or county office shall document its efforts to utilize public schools or to locate an appropriate nonpublic, nonsectarian school or agency program, or both, within the state.

(f) If a district, special education local plan area, or county office places a pupil with a nonpublic, nonsectarian school or agency outside of this state, the pupil's individualized education program team shall submit a report to the superintendent within 15 days of the placement decision. The report shall include information about the special education and related services provided by the out-of-state program placement and the costs of the special education and related services provided, as specified in subdivisions (a) and (b) of Section 56741, and shall indicate the efforts of the local educational agency to locate an appropriate public school or nonpublic, nonsectarian school or agency, or a combination thereof, within the state. The superintendent shall submit a report to the State Board of Education on all placements made outside of this state.

(g) If a school district, special education local plan area, or county office of education decides to place a pupil with a nonpublic, nonsectarian school or agency outside of this state, that local education agency shall indicate the anticipated date for the return of the pupil to a public or nonpublic, nonsectarian school or agency placement, or a combination thereof, located in the state and shall document efforts during the previous placement year to return the pupil.

(h) In addition to meeting the requirements of Section 56366.1, a nonpublic, nonsectarian school or agency that operates a program outside of this state shall be certified or licensed by that state to provide, respectively, special education and related services and designated instruction and related services to pupils under the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.).

(i) A nonpublic, nonsectarian school or agency that is located outside of this state is eligible for certification pursuant to Section 56366.1 only if a pupil is enrolled in a program operated by that school or agency pursuant to the recommendation of an individualized education program team in California, and if that pupil's parents or guardians reside in California.

SEC. 19. Section 56366 of the Education Code, as amended by Section 16.3 of Chapter 1296 of the Statutes of 1993, is repealed.

SEC. 20. Section 56366 of the Education Code, as amended by Section 16.35 of Chapter 1296 of the Statutes of 1993, is repealed.

SEC. 21. Section 56366 is added to the Education Code, to read: 56366. It is the intent of the Legislature that the role of the nonpublic, nonsectarian school or agency shall be maintained and continued as an alternative special education service available to districts, special education local plan areas, county offices, and parents.

(a) The contract for nonpublic, nonsectarian school or agency services shall be developed in accordance with the following provisions:

(1) The contract shall specify the general administrative and financial agreements between the nonpublic, nonsectarian school or agency and the district, special education local plan area, or county office to provide the special education and designated instruction and services, as well as transportation specified in the pupil's individualized education program on forms provided by the superintendent in January of each year for the following fiscal year. The administrative provisions of the contract also shall include procedures for recordkeeping and documentation, and the maintenance of school records by the contracting district, special education local plan area, or county office to ensure that appropriate high school graduation credit is received by the pupil. The contract may allow for partial or full-time attendance at the nonpublic, nonsectarian school.

(2) The contract shall include an individual services agreement on forms provided by the superintendent in January of each year for the following fiscal year for each pupil placed by a district, special education local plan area, or county office that will be negotiated for the length of time for which nonpublic, nonsectarian school or agency special education and designated instruction and services are specified in the pupil's individualized education program.

Changes in educational instruction, services, or placement provided under contract may only be made on the basis of revisions to the pupil's individualized education program.

At any time during the term of the contract or individual services agreement, the parent; nonpublic, nonsectarian school or agency; or district, special education local plan area, or county office may request a review of the pupil's individualized education program by the individualized education program team. Changes in the administrative or financial agreements of the contract that do not alter the individual services agreement that outlines each pupil's educational instruction, services, or placement may be made at any time during the term of the contract as mutually agreed by the nonpublic, nonsectarian school or agency and the district, special education local plan area, or county office.

(3) The contract or individual services agreement may be terminated for cause. The cause shall not be the availability of a public class initiated during the period of the contract unless the

parent agrees to the transfer of the pupil to a public school program. To terminate the contract either party shall give 20 days' notice.

(4) The nonpublic, nonsectarian school or agency shall provide all services specified in the individualized education program, unless the nonpublic, nonsectarian school or agency and the district, special education local plan area, or county office agree otherwise in the contract.

(5) Related services provided pursuant to a nonpublic, nonsectarian agency contract shall only be provided during the period of the child's regular or extended school year program, or both, unless otherwise specified by the pupil's individualized education program.

(6) The nonpublic, nonsectarian school or agency shall report attendance of pupils receiving special education and designated instruction and services as defined by Section 46307 for purposes of submitting a warrant for tuition to each contracting district, special education local plan area, or county office on forms developed by the superintendent.

(b) The contract or individual services agreement shall not include special education transportation provided through the use of services or equipment owned, leased, or contracted by a district, special education local plan area, or county office for pupils enrolled in the nonpublic, nonsectarian school or agency unless provided directly or subcontracted by that nonpublic, nonsectarian school or agency.

The superintendent shall withhold 20 percent of the amount apportioned to a school district or county office for costs related to the provision of nonpublic, nonsectarian school or agency placements if the superintendent finds that the local education agency is in noncompliance with this subdivision. This amount shall be withheld from the apportionments in the fiscal year following the superintendent's finding of noncompliance. The superintendent shall take other appropriate actions to prevent noncompliant practices from occurring and report to the Legislature on those actions.

(c) (1) If the pupil is enrolled in the nonpublic, nonsectarian school or agency with the approval of the district, special education local plan area, or county office prior to agreement to a contract or individual services agreement, the district, special education local plan area, or county office shall issue a warrant, upon submission of an attendance report and claim, for an amount equal to the number of creditable days of attendance at the per diem rate agreed upon prior to the enrollment of the pupil. This provision shall be allowed for 90 days during which time the contract shall be consummated.

(2) If after 60 days the contract or individual services agreement has not been finalized as prescribed in paragraph (1) of subdivision (a), either party may appeal to the county superintendent of schools, if the county superintendent is not participating in the local plan involved in the nonpublic, nonsectarian school or agency contract, or

the superintendent, if the county superintendent is participating in the local plan involved in the contract, to negotiate the contract. Within 30 days of receipt of this appeal, the county superintendent or the superintendent, or his or her designee, shall mediate the formulation of a contract which shall be binding upon both parties.

(d) (1) No contract for special education and related services provided by a nonpublic, nonsectarian school or agency shall be authorized under this part unless the school or agency has been certified as meeting those standards relating to the required special education and specified related services and facilities for individuals with exceptional needs. The certification shall result in the school's or agency's receiving approval to educate pupils under this part. The procedures, methods, and areas of certification shall be established by rules and regulations issued by the board that shall include, but not be limited to, procedures for conducting onsite reviews of the nonpublic, nonsectarian school or agency program and include provisions specific to the provision of special education and related services to individuals with exceptional needs from birth to preschool. In addition to those standards adopted by the board, the school or agency shall meet all applicable standards relating to fire, health, sanitation, and building safety.

(e) The school or agency shall be charged a reasonable fee for certification. The superintendent may adjust the fee annually commensurate with the statewide average percentage inflation adjustment computed for revenue limits of unified school districts with greater than 1,500 units of average daily attendance if the percentage increase is reflected in the district revenue limit for inflation purposes. For purposes of this section, the base fee shall be the following:

- (A) 1-5 pupils — \$150.
- (B) 6-10 pupils — \$250.
- (C) 11-24 pupils — \$500.
- (D) 25-75 pupils — \$750.
- (E) 76 pupils and over — \$1,000.

The school or agency shall pay this fee when it applies for certification and when it updates its application for annual review by the superintendent. The superintendent shall use these fees to conduct onsite reviews, which may include field experts. No fee shall be refunded if the application is withdrawn or is denied by the superintendent.

(f) (1) Notwithstanding any other provision of law, only those nonpublic, nonsectarian schools and agencies that provide special education and designated instruction and services utilizing staff who hold, or are receiving training under the supervision of staff who hold, a current valid California credential or license in the service rendered shall be eligible to receive certification. Only those nonpublic, nonsectarian schools or agencies located outside of California that employ staff who hold a current valid credential or license to render special education and related services as required

by that state shall be eligible to be certified.

(2) Nothing in this subdivision restricts student teachers, interns, or other staff who are enrolled in training programs that lead to a license or credential that authorize the holder to render services to special education pupils and who are under the direct supervision of a staff member who holds a current valid California credential, license, or certificate of registration document.

(3) A nonpublic, nonsectarian school or agency that employs only persons who hold a valid California credential authorizing substitute teaching pursuant to Section 56060 shall not be certified. At least one full-time person with a current valid California credential, license, or certificate of registration in the area of service to be rendered, or a current valid credential, license, or certificate or registration for appropriate special education and related services rendered that is required in another state, shall be required for purposes of certification under subdivision (d).

(4) A nonpublic, nonsectarian school or agency that employs persons holding a valid emergency credential shall document efforts of recruiting appropriately credentialed, licensed, or registered personnel for the special education and related services rendered as a condition of renewing certification.

SEC. 21.5. Section 56366 is added to the Education Code, to read: 56366. It is the intent of the Legislature that the role of the nonpublic, nonsectarian school or agency shall be maintained and continued as an alternative special education service available to districts, special education local plan areas, county offices, and parents.

(a) The master contract for nonpublic, nonsectarian school or agency services shall be developed in accordance with the following provisions:

(1) The master contract shall specify the general administrative and financial agreements between the nonpublic, nonsectarian school or agency and the district, special education local plan area, or county office to provide the special education and designated instruction and services, as well as transportation specified in the pupil's individualized education program on forms provided by the superintendent in January of each year for the following fiscal year. The administrative provisions of the contract also shall include procedures for recordkeeping and documentation, and the maintenance of school records by the contracting district, special education local plan area, or county office to ensure that appropriate high school graduation credit is received by the pupil. The contract may allow for partial or full-time attendance at the nonpublic, nonsectarian school.

(2) The master contract shall include an individual services agreement on forms provided by the superintendent in January of each year for the following fiscal year for each pupil placed by a district, special education local plan area, or county office that will be negotiated for the length of time for which nonpublic,

nonsectarian school or agency special education and designated instruction and services are specified in the pupil's individualized education program.

Changes in educational instruction, services, or placement provided under contract may only be made on the basis of revisions to the pupil's individualized education program.

At any time during the term of the contract or individual services agreement, the parent; nonpublic, nonsectarian school or agency; or district, special education local plan area, or county office may request a review of the pupil's individualized education program by the individualized education program team. Changes in the administrative or financial agreements of the master contract that do not alter the individual services agreement that outlines each pupil's educational instruction, services, or placement may be made at any time during the term of the contract as mutually agreed by the nonpublic, nonsectarian school or agency and the district, special education local plan area, or county office.

(3) The master contract or individual services agreement may be terminated for cause. The cause shall not be the availability of a public class initiated during the period of the contract unless the parent agrees to the transfer of the pupil to a public school program. To terminate the contract either party shall give 20 days' notice.

(4) The nonpublic, nonsectarian school or agency shall provide all services specified in the individualized education program, unless the nonpublic, nonsectarian school or agency and the district, special education local plan area, or county office agree otherwise in the contract.

(5) Related services provided pursuant to a nonpublic, nonsectarian agency master contract shall only be provided during the period of the child's regular or extended school year program, or both, unless otherwise specified by the pupil's individualized education program.

(6) The nonpublic, nonsectarian school or agency shall report attendance of pupils receiving special education and designated instruction and services as defined by Section 46307 for purposes of submitting a warrant for tuition to each contracting district, special education local plan area, or county office on forms developed by the superintendent.

(b) The master contract or individual services agreement shall not include special education transportation provided through the use of services or equipment owned, leased, or contracted by a district, special education local plan area, or county office for pupils enrolled in the nonpublic, nonsectarian school or agency unless provided directly or subcontracted by that nonpublic, nonsectarian school or agency.

The superintendent shall withhold 20 percent of the amount apportioned to a school district or county office for costs related to the provision of nonpublic, nonsectarian school or agency placements if the superintendent finds that the local education

agency is in noncompliance with this subdivision. This amount shall be withheld from the apportionments in the fiscal year following the superintendent's finding of noncompliance. The superintendent shall take other appropriate actions to prevent noncompliant practices from occurring and report to the Legislature on those actions.

(c) (1) If the pupil is enrolled in the nonpublic, nonsectarian school or agency with the approval of the district, special education local plan area, or county office prior to agreement to a contract or individual services agreement, the district, special education local plan area, or county office shall issue a warrant, upon submission of an attendance report and claim, for an amount equal to the number of creditable days of attendance at the per diem rate agreed upon prior to the enrollment of the pupil. This provision shall be allowed for 90 days during which time the contract shall be consummated.

(2) If after 60 days the master contract or individual services agreement has not been finalized as prescribed in paragraph (1) of subdivision (a), either party may appeal to the county superintendent of schools, if the county superintendent is not participating in the local plan involved in the nonpublic, nonsectarian school or agency contract, or the superintendent, if the county superintendent is participating in the local plan involved in the contract, to negotiate the contract. Within 30 days of receipt of this appeal, the county superintendent or the superintendent, or his or her designee, shall mediate the formulation of a contract which shall be binding upon both parties.

(d) (1) No master contract for special education and related services provided by a nonpublic, nonsectarian school or agency shall be authorized under this part unless the school or agency has been certified as meeting those standards relating to the required special education and specified related services and facilities for individuals with exceptional needs. The certification shall result in the school's or agency's receiving approval to educate pupils under this part for a period no longer than four years from the date of the approval. The procedures, methods, and areas of certification, including information required for purposes of the application specified in subdivision (a) of Section 56366.1, shall be established by rules and regulations issued by the board that shall include, but not be limited to, procedures for conducting onsite reviews of the nonpublic, nonsectarian school or agency program and include provisions specific to the provision of special education and related services to individuals with exceptional needs from birth to preschool. In addition to those standards adopted by the board, the school or agency shall meet all applicable standards relating to fire, health, sanitation, and building safety.

(e) The school or agency shall be charged a reasonable fee for certification. The superintendent may adjust the fee annually commensurate with the statewide average percentage inflation adjustment computed for revenue limits of unified school districts

with greater than 1,500 units of average daily attendance if the percentage increase is reflected in the district revenue limit for inflation purposes. For purposes of this section, the base fee shall be the following:

- (A) 1-5 pupils — \$150.
- (B) 6-10 pupils — \$250.
- (C) 11-24 pupils — \$500.
- (D) 25-75 pupils — \$750.
- (E) 76 pupils and over — \$1,000.

The school or agency shall pay this fee when it applies for certification and when it updates its application for annual review by the superintendent. The superintendent shall use these fees to conduct onsite reviews, which may include field experts. No fee shall be refunded if the application is withdrawn or is denied by the superintendent.

(f) (1) Notwithstanding any other provision of law, only those nonpublic, nonsectarian schools and agencies that provide special education and designated instruction and services utilizing staff who hold, or are receiving training under the supervision of staff who hold, a current valid California credential or license in the service rendered shall be eligible to receive certification. Only those nonpublic, nonsectarian schools or agencies located outside of California that employ staff who hold a current valid credential or license to render special education and related services as required by that state shall be eligible to be certified.

(2) Nothing in this subdivision restricts student teachers, interns, or other staff who are enrolled in training programs that lead to a license or credential that authorize the holder to render services to special education pupils and who are under the direct supervision of a staff member who holds a current valid California credential, license, or certificate of registration document.

(3) A nonpublic, nonsectarian school or agency that employs only persons who hold a valid California credential authorizing substitute teaching pursuant to Section 56060 shall not be certified. At least one full-time person with a current valid California credential, license, or certificate of registration in the area of service to be rendered, or a current valid credential, license, or certificate of registration for appropriate special education and related services rendered that is required in another state, shall be required for purposes of certification under subdivision (d).

(4) A nonpublic, nonsectarian school or agency that employs persons holding a valid emergency credential shall document efforts of recruiting appropriately credentialed, licensed, or registered personnel for the special education and related services rendered as a condition of renewing certification.

SEC. 22. Section 56366.1 of the Education Code, as amended by Section 16.5 of Chapter 1296 of the Statutes of 1993, is repealed.

SEC. 23. Section 56366.2 of the Education Code is repealed.

SEC. 24. Section 56366.2 is added to the Education Code, to read:

56366.2. (a) A district, special education local plan area, county office, nonpublic, nonsectarian school, or nonpublic, nonsectarian agency may petition the superintendent to waive one or more of the requirements under Sections 56365, 56366, 56366.1, 56366.3, 56366.6, and 56366.7. The petition shall state the reasons for the waiver request, and shall include the following:

(1) Sufficient documentation to demonstrate that the waiver is necessary to the content and implementation of a specific pupil's individualized education program and the pupil's current placement.

(2) The period of time that the waiver will be effective during any one school year.

(3) Documentation and assurance that the waiver does not abrogate any right provided individuals with exceptional needs and their parents or guardians under state or federal law, and does not hinder the compliance of a district, special education local plan area, or county office with the Individual with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794), and federal regulations relating thereto.

(b) No waiver shall be granted for reimbursement of those costs prohibited under Section 56740 or 56775 or certification pursuant to Section 56366.1 unless approved by the board pursuant to Section 56101.

(c) In submitting the annual report on waivers granted under Section 56101 and this section to the State Board of Education, the superintendent shall specify information related to the provision of special education and related services to individuals with exceptional needs through contracts with nonpublic, nonsectarian schools and agencies located in the state, nonpublic, nonsectarian school and agency placements in facilities located out of state, and the specific section waived pursuant to this section.

SEC. 24.5. Section 56366.2 is added to the Education Code, to read:

56366.2. (a) A district, special education local plan area, county office, nonpublic, nonsectarian school, or nonpublic, nonsectarian agency may petition the superintendent to waive one or more of the requirements under Sections 56365, 56366, 56366.3, 56366.6, and 56366.7. The petition shall state the reasons for the waiver request, and shall include the following:

(1) Sufficient documentation to demonstrate that the waiver is necessary to the content and implementation of a specific pupil's individualized education program and the pupil's current placement.

(2) The period of time that the waiver will be effective during any one school year.

(3) Documentation and assurance that the waiver does not abrogate any right provided individuals with exceptional needs and their parents or guardians under state or federal law, and does not hinder the compliance of a district, special education local plan area,

or county office with the Individual with Disabilities Education Act (20 U.S.C. Sec. 1400 and following) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794), the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 and following), and federal regulations relating thereto.

(b) No waiver shall be granted for reimbursement of those costs prohibited under Section 56740 or 56775 or certification pursuant to Section 56366.1 unless approved by the board pursuant to Section 56101.

(c) In submitting the annual report on waivers granted under Section 56101 and this section to the State Board of Education, the superintendent shall specify information related to the provision of special education and related services to individuals with exceptional needs through contracts with nonpublic, nonsectarian schools and agencies located in the state, nonpublic, nonsectarian school and agency placements in facilities located out of state, and the specific section waived pursuant to this section.

SEC. 25. Section 56740 of the Education Code, as amended by Section 23 of Chapter 1296 of the Statutes of 1993, is repealed.

SEC. 26. Section 56740 of the Education Code, as amended by Section 23.5 of Chapter 1296 of the Statutes of 1993, is repealed.

SEC. 27. Section 56740 is added to the Education Code, to read:
56740. (a) The superintendent shall apportion to each district and county office 70 percent of the cost of tuition in excess of the revenue limit and applicable federal funds for pupils enrolled in nonpublic, nonsectarian schools and agencies pursuant to Sections 56365 and 56366.

(b) The superintendent also may apportion to each nonpublic, nonsectarian school providing special education and designated instruction and services to individuals with exceptional needs an amount for pupils counted under the federal program of assistance for state-operated or state-supported programs for children with disabilities (P.L. 89-313, Sec. 6).

(c) The cost of contracts with nonpublic, nonsectarian schools and agencies that a district or county office of education reports under this section shall not include any of the following costs that a district, county office, or special education local plan area may incur:

(1) Administrative or indirect costs for the local education agency.

(2) Direct support costs for the local education agency.

(3) Transportation costs provided either directly, or through a nonpublic, nonsectarian school or agency contract for use of services or equipment owned, leased, or contracted, by a district, special education local plan area, or county office for any pupils enrolled in nonpublic, nonsectarian schools or agencies, unless provided directly or subcontracted by that nonpublic, nonsectarian school or agency pursuant to subdivisions (a) and (b) of Section 56366.

(4) Costs for services routinely provided by the district or county office including the following, unless the board grants a waiver under

Section 56101:

(A) School psychologist services other than those described in Sections 56324 and 56363 and included in a contract and individual services agreement under subdivision (a) of Section 56366.

(B) School nurse services other than those described in Sections 49423.5, 56324, and 56363 and included in a contract and individual services agreement under subdivision (a) of Section 56366.

(C) Language, speech, and hearing services other than those included in a contract and individual services agreement under subdivision (a) of Section 56366.

(D) Modified, specialized, or adapted physical education services other than those included in a contract and individual services agreement under subdivision (a) of Section 56366.

(5) Costs for nonspecial education programs or settings, including those provided for individuals with exceptional needs between the ages of birth and five years, inclusive, pursuant to Sections 56431 and 56441.8.

(6) Costs for nonpublic, nonsectarian school or agency placements outside of the state unless the board has granted a waiver pursuant to subdivisions (e) and (f) of Section 56365.

(7) Costs for related nonpublic, nonsectarian school pupil assessments by a school psychologist or school nurse pursuant to Sections 56320 and 56324.

(8) Costs for services that the nonpublic, nonsectarian school or agency is not certified to provide.

(9) Costs for services provided by personnel who do not meet the requirements specified in subdivision (e) of Section 56366.

(d) A nonpublic, nonsectarian school or agency shall not claim and is not entitled to receive reimbursement for attendance unless the site where the pupil is receiving special education or designated instruction and services is certified.

SEC. 27.5. Section 56740 is added to the Education Code, to read: 56740. (a) The superintendent shall apportion to each district and county office 70 percent of the cost of tuition in excess of the revenue limit and applicable federal funds for pupils enrolled in nonpublic, nonsectarian schools and agencies pursuant to Sections 56365 and 56366.

(b) The superintendent also may apportion to each nonpublic, nonsectarian school providing special education and designated instruction and services to individuals with exceptional needs an amount for pupils counted under the federal program of assistance for state-operated or state-supported programs for children with disabilities (P.L. 89-313, Sec. 6).

(c) The cost of master contracts with nonpublic, nonsectarian schools and agencies that a district or county office of education reports under this section shall not include any of the following costs that a district, county office, or special education local plan area may incur:

(1) Administrative or indirect costs for the local education

agency.

(2) Direct support costs for the local education agency.

(3) Transportation costs provided either directly, or through a nonpublic, nonsectarian school or agency contract for use of services or equipment owned, leased, or contracted, by a district, special education local plan area, or county office for any pupils enrolled in nonpublic, nonsectarian schools or agencies, unless provided directly or subcontracted by that nonpublic, nonsectarian school or agency pursuant to subdivisions (a) and (b) of Section 56366.

(4) Costs for services routinely provided by the district, special education local plan area, or county office including the following, unless the board grants a waiver under Section 56101:

(A) School psychologist services other than those described in Sections 56324 and 56363 and included in a master contract and individual services agreement under subdivision (a) of Section 56366.

(B) School nurse services other than those described in Sections 49423.5, 56324, and 56363 and included in a master contract and individual services agreement under subdivision (a) of Section 56366.

(C) Language, speech, and hearing services other than those included in a master contract and individual services agreement under subdivision (a) of Section 56366.

(D) Modified, specialized, or adapted physical education services other than those included in a master contract and individual services agreement under subdivision (a) of Section 56366.

(E) Other services not specified by a pupil's individualized education program or funded by the state on a caseload basis.

(5) Costs for nonspecial education programs or settings, including those provided for individuals with exceptional needs between the ages of birth and five years, inclusive, pursuant to Sections 56431 and 56441.8.

(6) Costs for nonpublic, nonsectarian school or agency placements outside of the state unless the board has granted a waiver pursuant to subdivisions (e) and (f) of Section 56365.

(7) Costs for related nonpublic, nonsectarian school pupil assessments by a school psychologist or school nurse pursuant to Sections 56320 and 56324.

(8) Costs for services that the nonpublic, nonsectarian school or agency is not certified to provide.

(9) Costs for services provided by personnel who do not meet the requirements specified in subdivision (e) of Section 56366.

(10) Costs for services provided by public school employees.

(d) A nonpublic, nonsectarian school or agency shall not claim and is not entitled to receive reimbursement for attendance unless the site where the pupil is receiving special education or designated instruction and services is certified.

SEC. 28. Section 11008.19 of the Welfare and Institutions Code is amended to read:

11008.19. (a) (1) To the degree child care and development services administered by the State Department of Education pursuant to Chapter 2 (commencing with Section 8200) of Part 6 of the Education Code are used to serve families receiving aid to families with dependent children that are eligible for child care under the AFDC program, the department and the State Department of Education, in consultation with the county welfare departments, shall establish a system for documenting child care usage by this population so the state can claim the maximum amount to which it is entitled under Title IV-A of the Social Security Act, contained in Part A (commencing with Section 601) of Subchapter 4 of Chapter 7 of Title 42 of the United States Code.

(2) To the extent permitted by federal law, on July 1, 1992, and each year thereafter, the department and the State Department of Education shall coordinate their efforts and claim federal financial participation pursuant to Title IV-A of the Social Security Act.

(3) Upon the approval of the Superintendent of Public Instruction, the department, and the State Department of Education shall enter into an interagency agreement to transfer Title IV-A funds from the department to the State Department of Education and to ensure that all federal requirements are met in carrying out the program made possible by the receipt of Title IV-A funds.

(4) The system established pursuant to paragraph (1) shall be implemented only to the extent that its implementation does not result in an overall increase in expenditures from the General Fund.

(b) (1) Title IV-A funds received pursuant to paragraph (1) of subdivision (a) shall be used to expand child care and development services in accordance with the interagency agreement required by paragraph (3) of subdivision (a).

(2) In no case shall Title IV-A funds received pursuant to this section be used to supplant existing state funds and cause the state to violate the maintenance of effort requirements for the federal Child Care and Development Block Grant and the Title IV-A "at-risk" programs. Funds made available pursuant to subdivision (a) shall be expended by the departments to support the following:

(A) Any additional administrative costs associated with documenting and claiming federal reimbursement incurred by the department, the State Department of Education, county welfare offices, and child care and development services contractors.

(B) Expanded child care and development services to families receiving AFDC benefits, in the following order of priority:

(i) AFDC families in approved education and training programs, except those receiving services under Article 3.2 (commencing with Section 11320) of Chapter 2.

(ii) AFDC applicants or recipients who choose the Alternative Assistance Program pursuant to Section 11280.

(iii) All other AFDC recipients who meet the eligibility criteria for federally funded Title IV-A child care pursuant to this section.

(c) (1) The Superintendent of Public Instruction, the Secretary

of Health and Welfare, and the Secretary for Child Development and Education, in consultation with representatives from child care and development programs, county welfare departments, legislative staff, and representatives from the Department of Finance and the office of the Legislative Analyst, shall investigate, and develop a report concerning, the feasibility of consolidating all child care and development services to provide equal access to services established by federal regulations, including issues associated with the AFDC child care disregard.

(2) The purpose of the report required by paragraph (1) shall be to develop a comprehensive, seamless program that maximizes parental choice.

(3) The Superintendent of Public Instruction, the Secretary of Health and Welfare, and the Secretary for Child Development and Education shall submit their report, including their findings and recommendations, to the appropriate policy and fiscal committees of the Legislature by January 30, 1993.

(d) (1) Notwithstanding Section 8278 of the Education Code and Item 6110-196-001 of the Budget Act of 1991 (Chapter 118 of the Statutes of 1991), the Superintendent of Public Instruction may authorize the expenditure of not more than one million dollars (\$1,000,000) in child care carryover funds by the State Department of Education and the State Department of Social Services, through an interagency agreement, for the purposes of implementing the program specified in this section in the 1991-92 and 1992-93 fiscal years.

(2) Prior to making the authorization under paragraph (1), the Superintendent of Public Instruction shall notify the appropriate policy and fiscal committees of the Legislature of the amounts to be expended pursuant to this subdivision.

(3) Funds that may be expended pursuant to this subdivision shall be expended for the purpose of supporting administrative costs associated with claiming federal reimbursement for families with dependent children receiving services pursuant to Chapter 2 (commencing with Section 8200) of Part 6 of the Education Code. In the 1993-94 fiscal year and subsequent fiscal years, state administrative funds for both departments shall be appropriated in the annual Budget Act pursuant to subdivision (b).

(e) For purposes of this section "Title IV-A funds" means federal money received pursuant to Part A (commencing with Section 601) of Subchapter 4 of Chapter 7 of Title 42 of the United States Code.

SEC. 29. No requests shall be approved pursuant to Section 2550.4 or 42238.8 for the 1994-95 fiscal year, or any fiscal year thereafter, until the Superintendent of Public Instruction and the Director of Finance evaluate the implementation of the new method to calculate attendance pursuant to Sections 46010 and 46010.2 by school districts that were so approved pursuant to Section 42238.8, and mutually agree that additional school districts or county offices of education should be permitted to implement that method of

attendance accounting.

SEC. 30. Item 6110-161-001 of Section 2.00 of the Budget Act of 1994 is amended to read:

6110-161-001—For local assistance, Department of Education (Proposition 98), Program 10.60—Special Education Programs for Exceptional Children 1,623,811,000
Schedule:

- (a) 10.60.050-Special education instruction..... 1,607,960,000
- (b) 10.60.050-Special education program for exceptional children—prior year deficiencies 15,851,000

Provisions:

1. Funds appropriated by this item are for transfer by the Controller to Section A of the State School Fund, in lieu of the amount that otherwise would be appropriated for transfer from the General Fund in the State Treasury to Section A of the State School Fund for the 1994–95 fiscal year pursuant to Sections 14002 and 41301 of the Education Code, for apportionment pursuant to Part 30 (commencing with Section 56000) of the Education Code, superseding all prior law.
2. Of the amount appropriated in this item, \$53,447,000 shall be available for program growth pursuant to Section 56728.6 of the Education Code. The funds allocated pursuant to this provision shall be the only funds available in this item for program growth for ages 3 to 21 years, inclusive.

These funds shall be allocated to fully fund calculated growth units for special education programs serving pupils ages 3 to 21 years, inclusive, excluding pupils ages 3 and 4 years not requiring intensive services, based on each special education local plan area's (SELPA) pupil count data and an average number of pupils per unit of:

- (a) For special day classes and centers—10.
- (b) For resource specialist programs—24.
- (c) For designated instructional services—24.

For the purposes of allocating special day class and center (SDC) growth units, a revenue limit offset shall be calculated for the unfunded 1993–94 P-2 SDC average daily attendance for those local educational agencies that are scheduled to

- receive SDC growth units. In no case shall the offset exceed 8 pupils per SDC growth unit. All other SDC growth units shall be allocated using no revenue limit offset.
3. The number of units to be recaptured shall be calculated pursuant to Section 56728.6 of the Education Code. Within each SELPA, to maximize the use of existing units, the units available for recapture shall be shifted to any instructional setting that is eligible for growth pursuant to Provision 2. After maximizing the existing units, growth shall be calculated pursuant to the standards in Provision 2. Waivers of the subcaps (Section 56728.6 of the Education Code) may be approved only if compliance would prevent the provision of a free, appropriate public education.
 4. Of the amount specified in Provision 2, \$500,000 shall be available only for units approved by waiver for SELPAs with small or sparse populations as identified under Article 1.5 (commencing with Section 56210) of Chapter 3 of Part 30 of the Education Code. Waivers for sparsity may be approved only after previous waivers have been reviewed to determine that those units were utilized in sparsely populated areas of the SELPA, that additional units are necessary for these areas, and that severe hardship would occur without additional units for this purpose.
 5. Of the amount appropriated in this item, \$759,000 shall be available for infant program growth units (ages birth-2 years). Funds for infant units shall be allocated with the following average number of pupils per unit:
 - (a) For special classes and centers—16.
 - (b) For resource specialist programs—24.
 - (c) For designated instructional services—16.
 6. Of the amount appropriated in this item, no more than \$344,000 shall be available for the purposes of Section 56775.5 of the Education Code.
 7. Of the funds appropriated in this item, \$8,030,000 shall be available for the purchase, repair, and inventory maintenance of specialized books, materials, and equipment for pupils with low-incidence disabilities, as defined in Section 56026.5 of the Education Code.
 8. Of the funds appropriated in this item, \$4,106,000 shall be available for the purposes of

Public Law 101-392, and for vocational training and job placement for special education pupils through Project Workability I pursuant to Article 3 (commencing with Section 56470) of Chapter 4.5 of Part 30 of the Education Code. As a condition of receiving these funds, each agency shall certify that the amount of nonfederal resources, exclusive of funds received pursuant to this provision, devoted to the provision of vocational education for special education pupils shall be maintained at or above the level provided in the 1984-85 fiscal year. The Superintendent of Public Instruction may waive this requirement for agencies that can demonstrate that the requirement would impose a severe hardship.

9. Of the funds appropriated in this item, \$2,712,000 shall be available for regional occupational centers and programs that serve pupils having disabilities, \$108,870,000 shall be available for extended year programs, \$52,263,000 shall be available for regionalized program specialist services, and \$5,061,000 shall be available for county office of education longer day and year programs.
10. Except for instructional personnel services units serving infants, the county office of education or school district reporting instructional personnel services units for funding shall be the agency that employs the personnel staffing the units, unless the combined unit rate and support services ratio of a nonemploying agency is equal to or lesser than that of the employing agency and both agencies agree that the nonemploying agency shall report the units for funding.
12. Of the funds appropriated in Schedule (b), \$15,851,000 shall be transferred to Section A of the State School Fund and made available for the purposes of paying the deficiency in the special education program for the 1993-94 fiscal year. Notwithstanding Section 41206 of the Education Code, or any other provision of law, the appropriation described in this provision shall apply to the state school funding obligation, as determined under subdivision (b) of Section 8 of Article XVI of the California Constitution, for the 1994-95 fiscal year.
13. During the 1994-95 fiscal year, the State Board of Education shall not approve any waiver of

Section 56364.1 of the Education Code relating to the full inclusion of pupils with low incidence disabilities. This restriction does not prohibit the State Board of Education from approving any waiver of Section 56364 of the Education Code relating to full inclusion during the 1994-95 fiscal year.

14. (a) Notwithstanding Chapter 7 (commencing with Section 56700) of Part 30 of the Education Code, or any other provision of law, the amount available under this item for apportionment for the 1994-95 fiscal year to any school district, county office of education, or special education local plan area that aggregates the special education entitlements of all of its constituents, for the purpose of the costs of placement of individuals with exceptional needs in non-public, nonsectarian schools or agencies and licensed children's institutions, except for the costs reimbursed at 100 percent for the placement of individuals with exceptional needs who reside in licensed children's institutions, shall be the lesser of the product of the amount computed under Section 56740 of the Education Code for the second principal apportionment of the 1993-94 fiscal year multiplied by 1.03615 or the amount computed under Section 56740 of the Education Code for the 1994-95 fiscal year.
- (b) Any school district or county office of education that, in the 1993-94 fiscal year, was apportioned \$70,000 or less to fund the costs of placement of individuals with exceptional needs in nonpublic school, nonsectarian schools or agencies may apply to the State Board of Education for a waiver of subdivision (a) of this provision if, because of the placement of one or more pupils in a non-public, nonsectarian school or agency pursuant to the individualized education plan for the pupil or pupils, the school district or county office of education incurs costs for those purposes in the 1994-95 fiscal year that are equal to or greater than 130 percent of the amount apportioned to the school district or county office of education for those purposes in the 1993-94 fiscal

year.

- (c) For the 1994–95 fiscal year, if (1) any nonpublic, nonsectarian school or agency increases the rates it charges to school districts and county offices of education to provide services to pupils with exceptional needs beyond the rates charged for those services in the 1993–94 fiscal year, (2) any school district or county office of education had pupils served by that nonpublic, nonsectarian school or agency in the 1993–94 fiscal year and planned to place pupils with that same nonpublic, nonsectarian school or agency in the 1994–95 fiscal year, and (3) that school district or county office of education deems that the rate increase is not justified, then the school district or county office of education shall inform the Superintendent of Public Instruction of the rate increase and the Superintendent of Public Instruction shall deem that nonpublic, nonsectarian school or agency to be not in compliance with Section 56366 of the Education Code, and shall decertify that school or agency pursuant to that section. The superintendent shall not apportion funds pursuant to this provision for the purpose of reimbursing any nonpublic, nonsectarian school or agency that is decertified. Within 15 days after receiving notification that it is not in compliance with Section 56366 of the Education Code, a nonpublic, nonsectarian school or agency may either provide evidence to the superintendent demonstrating, to the superintendent's satisfaction, that it is in compliance with that section, in which case it shall not be decertified, or request a waiver of this subdivision from the State Board of Education. Nothing in this provision shall be interpreted to supersede Section 56743 of the Education Code; accordingly, if a school district or county office of education decides that the rate increase of a nonpublic, nonsectarian school or agency for the 1994–95 fiscal year is justified, and decides to pay the additional amount rather than report the rate increase to the Superintendent of Public Instruction, the Superintendent of Pub-

lic Instruction shall not apportion additional funds to that school district or county office of education to pay that portion of a claim related to the increase in the rate.

- (d) The State Department of Education shall undertake to ensure that all local educational agencies report the costs of placement of individuals with exceptional needs in nonpublic, nonsectarian schools and agencies in a consistent manner.

SEC. 31. Item 6110-230-001 of Section 2.00 of the Budget Act of 1994 is amended to read:

6110-230-001—For local assistance, Department of Education, (Proposition 98) for transfer to Section A of the State School Fund, for allocation by the Superintendent of Public Instruction to school districts, county offices of education, and other agencies for the purposes of the Proposition 98 educational programs funded in this item, in lieu of amounts otherwise provided by statute 3,012,504,895

Schedule:

- (a) Programs 3,081,605,874
- (b) Reimbursements..... -69,100,979

Provisions:

1. The Superintendent of Public Instruction shall take action, in a manner consistent with state policy as expressed in statute and with the purposes of this act, to ensure the orderly administration of state-funded education programs conducted by local agencies. The 1994-95 fiscal year allocations of state aid for these programs shall be in the same amounts as the 1993-94 fiscal year allocations, adjusted as appropriate to reflect changes in other state, federal, and local revenues. The Superintendent of Public Instruction shall apportion funds from the program allocations to each school district, county office of education, or other agency in a manner consistent with the policies, formulas, regulations, and statutes governing those apportionments, including the appropriate program provisions set forth in the Proposed Conference Amendments No. 2 of July 2, 1992, for Senate Bill 1280 of the 1991-92 Regular Session. If funding provided in this item is greater or lesser than the amount necessary to fund these programs, the

- superintendent shall apportion the excess or deficiency on a proportional basis across all programs.
2. Notwithstanding any other provision of law, not more than 10 percent of the amount apportioned to any school district, county office of education, or other agency under this item for any program may be expended by that recipient for the purposes of any other program for which the recipient is eligible for funding under this item, except that the total amount of funding allocated to the recipient under this item that is expended by the recipient for the purposes of any program pursuant to this item shall not exceed 115 percent of the amount of state funding allocated pursuant to Provision 1 to that recipient for that program for the 1994-95 fiscal year.
 3. The educational programs that are not eligible for funding under this item are those programs funded by the following items of the Budget Act of 1991 (Ch. 118, Stats. 1991): Items 6110-001-001, 6110-001-178, 6110-001-231, 6110-001-344, 6110-001-687, 6110-001-890, 6110-005-001, 6110-006-001, 6110-006-814, 6110-008-001, 6110-015-001, 6110-021-001, 6110-101-001, 6110-101-814, 6110-101-890, 6110-106-001, 6110-113-001, 6110-117-001, 6110-128-890, 6110-129-001, 6110-136-890, 6110-141-890, 6110-152-001, 6110-156-890, 6110-160-001, 6110-161-001, 6110-161-890, 6110-165-001, 6110-166-890, 6110-171-178, 6110-176-890, 6110-181-140, 6110-183-890, 6110-196-890, 6110-201-890, 6110-202-001, and 6350-101-001.
 4. Notwithstanding Section 52616.18 of the Education Code, if funds are available under this item after funding is allocated pursuant to that section, a school district that operated, and claimed state apportionments for, an adult education program in the prior fiscal year for less than 30 units of average daily attendance (ADA) may qualify under that section starting at 30 units of ADA.
 5. Credit for participating in adult education classes or programs may be generated by a special day class pupil only for days for which the pupil has met the minimum day requirement in Section 46141 of the Education Code.
 6. Notwithstanding any other provision of law, alternative payment child care systems shall be

- subject to the rates established in the GAIN Market Rate Survey for provider payments.
8. Notwithstanding subdivision (z) of Section 8208 of the Education Code, for purposes of this item, a "site supervisor" is a person who has operational program responsibility for a child care and development program at a single site. A site supervisor shall meet the qualifications prescribed by Title 22 of the California Code of Regulations for a day care center director. In addition, these persons shall hold a regular children's center instructional permit, and shall have completed not less than six units in administration and supervision or early childhood education and child development, or both.
 9. Notwithstanding any other provision of law, in the case of the Oakland Unified School District, the Controller shall identify the 1993-94 fiscal year as "the first full year of operations" for purposes of Section 42247 of the Education Code, provided that the amount of audited costs approved by the Controller for the first full year of operation shall not exceed nine million seven hundred thousand dollars (\$9,700,000).
 10. The reduction of the maximum allowable building area for each applicant school district pursuant to Section 17746.8 of the Education Code shall be a permanent reduction to the district's eligibility for funding under Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code. To the extent feasible, the reduction shall be applied to district projects that represent the same grade levels of the pupils for which the district is claiming funding pursuant to Section 42263 of the Education Code.
 11. Of the funds appropriated in this item, \$50,000 shall be allocated from the total available Mentor Teacher Program local assistance funds to a county office of education to be designated as the local educational agency (LEA) to conduct a statewide evaluation of the Mentor Teacher Program in the 1994-95 fiscal year under the direction of the California Department of Education's Teaching Support Office. Funds allocated to LEAs for implementation of the Mentor Teacher Program will subsequently be reduced by \$50,000.
 13. Of the funds appropriated in this item for child

- care and development services pursuant to Chapter 2 (commencing with Section 8200) of Part 6 of the Education Code, up to \$4,717,000 shall be available for the administrative costs of alternative payment programs receiving federal Child Care and Development Block Grant Funds, and \$2,857,000 shall be available to provide additional child care services in the General Child Care Program. To the extent possible, the State Department of Education shall allocate 50 percent of the \$2,857,000 to provide child care services for preschool age children and the other 50 percent to provide child care services for infants and toddlers.
14. Notwithstanding subdivision (b) of Section 8278 of the Education Code, funds available for expenditure pursuant to Section 8278 of the Education Code shall be expended in the 1994-95 fiscal year pursuant to the following schedule:
 - (a) \$3,500,000 for accounts payable pursuant to paragraph (1) of subdivision (b) of Section 8278 of the Education Code.
 - (b) \$2,800,000 for the administrative costs of providing services with federal Child Care and Development Block Grant funds returned to the State Department of Education pursuant to an interagency agreement with the Department of Social Services regarding Miller v. Healy lawsuit. Any balance of the amount specified in paragraph (a) above, not required to meet the department's obligations pursuant to paragraph (1) of subdivision (b) of Section 8278, and any funds available pursuant to Section 8278 of the Education Code not scheduled in this provision, also shall be expended to maximize expenditures of federal funds previously earmarked for the Miller v. Healy lawsuit.
 - (c) \$1,200,000 for quality improvement activities.
 15. Of the funds available pursuant to Section 8278 of the Education Code and scheduled for quality improvement activities pursuant to this item, the State Department of Education shall allocate \$320,000 for the preschool education project by the Public Television Stations in Redding, San Francisco, San Jose, Sacramento, and Los Angeles. The Department shall allocate

those funds in accordance with the following criteria:

- (a) The 30 percent minimum match.
 - (b) A plan that specified the providers to be trained.
 - (c) Number of trainings held and trainers to be trained.
 - (d) Quality of the training offered.
 - (e) Linkages to the child care community.
 - (f) Cost-effectiveness.
16. Local educational agencies may use the authority granted under Provision 2 of this item to provide the funds necessary to initiate a Healthy Start program pursuant to Chapter 5 (commencing with Section 8800) of Part 6 of the Education Code.
18. Notwithstanding any other provision of law, funding distributed to each LEA for reimbursement of services provided in the 1994-95 fiscal year for the Adults in Correctional Facilities Program shall be limited to the amount received by each agency for services provided in the 1993-94 fiscal year, not to exceed a total of \$13,400,000 for all programs. Funding shall be reduced or eliminated, as appropriate, for any LEA that reduces or eliminates services provided under this program in the 1994-95 fiscal year, as compared to the level of service provided in the 1993-94 fiscal year. Any funds remaining as a result of those decreased levels of service shall be reallocated to provide support for new programs in accordance with Section 41841.8 of the Education Code.
19. Local education agencies may use the authority granted pursuant to Provision 2 of this item to provide the funds necessary to initiate a conflict resolution program pursuant to Chapter 2.5 (commencing with Section 32260) of Part 19 of the Education Code.

SEC. 32. The sum of two hundred fifty thousand dollars (\$250,000) is hereby appropriated from the Proposition 98 Reversion Account maintained in the State Treasury to the Department of Justice to pay any judgment or settlement claim in the case of Edward Allen, et al. v. Richmond Unified School District. Any amount that is appropriated in excess of the amount actually necessary to pay that judgment or settlement claim shall revert to the Proposition 98 Reversion Account on June 30 of the fiscal year in which the payment is made.

SEC. 33. (a) The sum of six hundred fifty-six thousand two hun-

dred fifty-two dollars (\$656,252) is hereby reappropriated from the funds appropriated pursuant to Schedule (d) of Item 6110-101-001 of Section 2.00 of the Budget Act of 1992, as set forth in Chapter 587 of the Statutes of 1992, to the Superintendent of Public Instruction, in augmentation of the following:

(1) Schedule (e) of Item 6100-101-001 of Section 2.00 of the Budget Act of 1987, as set forth in Chapter 135 of the Statutes of 1987, for allocation in the 1987-88 fiscal year to fund apprenticeship education programs pursuant to Article 8 (commencing with Section 8150) of Chapter 1 of Part 6 of the Education Code.

(2) Item 6110-230-001 of Section 2.00 of the Budget Act of 1988, as set forth in Chapter 313 of the Statutes of 1988, for allocation in the 1988-89 fiscal year to fund apprenticeship education programs pursuant to Article 8 (commencing with Section 8150) of Chapter 1 of Part 6 of the Education Code.

(3) Schedule (d) of Item 6110-101-001 of Section 2.00 of the Budget Act of 1989, as set forth in Chapter 93 of the Statutes of 1989, for allocation in the 1989-90 fiscal year pursuant to Article 8 (commencing with Section 8150) of Chapter 1 of Part 6 of the Education Code.

(b) Funds appropriated by this section shall be allocated pursuant to paragraphs (1), (2), and (3) of subdivision (a) to reimburse school districts for disbursements made to apprenticeship programs which have not been reimbursed by the Superintendent of Public Instruction. The funds shall first be allocated pursuant to paragraph (1) of subdivision (a). Funds remaining after allocation pursuant to paragraph (1) of subdivision (a) shall be allocated according to paragraph (2) of subdivision (a). Funds remaining after allocation pursuant to paragraph (2) of subdivision (a) shall be allocated according to paragraph (3) of subdivision (a).

(c) This section shall become operative only if the final certification made pursuant to subdivision (b) of Section 41206 for the 1992-93 fiscal year determines that the minimum school funding obligation set forth in Section 8 of Article XVI of the California Constitution was not met pursuant to appropriations and legislation that are chaptered before this act is chaptered.

SEC. 34. (a) Section 5.3 of this bill incorporates amendments to Section 8263 of the Education Code proposed by both this bill and AB 2981. It shall only become operative if (1) both bills are enacted and become effective January 1, 1995, (2) each bill amends Section 8263 of the Education Code, (3) AB 2869 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2981 in which case Sections 5, 5.5, and 5.7 of this bill shall not become operative.

(b) Section 5.5 of this bill incorporates amendments to Section 8263 of the Education Code proposed by both this bill and AB 2869. It shall only become operative if (1) both bills are enacted and become effective January 1, 1995, (2) each bill amends Section 8263 of the Education Code, (3) AB 2981 is not enacted or as enacted does

not amend that section, and (4) this bill is enacted after AB 2869 in which case Sections 5, 5.3, and 5.7 of this bill shall not become operative.

(c) Section 5.7 of this bill incorporates amendments to Section 8263 of the Education Code proposed by this bill, AB 2869, and AB 2981. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1995, (2) all three bills amend Section 8263 of the Education Code, and (3) this bill is enacted after AB 2869 and AB 2981 in which case Sections 5, 5.3, and 5.5 of this bill shall not become operative.

SEC. 35. Section 18.5 of this bill affects Section 56365 of the Education Code, as proposed by both this bill and AB 3793. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill affects Section 56365 of the Education Code, and (3) this bill is enacted after AB 3793, in which case Section 18 of this bill shall not become operative.

SEC. 36. Section 21.5 of this bill affects Section 56366 of the Education Code, as proposed by both this bill and AB 1250. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill affects Section 56366 of the Education Code, and (3) this bill is enacted after AB 1250, in which case Section 21 of this bill shall not become operative.

SEC. 37. Section 24.5 of this bill affects Section 56366.2 of the Education Code, as proposed by both this bill and AB 1250. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill affects Section 56366.2 of the Education Code, and (3) this bill is enacted after AB 1250, in which case Section 24 of this bill shall not become operative.

SEC. 38. Section 27.5 of this bill affects Section 56740 of the Education Code, as proposed by both this bill and AB 1250. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill affects Section 56740 of the Education Code, and (3) this bill is enacted after AB 1250, in which case Section 27 of this bill shall not become operative.

CHAPTER 1173

An act to amend Section 222 of, and to add Sections 222.1, 222.3, 222.4, and 222.5 to, the Health and Safety Code, relating to laboratory and office facilities, and making an appropriation therefor.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 222 of the Health and Safety Code is amended to read:

222. (a) The Director of General Services may acquire real property in order to construct a laboratory and office facility or remodeling an existing facility in the City of Richmond, for the use of the State Department of Health Services.

(b) Revenue bonds, negotiable notes, and negotiable bond anticipation notes may be issued by the State Public Works Board pursuant to the State Building Construction Act of 1955 (Part 10b (commencing with Section 15800) of Division 3 of Title 2 of the Government Code) to finance the acquisition and construction of a new laboratory and office facility, or remodeling of an existing facility for the State Department of Health Services in the City of Richmond. The amount of the bonds plus the cost of equipment shall not exceed fifty-four million five hundred thousand dollars (\$54,500,000) as necessary for land acquisition including, but not limited to, land needed for planned future expansion of the laboratory and office facility, environmental studies, preliminary plans, working drawings, construction, furnishings, equipment, and all related betterments and improvements. Notwithstanding Section 13332.11 of the Government Code, the State Public Works Board may authorize the augmentation of the amount authorized under this section for the project by an amount not to exceed 10 percent of the amount appropriated for this project.

(c) The State Public Works Board may borrow funds for project costs from the Pooled Money Investment Account pursuant to Sections 16312 and 16313 of the Government Code.

(d) The amount of revenue bonds, negotiable notes, or negotiable bond anticipation notes to be sold shall equal the cost of acquisition, including land, construction, preliminary plans, and working drawings, construction management and supervision, other costs relating to the design, construction, or remodeling of the facilities, and any additional sums necessary to pay interim and permanent financing costs. The additional amount may include interest and a reasonable required reserve fund. At least 30 days prior to the signing of the agreement for the acquisition, construction, or remodeling of the Richmond facility pursuant to subdivision (b), the State Director of Health Services and the Director of General Services shall jointly report to the Joint Legislative Budget Committee and the fiscal committees of each house of the Legislature. The report shall specify (1) the terms of the proposed agreement, (2) how the acquisition, construction, or remodeling will meet the needs of the State Department of Health Services for laboratory facilities in the East Bay area, and (3) implementation plans for the Richmond facility, including project planning guides and cost estimates for the project.

SEC. 2. Section 222.2 is added to the Health and Safety Code, to read:

222.2. It is the intent of the Legislature to fully utilize current state real property assets and to encourage joint land use between public entities. Therefore, it is the Legislature's intent that the development of the State Department of Health Services' laboratory

and office facility, as authorized by Section 222 occur on property owned by the Regents of the University of California, commonly known as the Richmond Field Station in Richmond, California.

SEC. 3. Section 222.3 is added to the Health and Safety Code, to read:

222.3. (a) Subject to the approval by the Regents of the University of California and the Public Works Board, of a land exchange agreement that is consistent with this section, a land exchange shall occur in which the state-owned real property located at 2151 Berkeley Way, Berkeley, shall be exchanged for real property located on the University of California, Richmond Field Station, owned by the Regents of the University of California, to allow the state department to construct a laboratory and office facility pursuant to Section 222 and planned future expansion to meet its programmatic needs.

(b) In exchange for no more than 11.5 acres on the northwest corner of the Richmond Field Station, with the understanding that the state department shall negotiate with the regents for additional land to provide whatever additional employee parking is necessary, and upon vacating the property at 2152 Berkeley Way, the state department shall transfer title to the real property located at 2151 Berkeley Way, Berkeley, to the Regents of the University of California under all of the following conditions:

(1) The state department shall be responsible for the future demolition of the building, and any other improvements, located at 2151 Berkeley Way, Berkeley. The demolition of this property shall begin within six months of the state department vacating the property 2152 Berkeley Way, Berkeley and be completed with all due diligence but no later than two years from the beginning date of demolition.

(2) The state department and the University of California shall each be responsible for ensuring the property they exchange is free of contamination to the extent provided by law.

(3) The state department shall consult with representatives of local environmental organizations, the University of California at Berkeley, and the City of Richmond regarding the site plan of the laboratory and office facility on the Richmond Field Station to meet the state department's programmatic needs, and to resolve environmental concerns on the property.

(4) The sale of the state department property located at 2002 Acton Street, Berkeley, shall be commenced by the Department of General Services on behalf of the state department at the time the new laboratory and office facility at the Richmond Field Station is occupied. The sale of this property shall be to a private entity causing the property to revert to the tax rolls, with the proceeds deposited in the General Fund.

(5) Within 12 months of the transfer of title of the property at 2151 Berkeley Way, Berkeley, the regents shall offer for sale, lease, or exchange, for nontax exempt uses, that portion of the property

bounded on the west by Shattuck Avenue, on the south by Berkeley Way, on the north by Hearst, and on the east by a marking of approximately 135 feet from the west boundary of the property. The proceeds of the sale, lease, or exchange of this property shall be to the credit of the Regents of the University of California.

(c) The Regents of the University of California shall, by June 1, 1995, either preliminarily approve or disapprove the exchange of real properties between the University of California and the state department as provided for in this section. The regents, the Public Works Board, and the department shall give final approval or disapproval of the real property exchange as specified in this section within three months of their receipt of final environmental documentation as required by the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code on the department's project at the Richmond Field Station site.

(d) In the event the City of Richmond should approve the relocation of the railroad tracks currently located north of the Richmond Field Station site, the city shall be responsible for necessary mitigation measures to ensure that the relocation of the railroad tracks does not negatively affect the scientific work and studies being conducted by the state department.

(e) It is the intent of the Legislature that both parties receive equal value as a result of the land exchange agreement described in subdivision (a). The determination of equal value shall be approved by the Regents of the University of California and the State Public Works Board prior to the final approval of the land exchange agreement.

(f) This section shall not apply to the University of California, except to the extent that the Regents of the University of California, by appropriate resolution, make it applicable.

SEC. 4. Section 222.4 is added to the Health and Safety Code, to read:

222.4. In the event the regents do not preliminarily approve this project by June 1, 1995, or final approval is not forthcoming from the Regents, the board, or the state department after completion of the final environmental documentation pursuant to Section 222.3, the state department shall obtain property elsewhere in the City of Richmond for the critically needed laboratory. Upon completion of the new state department facility in Richmond, the property at 2151 Berkeley Way, Berkeley, shall, as determined by the state department, either:

(a) Be retained by the state department to meet additional facility needs. Any future development by the state department of 2151 Berkeley Way, Berkeley, shall, to the extent feasible, include joint use between the state department and the University of California Berkeley School of Public Health.

(b) Be sold to a private entity by the Department of General Services on behalf of the state department in order to cause the

property to revert to the tax rolls. Any proceeds from the sale of 2151 Berkeley Way, Berkeley, shall be deposited in the General Fund.

CHAPTER 1174

An act to amend Section 51207 of the Government Code, relating to agricultural land.

[Approved by Governor September 29, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 51207 of the Government Code is amended to read:

51207. (a) On or before May 1 of every other year beginning in 1996, the Department of Conservation shall report to the Legislature regarding the implementation of this chapter by cities and counties.

(b) The report shall contain, but not be limited to, the number of acres of land under contract in each category and the number of acres of land which were removed from contract through cancellation, eminent domain, annexation, or nonrenewal.

(c) The report shall also contain the following specific information relating to not less than one-third of all cities and counties participating in the Williamson Act program:

(1) The number of contract cancellation requests for which notices of hearings were mailed to the Director of Conservation pursuant to Section 51284 which were approved by boards or councils during the prior two years or for which approval is still pending by boards or councils.

(2) The amount of cancellation fees payable to the county treasurer as deferred taxes and which are required to be transmitted to the Controller pursuant to subdivision (d) of Section 51283 which have not been collected or which remain unpaid.

(3) The total number of acres covered by certificates of cancellation of contracts during the previous two years.

(4) The number of nonrenewal and withdrawal of renewal notices received pursuant to Section 51245 and the number of expiration notices received pursuant to Section 51246 during the previous two years.

(5) The number of acres covered by nonrenewal notices that were not withdrawn and expiration notices during the previous two years.

(d) The department may recommend changes to this chapter which would further promote its purposes.

(e) The Legislature may, upon request of the department, appropriate funds from the deferred taxes deposited in the General Fund pursuant to subdivision (d) of Section 51283 in an amount

sufficient to prepare the report required by this section.

CHAPTER 1175

An act to amend Section 49116 of the Education Code, and to amend Sections 1286, 1288, 1293.1, 1294, 1295, 1296, 1298, 1303, 1305, 1308, 1308.1, 1309, 1391, 1392, and 1394 of, to add Sections 1294.1, 1294.3, 1294.4, 1294.5, 1308.2, 1308.3, 1308.4, and 1393 to, and to repeal Section 1394.1 of, the Labor Code, relating to employment.

[Approved by Governor September 29, 1994. Filed with Secretary of State September 30, 1994.]

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

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

(a) Child labor law violations continue to be a serious problem in many different California industries.

(b) California's child labor laws are narrower in scope and provide for significantly lower penalties than federal labor laws prohibiting exactly the same injurious, unsafe, and unhealthy working conditions for children.

(c) The narrow scope of, and relatively light penalties under California child labor laws do little to encourage employers to prevent child injuries and illnesses in California workplaces.

(d) State officials currently are not mandated to conduct comprehensive analysis with respect to occupationally related illnesses, injuries, and deaths of children.

(e) The lack of any comprehensive analysis or statistical reporting of children's occupational illnesses, injuries, and deaths prevents Californians from understanding the types, causes, frequency, and severity of those occurrences or the full costs of child labor in this state. Other states, such as New York, have compiled those statistical analyses and reports as an essential part of protecting child workers.

SEC. 2. It is the intent of the Legislature:

(a) To afford children working in California's industries workplace protection at least as great as that provided under federal law.

(b) To bring penalties under the scope of California child labor laws into conformity with the federal penalty provisions.

(c) To establish as a goal the evaluation of the nature, causes, frequency, and costs of children's occupational injuries and illnesses in order to prevent these occurrences and ensure the well-being of all children during employment and throughout their lives.

SEC. 3. This act shall be known as the Omnibus Child Labor Reform Act of 1993.

SEC. 4. Section 49116 of the Education Code is amended to read:

49116. (a) While school is in session, an employer shall not employ a minor 14 or 15 years of age for more than three hours in any day, nor more than 18 hours in any week, nor during school hours, except that a minor enrolled in and employed pursuant to a school-supervised and school-administered work experience and career exploration program may be employed for no more than 23 hours, any portion of which may be during school hours.

(b) An employer shall not employ a minor 16 or 17 years of age for more than four hours in any day in which that minor is required by law to attend school for 240 minutes or more, except as follows:

(1) The minor is employed in personnel attendance occupations, as defined in the Industrial Welfare Commission Minimum Wage Order No. 1-74, school approved work experience, or cooperative vocational education programs.

(2) The minor has been issued a permit to work pursuant to subdivision (c) of Section 49112 and is employed in accordance with the provisions of that permit.

(c) If evidence is shown, to the satisfaction of the authority issuing the permit to work, that the schoolwork or the health of the minor is being impaired by the employment, that authority may revoke the permit.

(d) Nothing in this section shall apply to any minor employed to deliver newspapers to consumers.

SEC. 5. Section 1286 of the Labor Code is amended to read:

1286. As used in this article:

(a) "Director" means the Director of Industrial Relations or his or her designee.

(b) "Department" means the Department of Industrial Relations.

(c) "Minor" means any person under the age of 18 years who is required to attend school under Chapter 2 (commencing with Section 48200) and Chapter 3 (commencing with Section 48400) of Part 27 of the Education Code. A person under the age of 18 years who is not required to attend school under Chapter 2 (commencing with Section 48200) and Chapter 3 (commencing with Section 48400) of Part 27 of the Education Code solely because that person is a nonresident of California shall still be considered a minor.

(d) "Labor Commissioner" means the Chief of the Division of Labor Law Enforcement, his or her deputies or agents, who shall have the authority to conduct informal hearings and determine the amount of civil penalties in accordance with this article.

(e) "Door-to-door sales" has the same meaning as "home solicitation contract or offer," as defined in subdivision (a) of Section 1689.5 of the Civil Code, except that "door-to-door sales" is not subject to the minimum monetary limitation set forth in that subdivision.

SEC. 6. Section 1288 of the Labor Code is amended to read:

1288. Citations issued pursuant to this article shall be classified according to the nature of the violation, and shall indicate the classification on the face thereof, as follows:

(a) Class "A" violations are violations of Section 1292, 1293, 1293.1, 1294, 1294.1, 1294.2, 1308, or 1392, and any other violations that the director determines present an imminent danger to minor employees or a substantial probability that death or serious physical harm would result therefrom. The violation of Section 1391 for the third or subsequent time shall also constitute a class "A" violation. A physical condition or one or more practices, means, methods, or operations in use in a place of employment may constitute a violation. A class "A" violation is subject to a civil penalty in an amount not less than five thousand dollars (\$5,000) and not exceeding ten thousand dollars (\$10,000) for each and every violation. Willful or repeated violations shall receive higher civil penalties than those imposed for comparable nonwillful or first violations, not to exceed ten thousand dollars (\$10,000).

(b) Class "B" violations are violations of Section 1299 or 1308.5, or a violation of Section 1391 for the first and second time, and those other violations that the director determines have a direct or immediate relationship to the health, safety, or security of minor employees, other than class "A" violations. A class "B" violation is subject to a civil penalty in an amount not less than five hundred dollars (\$500) and not to exceed one thousand dollars (\$1,000) for each and every violation. Willful or repeated violations shall receive higher civil penalties than those imposed for comparable nonwillful or first violations. A second violation of Section 1391 shall be subject to a civil penalty of one thousand dollars (\$1,000).

(c) Nothing in this section shall preclude the imposition of criminal penalties provided for in this chapter.

SEC. 7. Section 1293.1 of the Labor Code is amended to read:

1293.1. (a) Except as provided in subdivision (c) of Section 1394, no minor under the age of 12 years may be employed or permitted to work, or accompany or be permitted to accompany an employed parent or guardian, in an agricultural zone of danger. As used in this section, "agricultural zone of danger" means any or all of the following:

- (1) On or about moving equipment.
- (2) In or about unprotected chemicals.
- (3) In or about any unprotected water hazard.

The Department of Industrial Relations may, after hearing, determine other hazards that constitute an agricultural zone of danger.

(b) Except for employment described in subdivision (a) of Section 1394, no minor under the age of 12 years may be employed or permitted to work, or accompany an employed parent or guardian, in any of the occupations declared hazardous for employment of minors below 16 years of age in Section 570.71 of Title 29 of the Code of Federal Regulations, as that regulation may be amended from time to time.

SEC. 8. Section 1294 of the Labor Code is amended to read:

1294. No minor under the age of 16 years shall be employed or

permitted to work in any capacity:

- (a) Upon any railroad, whether steam, electric, or hydraulic.
- (b) Upon any vessel or boat engaged in navigation or commerce within the jurisdiction of this state.
- (c) In, about, or in connection with any processes in which dangerous or poisonous acids are used, in the manufacture or packing of paints, colors, white or red lead, or in soldering.
- (d) In occupations causing dust in injurious quantities, in the manufacture or use of dangerous or poisonous dyes, in the manufacture or preparation of compositions with dangerous or poisonous gases, or in the manufacture or use of compositions of lye in which the quantity thereof is injurious to health.
- (e) On scaffolding, in heavy work in the building trades, in any tunnel or excavation, or in, about or in connection with any mine, coal breaker, coke oven or quarry.
- (f) In assorting, manufacturing or packing tobacco.
- (g) Operating any automobile, motorcar, or truck.
- (h) In any occupation dangerous to the life or limb, or injurious to the health or morals of the minor.

SEC. 9. Section 1294.1 is added to the Labor Code, to read:

1294.1. (a) No minor under the age of 16 years shall be employed or permitted to work in either of the following:

(1) Any occupation declared particularly hazardous for the employment of minors below the age of 16 years in Section 570.71 of Title 29 of the Code of Federal Regulations, as that regulation may be revised from time to time.

(2) Any employment that does not meet the conditions and limitations upon the employment of minors between 14 and 16 years of age prescribed by, or pursuant to, Subpart C of Part 570 of Title 29 of the Code of Federal Regulations, as those regulations may be revised from time to time.

(b) No minor shall be employed or permitted to work in any occupation declared particularly hazardous for the employment of minors between 16 and 18 years of age, or declared detrimental to their health or well-being, in Subpart E of Part 570 of Title 29 of the Code of Federal Regulations, as those regulations may be revised from time to time.

(c) Nothing in this section shall prohibit a minor engaged in the processing and delivery of newspapers from entering areas of a newspaper plant, other than areas where printing presses are located, for purposes related to the processing or delivery of newspapers.

SEC. 10. Section 1294.3 is added to the Labor Code, to read:

1294.3. Minors 14 and 15 years of age may be employed in:

- (a) Office and clerical work, including the operation of office machines.
- (b) Cashiering, selling, modeling, art work, work in advertising departments, window trimming, and comparative shopping.
- (c) Price marking and tagging by hand or by machine, assembling

orders, packing and shelving.

(d) Bagging and carrying out customers' orders.

(e) Errand and delivery work by foot, bicycle, and public transportation.

(f) Cleanup work, including the use of vacuum cleaners and floor waxers, and maintenance of grounds, but not including the use of power-driven mowers or cutters.

(g) Kitchen work and other work involved in preparing and serving food and beverages, including the operation of machines and devices used in the performance of this work, including, but not limited to, dishwashers, toasters, dumbwaiters, popcorn poppers, milkshake blenders, and coffee grinders.

(h) Cleaning vegetables and fruits, and wrapping, sealing, labeling, weighing, pricing, and stocking goods when performed in areas physically separate from areas where meat is prepared for sale and outside freezers or meat coolers.

SEC. 11. Section 1294.4 is added to the Labor Code, to read:

1294.4. Nothing in this chapter shall be construed to prohibit a minor engaged in the delivery of newspapers to consumers from making deliveries by foot, bicycle, public transportation, or by an automobile driven by a person 18 years of age or older.

SEC. 12. Section 1294.5 is added to the Labor Code, to read:

1294.5. (a) Minors 16 and 17 years of age may work in gas service stations in the following activities:

- (1) Dispensing gas or oil.
- (2) Courtesy service.
- (3) Car cleaning, washing, and polishing.
- (4) Activities specified in Section 1294.3.

(b) No minor 16 or 17 years of age may perform work in gas service stations that involves the use of pits, racks, or lifting apparatus, or that involves the inflation of any tire mounted on a rim equipped with a removable retaining ring.

(c) Minors under the age of 16 years may be employed in gas service stations to perform only those activities specified in Section 1294.3.

SEC. 13. Section 1295 of the Labor Code is amended to read:

1295. (a) Sections 1292, 1293, 1294, and 1294.5 shall not apply to any of the following:

(1) Courses of training in vocational or manual training schools or in state institutions.

(2) Apprenticeship training provided in an apprenticeship training program established pursuant to Chapter 4 (commencing with Section 3070) of Division 3.

(3) Work experience education programs conducted pursuant to either or both Section 29007.5 and Article 5.5 (commencing with Section 5985) of Chapter 6 of Division 6 of the Education Code, provided that the work experience coordinator determines that the students have been sufficiently trained in the employment or work otherwise prohibited by these sections, if parental approval is

obtained, and the principal or the counselor of the student has determined that the progress of the student toward graduation will not be impaired.

(b) Section 1294.1 shall not apply to the following persons as provided by Section 570.72 of Title 29 of the Code of Federal Regulations:

(1) Student-learners in a bona fide vocational agriculture program working in the occupations listed in subdivisions (a) to (f), inclusive, of Section 1294.1 under a written agreement that provides that the student-learner's work is incidental to training, intermittent, for short periods of time, and under close supervision of a qualified person, and includes all of the following:

(A) Safety instructions given by the school and correlated with the student-learners's on-the-job training.

(B) A schedule of organized and progressive work processes for the student-learner.

(C) The name of the student-learner.

(D) The signature of the employer and a school authority, each of whom must keep copies of the agreement.

(2) Minors 14 or 15 years of age who hold certificates of completion of either a tractor operation or a machine operation program and who are working in the occupations for which they have been trained. These certificates are valid only for the occupations listed in subdivisions (a) and (b) of Section 1294.1. Farmers employing minors who have completed this program shall keep a copy of the certificates of completion on file with the minor's records.

(3) Minors 14 and 15 years old who hold certificates of completion of either a tractor operation or a machine operation program of the United States Office of Education Vocational Agriculture Training Program and are working in the occupations for which they have been trained. These certificates are valid only for the occupations listed in subdivisions (a) and (b) of Section 1294.1. Farmers employing minors who have completed this program shall keep a copy of the certificate of completion on file with the minor's records.

SEC. 14. Section 1296 of the Labor Code is amended to read:

1296. The Division of Labor Standards Enforcement may, after a hearing, determine whether any particular trade, process of manufacture, or occupation, in which the employment of minors under the age of 18 years is not already forbidden by law, or whether any particular method of carrying on the trade, process of manufacture, or occupation is sufficiently dangerous to the lives or limbs or injurious to the health or morals of minors under 18 years of age to justify their exclusion therefrom. No minor under 18 years of age shall be employed or permitted to work in any occupation thus determined to be dangerous or injurious to minors. Any determination hereunder may be reviewed by the superior court.

SEC. 15. Section 1298 of the Labor Code is amended to read:

1298. (a) Notwithstanding Section 1308.1, no minor under 12

years of age shall be employed or permitted to work at any time in or in connection with the occupation of selling or distributing newspapers, magazines, periodicals, or circulars.

(b) This section shall not apply to a minor who is at least 10 years of age and is engaged as a newspaper carrier on the effective date of the act adding this subdivision.

SEC. 16. Section 1303 of the Labor Code is amended to read:

1303. Any person, or agent or officer thereof, employing either directly or indirectly through third persons, or any parent or guardian of a minor affected by this article who violates any provision hereof, or who employs, or permits any minor to be employed in violation hereof, is guilty of a misdemeanor, punishable by a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) or imprisonment in the county jail for not more than six months, or both. Any person who willfully violates this article shall, upon conviction, be subject to a fine of not more than ten thousand dollars (\$10,000) or to imprisonment in the county jail for not more than six months, or both. No person shall be imprisoned under this section, except for an offense committed after the conviction of that person for a prior offense under this article.

SEC. 17. Section 1305 of the Labor Code is amended to read:

1305. (a) All fines and penalties collected under this article, other than as the result of a judicial proceeding to enforce collection, shall be paid to the department in the form of remittances payable to the Department of Industrial Relations. The department shall transmit the payments to the State Treasury and the payments shall be credited to the General Fund.

(b) Notwithstanding Section 1463 of the Penal Code, all fines and penalties collected in judicial proceedings to enforce their collection, except for the civil penalties that are assessed and collected pursuant to Sections 1287, 1288, and 1289, shall be allocated pursuant to court order. The court shall direct that 50 percent of the fines and penalties assessed shall be transmitted to the county treasury, if prosecuted by the district attorney or the county counsel, or to the city treasury, if prosecuted by the city attorney, 25 percent of the fines and penalties assessed shall be transmitted to the Department of Industrial Relations to be available, upon appropriation by the Legislature, to cover the cost of complying with the reporting requirements specified in Section 1311.1, and 25 percent of the fines and penalties assessed be transmitted to the Treasurer for deposit in the State Treasury to the credit of the General Fund.

SEC. 18. Section 1308 of the Labor Code is amended to read:

1308. (a) Any person is guilty of a misdemeanor and is punishable by a fine of not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000), imprisonment for not exceeding six months, or both, who, as parent, relative, guardian, employer, or otherwise having the care, custody, or control of any minor under the age of 16 years, exhibits, uses, or employs, or in any manner or under any pretense, sells, apprentices, gives away, lets

out, or disposes of the minor to any person, under any name, title, or pretense for, or who causes, procures, or encourages the minor to engage in any of the following:

(1) Any business, exhibition, or vocation injurious to the health or dangerous to the life or limb of the minor.

(2) The vocation, occupation, service, or purpose of singing, playing on musical instruments, rope or wire walking, dancing, begging, or peddling, or as a gymnast, acrobat, contortionist, or rider, in any place whatsoever.

(3) Any obscene, indecent, or immoral purposes, exhibition, or practice whatsoever. Notwithstanding any other provision of law, this paragraph shall apply to a person with respect to any minor under the age of 18 years.

(4) Any mendicant or wandering business.

Any person who willfully violates this section shall, upon conviction, be subject to a fine of not more than ten thousand dollars (\$10,000), or to imprisonment in the county jail for not more than six months, or both. No person shall be imprisoned under this section, except for an offense committed after the conviction of that person for a prior offense under this article.

(b) Nothing in this section applies to or affects any of the following:

(1) The employment or use of any minor as a singer or musician in any church, school, or academy, or the teaching or learning of the science or practice of music.

(2) The employment of any minor as a musician at any concert or other musical entertainment on the written consent of the mayor of the city or president of the board of trustees of the city where the concert or entertainment takes place.

(3) The participation by any minor of any age, whether or not the minor receives payment for his or her services or receives money prizes, in any horseback riding exhibition, contest, or event other than a rough stock rodeo event, circus, or race. As used in this paragraph, "rough stock rodeo event" means any rodeo event operated for profit or operated by other than a nonprofit organization in which unbroken, little-trained, or imperfectly trained animals are ridden or handled by the participant, and shall include, but not be limited to, saddle bronc riding, bareback riding, and bull riding. As used in this paragraph, "race" means any speed contest between two or more animals that are on a course at the same time and that is operated for profit or operated other than by a nonprofit organization.

(4) The leading of livestock by a minor in nonprofit fairs stock parades, livestock shows and exhibitions.

SEC. 19. Section 1308.1 of the Labor Code is amended to read:

1308.1. (a) No minor under the age of 6 years shall be permitted to engage in the door-to-door sales or street sales of candy, cookies, flowers, or any other merchandise or commodities.

(b) No minor under 16 years of age, permitted by law to engage

in door-to-door sales of newspaper or magazine subscriptions, or of candy, cookies, flowers, or other merchandise or commodities, shall be employed in those activities more than 50 miles from his or her place of residence.

SEC. 20. Section 1308.2 is added to the Labor Code, to read:

1308.2. (a) Except as provided in subdivision (f), any person 18 years of age or older who transports, or provides direction or supervision during transportation of, a minor under 16 years of age to any location more than 10 miles from the minor's residence, or directs or supervises a minor, for the purpose of facilitating the minor's participation in door-to-door sales of any merchandise or commodity, shall register with the Labor Commissioner pursuant to this section. Registration may be renewed on an annual basis.

(b) The Labor Commissioner shall not register or renew registration of any person pursuant to this section unless all of the following conditions are satisfied:

(1) The person has executed a written application on a form prescribed by the Labor Commissioner, including all of the following:

(A) The name, address, social security number, and California driver's license number of the applicant and the name, address, and employer identification number of the organization from which the merchandise to be sold is purchased. The information provided pursuant to this subparagraph shall be set forth in a declaration of the individual applicant under penalty of perjury.

(B) A statement by the applicant containing all facts required by the Labor Commissioner concerning the applicant's character, competency, responsibility, and the manner and method by which the applicant proposes to transport the minor or minors, the number of minors to be transported, methods and levels of adult supervision to be provided, the nature of the merchandise to be sold, the content of any promotional statement to be delivered by any minor, and a description of how the merchandise or commodity to be sold would be represented to the public.

(2) The Labor Commissioner, following an investigation thereof, is satisfied as to the character, competency, and responsibility of the applicant.

(3) Each application for initial registration shall be accompanied by a fee determined by the Labor Commissioner in an amount sufficient in the aggregate to defray the division's costs of administering the registration program, but which shall not exceed one hundred dollars (\$100) for initial registration or fifty dollars (\$50) for registration renewal.

(c) Any registrant under this section shall have proof of registration with the Labor Commissioner in his or her immediate possession at all times when engaged in any activity described in subdivision (a).

(d) Whenever an application for a registration or renewal is made, and application processing pursuant to this section has not

been completed, the Labor Commissioner may, at his or her discretion, issue a temporary or provisional registration valid for a period not exceeding 90 days, and subject, where appropriate, to summary revocation by the Labor Commissioner. Otherwise, the conditions for issuance or renewal of registration shall meet the requirements of subdivision (b).

(e) Any person who violates subdivision (a) or (c) is guilty of a misdemeanor, punishable by a fine of one thousand dollars (\$1,000) per affected minor upon the first conviction for a violation, two thousand five hundred dollars (\$2,500) per affected minor for the second conviction for a violation, and ten thousand dollars (\$10,000) per affected minor for a third or subsequent conviction for a violation.

(f) The following persons are not required to register under this section:

- (1) A parent or the guardian of the minor.
- (2) A person solely providing transportation for hire, who is not otherwise subject to the registration requirements of subdivision (a).
- (3) A person acting on behalf of a trustee or charitable corporation, as defined in Sections 12582 and 12582.1, respectively, of the Government Code, or of any entity described in Section 12583 of the Government Code.

SEC. 21. Section 1308.3 is added to the Labor Code, to read:

1308.3. (a) Except as provided in subdivision (g), any individual, association, corporation, or other entity that employs or uses, either directly or indirectly through third persons, minors under 16 years of age in door-to-door sales at any location more than 10 miles from the minor's residence shall register with the Labor Commissioner pursuant to this section. Registration may be renewed on an annual basis.

(b) The Labor Commissioner shall not register or renew registration of any applicant pursuant to this section unless all the following conditions are satisfied:

(1) The organization has executed a written application therefor on a form prescribed by the Labor Commissioner, including all of the following:

(A) The company's name, address, and employer identification number, and the names, addresses, and social security numbers of all adults employed to supervise, accompany, or transport minors who would be engaged in door-to-door sales. The information provided pursuant to this subparagraph shall be set forth in a declaration under penalty of perjury by the applicant if an individual, or an officer of an applicant that is an association, corporation, or other entity.

(B) A statement of all the facts required by the Labor Commissioner concerning the nature of the merchandise to be sold and a plan detailing the level and nature of adult supervision to be provided minors engaged in door-to-door sales. The information provided pursuant to this subparagraph shall be by declaration under

penalty of perjury by the individual, or an officer of the association, corporation, or other entity.

(C) A copy of any written contract or other written agreement to be offered by the applicant to minors employed or used by the applicant in door-to-door sales.

(2) The Labor Commissioner, following an investigation thereof, is satisfied that the employer has not previously violated this article and does not propose to expose minors in its employ to hazardous or unsafe working conditions.

(3) Each application for initial registration shall be accompanied by a fee determined by the Labor Commissioner in an amount sufficient in the aggregate to defray the division's costs of administering the registration program, but which shall not exceed three hundred fifty dollars (\$350) for initial registration or two hundred dollars (\$200) for registration renewal.

(c) Any registrant under this section shall, upon request, make available for inspection by the Labor Commissioner all its payroll records for any period.

(d) Any registrant under this section, or person acting on behalf of a registrant, shall have proof of registration with the Labor Commissioner in his or her immediate possession at all times when engaged in any activity described in subdivision (a).

(e) Whenever an application for a registration or renewal is made, and application processing pursuant to this section has not been completed, the Labor Commissioner may, at his or her discretion, issue a temporary or provisional registration valid for a period not exceeding 90 days, and subject, where appropriate, to summary revocation by the Labor Commissioner. Otherwise, the conditions for issuance or renewal of registration shall meet the requirements of subdivision (a).

(f) Any person or entity, or any agent or officer thereof, who violates subdivision (a) or (c), and any parent or guardian who knowingly permits a minor in his or her custody to be employed in door-to-door sales specified in subdivision (a) by an unregistered person or entity, or permits any minor to be employed in violation hereof, is guilty of a misdemeanor, punishable by a fine of one thousand dollars (\$1,000) per affected minor for the first conviction for a violation, two thousand five hundred dollars (\$2,500) per affected minor for the second conviction for a violation, and ten thousand dollars (\$10,000) per affected minor for a third or subsequent conviction for a violation.

(g) This section does not apply to any trustee or charitable corporation, as defined in Sections 12582 and 12582.1, respectively, of the Government Code, or to any entity described in Section 12583 of the Government Code.

SEC. 22. Section 1308.4 is added to the Labor Code, to read:

1308.4. The Labor Commissioner may revoke, suspend, or refuse to renew any registration under Section 1308.2 or 1308.3 when any of the following have occurred:

(a) The registrant or any agent of the registrant has violated or failed to comply with Section 1308.2 or 1308.3.

(b) The registrant has made any misrepresentation or false statement in his or her application for registration under Section 1308.2 or 1308.3.

(c) The registrant has operated in a manner substantially different from the conditions of operation stated in the application for registration.

(d) The registrant, or any agent of the registrant, has been found by a court of law or the Labor Commissioner to have violated, or willfully aided or abetted any person in the violation of, any law of this state regulating the employment of minors, the payment of wages to minors, or the conditions, terms, or places of employment affecting the health and safety of minors.

(e) The registrant has been found, by a court of law or the Secretary of Labor, to have violated any provision of the child labor provisions set forth in Section 12 of the federal Fair Labor Standards Act of 1938, as amended (29 U.S.C. Sec. 212).

SEC. 23. Section 1309 of the Labor Code is amended to read:

1309. Every person who takes, receives, hires, employs, uses, exhibits, or has in custody, for any of the purposes mentioned in Section 1308, any minor under the age of 16, or under the age of 18, as specified in paragraph (3) of subdivision (a) of Section 1308, is guilty of a misdemeanor punishable by a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000), or imprisonment for not more than six months, or both.

Any person who willfully violates this section shall, upon conviction, be subject to a fine of not more than ten thousand dollars (\$10,000), or to imprisonment in the county jail for not more than six months, or both. No person shall be imprisoned under this section, except for an offense committed after the conviction of that person for a prior offense under this article.

SEC. 24. Section 1391 of the Labor Code is amended to read:

1391. (a) Except as provided in Sections 1297, 1298, and 1308.7:

(1) No employer shall employ a minor 15 years of age or younger for more than eight hours in one day of 24 hours, or more than 40 hours in one week, or before 7 a.m. or after 7 p.m., except that from June 1 through Labor Day, a minor 15 years of age or younger may be employed for the hours authorized by this section until 9 p.m. in the evening.

(2) Notwithstanding paragraph (1), while school is in session, no employer shall employ a minor 14 or 15 years of age for more than three hours in any schoolday, nor more than 18 hours in any week, nor during school hours, except that a minor enrolled in and employed pursuant to a school-supervised and school-administered work experience and career exploration program may be employed for no more than 23 hours, any portion of which may be during school hours.

(3) No employer shall employ a minor 16 or 17 years of age for

more than eight hours in one day of 24 hours or more than 48 hours in one week, or before 5 a.m., or after 10 p.m. on any day preceding a schoolday. However, a minor 16 or 17 years of age may be employed for the hours authorized by this section during any evening preceding a nonschoolday until 12:30 a.m. of the nonschoolday.

(4) Notwithstanding paragraph (3), while school is in session, no employer shall employ a minor 16 or 17 years of age for more than four hours in any schoolday, except as follows:

(A) The minor is employed in personnel attendance occupations, as defined in the Industrial Welfare Commission Minimum Wage Order No. 1-74, school approved work experience, or cooperative vocational education programs.

(B) The minor has been issued a permit to work pursuant to subdivision (c) of Section 49112 and is employed in accordance with the provisions of that permit.

(b) For purposes of this section, "schoolday" means any day in which a minor is required to attend school for 240 minutes or more.

(c) Any person or the agent or officer thereof, or any parent or guardian, who directly or indirectly violates or causes or suffers the violation of this section is guilty of a misdemeanor punishable by a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000), or imprisonment in the county jail for not more than 60 days, or both. Any person who willfully violates this section shall, upon conviction, be subject to a fine of not more than ten thousand dollars (\$10,000) or to imprisonment in the county jail for not more than six months, or both. No person shall be imprisoned under this section, except for an offense committed after the conviction of that person for a prior offense under this article.

(d) Nothing in this section shall apply to any minor employed to deliver newspapers to consumers.

SEC. 25. Section 1392 of the Labor Code is amended to read:

1392. Every person who has a minor under his or her control, as a ward or an apprentice, and who, except in household occupations, requires the minor to work more than eight hours in any one day, is guilty of a misdemeanor.

SEC. 26. Section 1393 is added to the Labor Code, to read:

1393. (a) Notwithstanding any other provision of this article, the Labor Commissioner may issue an exemption from laws regulating the employment of minors to employers operating agricultural packing plants that employ minors 16 and 17 years of age during any day during which school is not in session, for up to 10 hours per day during the peak harvest season. These exemptions shall only be granted if they do not materially affect the safety and welfare of minor employees and will prevent undue hardship on the employer. The Labor Commissioner may require an inspection of an agricultural packing plant prior to issuing an exemption.

(b) Any exemption granted pursuant to subdivision (a) shall be in writing to be effective, and may be revoked after reasonable notice is given, in writing, by the Labor Commissioner. Any notice of

revocation shall include the reason for the revocation.

(c) An application for an exemption under subdivision (a) shall be made by an employer on a form provided by the Labor Commissioner, and a copy of the application shall be posted at the employer's place of employment at the time the application is filed with the division.

SEC. 27. Section 1394 of the Labor Code is amended to read:

1394. Nothing in this article or Article 2 (commencing with Section 1285) of Chapter 2 shall prohibit or prevent either of the following:

(a) The employment of any minor at agricultural, horticultural, viticultural, or domestic labor during the time the public schools are not in session, or during other than school hours, when the work performed is for or under the control of his parent or guardian and is performed upon or in connection with premises owned, operated or controlled by the parent or guardian. However, nothing herein shall permit children under schoolage to work at these occupations, while the public schools are in session.

(b) The full-time employment of minors who meet all other legal employment requirements, if they are exempt from compulsory school attendance under Section 48231 of the Education Code.

SEC. 28. Section 1394.1 of the Labor Code is repealed.

SEC. 29. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1176

An act to add Chapter 4.7 (commencing with Section 24500) to Division 20 of the Health and Safety Code, relating to infant safety.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

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

(1) The disability and death of infants resulting from injuries sustained in crib accidents are a serious threat to the public health, welfare, and safety of the people of this state.

(2) Infants are an especially vulnerable class of people who are at the complete mercy of an unsafe crib.

(3) The design and construction of a baby crib must ensure that it is safe to leave an infant unattended for extended periods of time. A parent or caregiver has a right to believe that the crib in use is a safe place to leave an infant.

(4) Over 13,000 infants are injured in unsafe cribs every year.

(5) In the past decade, 622 infants died (a rate of 62 infants each year) from injuries sustained in unsafe cribs.

(6) The United States Consumer Product Safety Commission estimates that the cost to society resulting from injuries and death due to unsafe cribs is two hundred thirty-five million dollars (\$235,000,000) per year.

(7) Secondhand, hand-me-down, and heirloom cribs pose a special problem. There were four million infants born in this country last year, but only one million new cribs sold. As many as three out of four infants are placed in secondhand, hand-me-down, or heirloom cribs.

(8) Most injuries and deaths occur in secondhand, hand-me-down, or heirloom cribs.

(9) Existing state and federal legislation is inadequate to deal with this hazard.

(10) Prohibiting the remanufacture, retrofit, sale, contracting to sell or resell, leasing, or subletting of unsafe cribs, particularly unsafe secondhand, hand-me-down, or heirloom cribs, will prevent injuries and deaths caused by cribs.

(b) The purpose of this article is to prevent the occurrence of injuries and deaths to infants as a result of unsafe cribs by making it illegal to remanufacture, retrofit, sell, contract to sell or resell, lease, sublet, or otherwise place in the stream of commerce, after the effective date of this act, any full-size or non-full-size crib that is unsafe for any infant using the crib.

(c) It is the intent of the Legislature to encourage public and private collaboration in disseminating materials relative to the safety of baby cribs to parents, child care providers, and those who would be likely to place unsafe cribs in the stream of commerce. The Legislature also intends that informational materials regarding baby crib safety are to be developed with private resources and shall be available to consumers through the Department of Consumer Affairs.

SEC. 2. Chapter 4.7 (commencing with Section 24500) is added to Division 20 of the Health and Safety Code, to read:

CHAPTER 4.7. INFANT SAFETY

Article 1. Infant Crib Safety Act

24500. This article shall be known and may be cited as the Infant Crib Safety Act.

24501. As used in this article, the following terms have the following meanings:

(a) "Infant" means any person less than 35 inches tall and less than three years of age.

(b) "Crib" means a bed or containment designed to accommodate an infant.

(c) "Full-size crib" means a full-size crib as defined in Section 1508.3 of Title 16 of the Code of Federal Regulations regarding the requirements for full-size cribs.

(d) "Non-full-size crib" means a non-full-size crib as defined in Section 1509.2(b) of Title 16 of the Code of Federal Regulations regarding the requirements for non-full-size cribs.

(e) "Person" means any natural person, firm, corporation, association, or agent or employee thereof.

(f) "Commercial user" means any person who deals in full-size or non-full-size cribs of the kind governed by this chapter who otherwise by one's occupation holds oneself out as having knowledge or skill peculiar to the full-size or non-full-size cribs governed by this chapter, or any person who is in the business of remanufacturing, retrofitting, selling, leasing, subletting, or otherwise placing in the stream of commerce full-size or non-full-size cribs.

24502. (a) No commercial user shall remanufacture, retrofit, sell, contract to sell or resell, lease, sublet, or otherwise place in the stream of commerce, on or after January 1, 1995, a full-size or non-full-size crib that is unsafe for any infant using the crib.

(b) A crib is presumed to be unsafe pursuant to this article if it does not conform to all of the following:

(1) Part 1508 (commencing with Section 1508.1) of Title 16 of the Code of Federal Regulations.

(2) Part 1509 (commencing with Section 1509.1) of Title 16 of the Code of Federal Regulations.

(3) Part 1303 (commencing with Section 1303.1) of Title 16 of the Code of Federal Regulations.

(4) American Society for Testing Materials Voluntary Standards F966-90.

(5) American Society for Testing Materials Voluntary Standards F1169-88.

(6) Any regulations that are adopted in order to amend or supplement the regulations described in paragraphs (1) to (5), inclusive.

(c) Cribs that are unsafe or fail to perform as expected pursuant to subdivision (b) include, but are not limited to, cribs that have any of the following dangerous features or characteristics:

(1) Corner posts that extend more than one-sixteenth of an inch.

(2) Spaces between side slats more than two and three-eighths inches.

(3) Mattress support that can be easily dislodged from any point of the crib. A mattress segment can be easily dislodged if it cannot withstand at least a 25-pound upward force from underneath the

crib.

(4) Cutout designs on the end panels.

(5) Rail height dimensions that do not conform to the following:

(A) The height of the rail and end panel as measured from the top of the rail or panel in its lowest position to the top of the mattress support in its highest position is at least 22.8 centimeters (9 inches).

(B) The height of the rail and end panel as measured from the top of the rail or panel in its highest position to the top of the mattress support in its lowest position is at least 66 centimeters (26 inches).

(6) Any screws, bolts, or hardware that are loose and not secured.

(7) Sharp edges, points, or rough surfaces, or any wood surfaces that are not smooth and free from splinters, splits, or cracks.

(8) Non-full-size cribs with tears in mesh or fabric sides.

24503. On or after January 1, 1996, any commercial user who willfully and knowingly violates Section 24502 is guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars (\$1,000). Hotels, motels, or similar transient lodging shall not be subject to this section until January 1, 1998.

24504. Any person may maintain an action against any commercial user who violates Section 24502 to enjoin the remanufacture, retrofit, sale, contract to sell, contract to resell, lease, or subletting of a full-size or non-full-size crib that is unsafe for any infant using the crib, and for reasonable attorney's fees and costs. This section shall not apply to hotels, motels, or similar transient lodging until January 1, 1998.

24505. Remedies available under this article shall be in addition to any other remedies or procedures under any other provision of law that may be available to an aggrieved party.

24506. If any provision of this article or the application thereof to any person or circumstances is held invalid or unconstitutional, that invalidity shall not affect other provisions or applications of this article that can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

Article 2. Shaken Baby Syndrome

24520. The Legislature finds and declares all of the following:

(a) Shaken baby syndrome is a medically serious, sometimes fatal, matter affecting newborns and very young children. Shaking an infant or child in anger is particularly dangerous.

(b) Vigorous shaking of an infant or child can result in bleeding inside the head, causing irreversible brain damage, blindness, cerebral palsy, hearing loss, spinal cord injury, seizures, learning disabilities, and even death.

(c) While doctors have long recognized that shaking an infant or child can cause injuries, many adults remain unaware of how dangerous this practice can be.

(d) Studies have shown that exposure to materials about the

dangers of shaking a baby improved understanding of the effects of shaking an infant or child.

(e) Shaken baby syndrome is preventable. Knowledge about shaken baby syndrome can be significantly raised through education and public awareness campaigns.

(f) It is the intent of the Legislature to encourage public and private collaboration in developing instructional materials regarding shaken baby syndrome, and to encourage that these materials be supplied to health facilities, midwives, and to the State Department of Social Services free of charge.

24521. The purpose of this article is to prevent the occurrence of injuries and deaths to infants and children as a result of shaken baby syndrome by creating a statewide public awareness education campaign. The campaign shall include the distribution of readily understandable information and instructional materials regarding shaken baby syndrome, explaining its medical effects upon infants and children and emphasizing preventive measures.

24522. (a) Information and instructional materials as described in Section 24521 shall be provided free of charge by each health facility to parents or guardians of each newborn, upon discharge from the health facility. In the event of home birth attended by a licensed midwife, the midwife shall provide the information and instructional materials to the parents or guardians of the newborn.

(b) The State Department of Social Services shall provide the information and instructional materials free of charge to child care providers upon licensure and at the time of site visit.

(c) The information and instructional materials provided pursuant to this section shall focus upon the serious nature of the risk to infants and young children presented by shaken baby syndrome.

(d) The requirement that informational and instructional materials be provided pursuant to this section applies only when those materials have been supplied to those persons or entities that are required to provide the materials. The persons or entities required to provide these materials shall not be subject to any legal cause of action whatsoever based on the requirements of this section.

(e) For persons or agencies providing these materials pursuant to this section, this section does not require the provision of duplicative or redundant informational and instructional materials.

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

CHAPTER 1177

An act to amend Section 25007 of the Health and Safety Code, and to amend Sections 13281 and 13282 of the Water Code, relating to waste discharge.

[Approved by Governor September 29, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 25007 of the Health and Safety Code is amended to read:

25007. (a) Applicants may be registered under any terms, conditions, orders, and directions as the health officer or his or her duly authorized representative may deem necessary for the protection of human health and comfort. Each health officer and his or her duly authorized representative may require any and all persons who are registered with the health officer to clean septic tanks, cesspools, or sewage seepage pits or to dispose of the cleanings therefrom, to file with the health officer at any time and at any frequency or intervals as the health officer or duly authorized representative may desire, a statement specifying all of the following:

(1) The name and address of the owner or tenant of each and every one of the premises where a septic tank, cesspool, or sewage seepage pit has been cleaned out by the registrant or his or her employees or by others on his or her behalf and the date of each cleaning.

(2) The location where the cleanings are disposed of and by whom.

(3) Discharges of waste that may result in violation of laws or ordinances required to be known by the registrant pursuant to Section 25004.

(b) The health officer may require the statement to be sworn to before a notary.

(c) Any and all persons registered with the health officer to clean septic tanks, cesspools, or sewage seepage pits, or to dispose of the cleanings therefrom, shall also provide a statement as required pursuant to paragraph (3) of subdivision (a) to a regional board as defined pursuant to Section 13050 of the Water Code.

SEC. 2. Section 13281 of the Water Code is amended to read:

13281. In making the determination, the regional board shall consider all relevant evidence related to the discharge, including, but not limited to, those factors set forth in Section 13241, information provided pursuant to Section 25007 of the Health and Safety Code, possible adverse impacts if the discharge is permitted, failure rates of any existing individual disposal systems whether due to inadequate design, construction, maintenance, or unsuitable

hydrogeologic conditions, evidence of any existing, prior, or potential contamination, existing and planned land use, dwelling density, historical population growth, and any other criteria as may be established pursuant to guidelines, regulations, or policies adopted by the state board.

SEC. 3. Section 13282 of the Water Code is amended to read:

13282. (a) If it appears that adequate protection of water quality, protection of beneficial uses of water, and prevention of nuisance, pollution, and contamination can be attained by appropriate design, location, sizing, spacing, construction, and maintenance of individual disposal systems in lieu of elimination of discharges from systems, and if an authorized public agency provides satisfactory assurance to the regional board that the systems will be appropriately designed, located, sized, spaced, constructed, and maintained, the discharges shall be permitted so long as the systems are adequately designed, located, sized, spaced, constructed, and maintained.

(b) An authorized public agency shall notify the regional board if the systems are not adequately designed, located, sized, spaced, constructed, and maintained.

(c) For purposes of this section, "authorized public agency" means a public agency authorized by a water quality control board and having authority to ensure that systems are adequately designed, located, sized, spaced, constructed, and maintained.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

Moreover, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Also, notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1178

An act to add Section 44253.10 to the Education Code, relating to teacher credentialing.

[Approved by Governor September 29, 1994. Filed with Secretary of State September 30, 1994.]

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

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

(a) All pupils should have the opportunity to learn. Pupils with limited English Proficiency (LEP) need equal educational access to the curriculum. Teachers of LEP pupils must have the skills and knowledge to provide appropriate methods of instruction. The pupil population in kindergarten and grades 1 to 12, inclusive, in this state has become more diverse and many pupils in our schools speak little or no English. It appears that this trend toward a more culturally diverse population will continue at a rising pace. This increase in cultural and language diversity of the schoolage population will require a dramatic increase in the number of teachers who are trained and competent to provide educational instructions to LEP pupils.

(b) The new credentialing system includes a Crosscultural, Language and Academic Development (CLAD) certificate to provide for the preparation and credentialing of teachers for LEP pupils. For the near future, there is a shortage of teachers who will meet the educational requirements of the CLAD certificates. However, there is an abundance of LEP pupils who need trained and competent teachers.

(c) In appreciation of these current circumstances, and as an alternative to the CLAD certificate program for a limited duration to efficiently and quickly generate a sufficient number of experienced, competent teachers to provide equal educational access for the large schoolage population of LEP pupils in this state, the Legislature hereby enacts Section 44253.10 of the Education Code.

SEC. 2. Section 44253.10 is added to the Education Code, to read:

44253.10. (a) A teacher with a basic teaching credential may be assigned to provide specially designed content instruction delivered in English, as defined in subdivision (b) of Section 44253.2, to limited-English-proficient pupils only if the following conditions are met:

(1) The teacher, as of January 1, 1995, is a permanent employee of a school district, a county office of education, or a school administered under the authority of the Superintendent of Public Instruction, or has been employed in a school district with an average daily attendance of not more than 250 for at least two years.

(2) The teacher completes 45 clock hours of staff development in methods of specially designed content instruction delivered in English prior to January 1, 1998. The commission may extend that date by an additional six-month period if the commission finds, on the basis of a petition by the staff development sponsor, that the sponsor has made a good faith effort to provide the staff development but has been unable to do so because of circumstances beyond the control of the sponsor providing the staff development and the teachers.

(b) The commission, in consultation with the Superintendent of Public Instruction, shall establish guidelines for the provision of staff development pursuant to this section. The commission and the superintendent shall use their best efforts to establish these guidelines as soon as possible, but in no event later than January 1, 1996. Staff development pursuant to this section shall be consistent with the commission's guidelines. To ensure the highest standards of program quality and effectiveness, the guidelines shall include quality standards for the persons who train others to perform staff development training and for those who provide the training. The guidelines may require that teachers who qualify to provide instruction pursuant to paragraph (1) of subdivision (d) include a portion within the total 45 clock hours of training provided in paragraph (2) of subdivision (a) in English language development. The guidelines and standards established by the commission to implement this section shall require and maintain compliance with any requirements mandated by federal law or its implementing regulations for purposes of assuring continued federal financial assistance.

(c) The staff development may be sponsored by any school district, county office of education, or regionally accredited college or university meets the standards included in the guidelines established pursuant to this subdivision or any organization that meets those standards and is approved by the commission. Any equivalent three semester unit or four quarter unit class may be taken by the teacher at a regionally accredited college or university to satisfy the staff development requirement described in subdivision (a).

(d) A teacher who completes the staff development described in subdivision (a) shall be awarded a certificate of completion of staff development in methods of specifically designed content instruction in English by the school district or county office of education, but may not be assigned to provide content instruction in the pupil's primary language, as defined in subdivision (c) of Section 44253.2. A teacher who completes that staff development may be assigned to provide instruction for English language development, as defined in subdivision (a) of Section 44253.2, in a self-contained classroom only under either of the following circumstances:

(1) The teacher has taught for at least nine years in California public schools and certifies that he or she has had experience, or training in, teaching limited-English-proficient pupils and authorizes

verification by the entity that issues the certificate of completion. The teacher shall be awarded a certificate of completion in methods of instruction for English language development in a self-contained classroom issued by the school district or county office of education.

(2) The teacher has taught for less than nine years in California public schools, or has taught for at least nine years in California public schools but is unable to certify that he or she has had experience, or training in, teaching limited-English-proficient pupils, but has, within three years of completing the staff development described in subdivision (a), completed an additional 45 hours of staff development, including English language development training, as set forth in the guidelines developed pursuant to subdivision (a). Upon completion of this additional staff development, the teacher shall be awarded a certificate of completion in methods of instruction for English language development in a self-contained classroom issued by the school district or county office of education.

(e) A teacher who is pursuing the training specified in paragraph (2) of subdivision (a) or subdivision (d), or both, including through the period for the assessment and awarding of the certificate, may be provisionally assigned to provide instruction for English language development, as defined in subdivision (a) of Section 44253.2, or to provide specially designed content instruction delivered in English, as defined in subdivision (b) of Section 44253.2, during the period in which the teacher pursues that training.

(f) A teacher who meets the requirements for a certificate of completion may be assigned indefinitely to provide the instructional services named on the certificate in any school district, county office of education, or school administered under the authority of the Superintendent of Public Instruction.

(g) A school district or county office of education that provides staff development pursuant to paragraph (2) of subdivision (a) shall award each teacher who completes the staff development a certificate of completion of staff development in methods of specially designed content instruction in English or English language development, or both, in accordance with the staff development that the teacher completed.

(h) Teacher assignments made in accordance with subdivision (a) of this section shall be included in the reports required by subdivisions (a) and (e) of Section 44258.9.

(i) A school district governing board shall make reasonable efforts to provide limited-English-proficient pupils in need of English language development instruction with teachers who hold appropriate credentials, language development specialist certificates, or crosscultural language and academic development certificates that authorize English language development instruction. However, any teacher awarded a certificate or certificates of completion under subdivision (e) shall be deemed certificated and competent to provide the services listed on that

certificate of completion. A teacher who completes staff development pursuant to this section may use those hours of staff development to meet the requirements of subdivision (b) of Section 44277.

(k) Any teacher completing staff development pursuant to this section shall be credited with three semester units or four quarter units for each block of 45 hours of staff development completed for the purpose of meeting the requirements set forth in subdivision (b) of Section 44253.3.

(l) Any school district may use funds allocated to it for the purposes of Chapter 3.1 (commencing with Section 44670) to provide staff development pursuant to this section.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1179

An act to amend Section 39616 of, and to add Section 40440.2 to, the Health and Safety Code, relating to air pollution.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 39616 of the Health and Safety Code is amended to read:

39616. (a) The Legislature hereby finds and declares all of the following:

(1) Several regions in California suffer from some of the worst air quality in the United States.

(2) While traditional command and control air quality regulatory programs are effective in cleaning up the air, other options for improvement in air quality, such as market-based incentive programs, should be explored, provided that those programs result in equivalent emission reductions while expending fewer resources and while maintaining or enhancing the state's economy.

(3) The purpose of this section is to establish requirements under

which a district board may adopt market-based incentive programs in a manner which achieves the greatest air quality improvement while strengthening the state's economy and preserving jobs.

(b) (1) A district may adopt a market-based incentive program as an element of the district's plan for attainment of the state or federal ambient air quality standards.

(2) A market-based incentive program that satisfies the conditions in this section may substitute for current command and control regulations and future air quality measures that would otherwise have been adopted as part of the district's plan for attainment, and may be implemented in lieu of some or all of the control measures adopted by the district pursuant to Chapter 10 (commencing with Section 40910) of Part 3.

(c) In adopting the rules and regulations to implement a program for the use of market-based incentives, a district shall, at the time the rules and regulations are adopted, make express findings and shall, at the time the rules and regulations are submitted to the state board, submit appropriate information to substantiate the basis for making the findings that each of the following conditions is met on an overall districtwide basis:

(1) The program will result in an equivalent or greater reduction in emissions at equivalent or less cost compared with current command and control regulations and future air quality measures that would otherwise have been adopted as part of the district's plan for attainment.

(2) The program will provide a level of enforcement and monitoring, to ensure compliance with emission reduction requirements, comparable with command and control air quality measures that would otherwise have been adopted by the district for inclusion in the district's plan for attainment.

(3) The program will establish a baseline methodology that provides appropriate credit so that stationary sources of air pollution which have been modified prior to implementation of the program to reduce stationary source emissions are treated equitably.

(4) The program will not result in a greater loss of jobs or more significant shifts from higher to lower skilled jobs, on an overall districtwide basis, than that which would exist under command and control air quality measures that would otherwise have been adopted as part of the district's plan for attainment. A finding of compliance with this requirement may be made in the same manner as the analyses made by the district to meet the requirements of Section 40728.5.

(5) The program will not in any manner delay, postpone, or otherwise hinder district compliance with Chapter 10 (commencing with Section 40910) of Part 3.

(6) The program will not result in disproportionate impacts, measured on an aggregate basis, on those stationary sources included in the program compared to other permitted stationary sources in the district's attainment plan.

(d) (1) A plan or plan revision submitted to the state board prior to January 1, 1993, shall be designed to achieve equivalent emission reductions and reduced cost and job impacts compared to current command and control regulations and future air quality measures that would otherwise have been adopted as part of the district's implementation plan. The state board shall, not later than 90 days after the program has been submitted, or by April 1, 1993, whichever is sooner, determine whether the program complies with this paragraph. A district shall not implement the program unless the state board determines that the plan or plan revision complies with this paragraph.

(2) A plan or plan revision submitted on or after January 1, 1993, shall be designed to meet the provisions of subdivision (c) and Section 40440.1 if applicable. The state board shall approve the plan or plan revision prior to program implementation, and shall make its determination not later than 90 days from submittal of the plan or plan revision.

(3) Upon the adoption of rules and regulations to implement the program, the district shall submit the rules and regulations to the state board. The state board shall, within 90 days, determine whether the rules and regulations meet the requirements of this section and Section 40440.1, if applicable. This paragraph does not prohibit the district from implementing the program upon the approval of the plan or plan revision and prior to submittal of the implementing rules and regulations.

(e) Within five years of the date of adoption of a program for the use of market-based incentives, the district board shall commence public hearings to reassess the program and shall, not later than seven years from the district's initial adoption of the program, ratify the findings required pursuant to paragraphs (1), (2), (5), and (6) of subdivision (c) and the district's compliance with Section 40440.1, if applicable, with the concurrence of the state board. If the district fails to ratify the findings within the seven-year period, the district shall make appropriate revisions to the district's plan for attainment.

(f) The district board shall reassess any program subject to this section if the market price of emission trading units exceeds a predetermined level set by the district board. The district board may take action to revise the program. A predetermined market price review level shall be set in a public hearing in consideration of the costs of command and control air quality measures that would otherwise have been adopted as part of the district's plan for attainment, costs and factors submitted by interested parties, and any other factors considered appropriate by the district. The district board may revise the market price review level for emission trading units every three years during attainment plan updates required under Section 40925. In revising the market price review level, the district board shall consider the factors used in setting the initial market price review level as well as other economic impacts, including the overall impact of the program on job loss, rate of

business formation, and rate of business closure.

(g) For sources not included in market-based incentive programs, this section does not apply to, and shall in no way limit, existing district authority to facilitate compliance with particular emission control measures by imposing or authorizing sourcewide emission caps, alternative emission control plans, stationary for mobile source emission trades, mobile for mobile source emission trades, and similar measures, whether imposed or authorized by rule or permit condition.

(h) This section does not apply to the implementation of market-based transportation control measures which do not involve emissions trading.

SEC. 2. Section 40440.2 is added to the Health and Safety Code, to read:

40440.2. (a) In addition to, and notwithstanding the requirements of, Section 39616, all of the following shall be implemented as part of the south coast district's market-based incentive program, the Regional Clean Air Incentives Market, also known as RECLAIM:

(1) (A) On or before July 1, 1998, the south coast district staff shall provide to the south coast district board a progress report based on the annual audits specified in paragraph (3). The progress report shall meet all of the following requirements:

(i) The data in the report for the nitrogen oxides RECLAIM program shall be aggregated by three-digit SIC code and facility emission rate to the extent feasible. The categories of emission rates shall be under 4, 4 to 10, inclusive, 11 to 100, inclusive, and over 100 tons per year.

(ii) The data in the report for the sulfur oxides RECLAIM program shall be aggregated by three-digit SIC code only to the extent feasible.

(iii) In preparing the report, the south coast district shall publish in an appendix all final data and model outputs, except that it shall keep confidential any facility-specific information that is obtained by either the south coast district, or any independent contractor retained by the south coast district, in the course of preparing the report.

(iv) Any publication of the data obtained from facilities by the south coast district shall be in aggregate form only, as specified in this subdivision. The south coast district board shall make the raw data available to the public.

(B) The south coast district board shall receive public comment on the progress report.

(C) The south coast district shall not lower the emission threshold for mandatory participation in the RECLAIM program for nitrogen oxides and sulfur oxides from the threshold that was established on October 15, 1993, until the progress report is completed and a public hearing on the report has been held, unless the south coast district board finds, after a public hearing, that there will be no adverse

environmental or economic effects resulting from a lowered emission threshold.

(2) On or before July 1, 1997, an advisory committee shall be selected by the south coast district board. The advisory committee shall serve for a maximum of one year, or until the report required by paragraph (4) is made to the south coast district board, whichever is later. The advisory committee shall be composed of the following members:

(A) One representative from each of the following:

(i) A facility that participates in one or both of the market-based incentive programs and emits more than 100 tons of nitrogen oxides or sulfur oxides annually.

(ii) A facility that emits from 11 to 100 tons, inclusive, of nitrogen oxides or sulfur oxides annually.

(iii) A facility that emits less than 10 tons, of nitrogen oxides or sulfur oxides annually.

(B) One representative from the south coast district staff, one representative from the state board, and one representative from the Environmental Protection Agency.

(C) One representative from a financial institution.

(D) One representative from an academic institution.

(E) One representative from an market commodities or securities trading institution.

(F) One representative from an economic analysis research institution.

(G) Two representatives from environmental organizations.

(H) One representative from each of the investor-owned energy utilities serving the south coast district, and one representative from a municipal energy utility representing the City of Los Angeles.

(I) One representative from a technical contractor specializing in installation and certification of emissions monitoring equipment.

(J) One representative from an oil company.

(K) One representative from the aerospace industry.

(3) In addition to any other information required by subdivision (e) of Section 39616, the south coast district shall annually perform a detailed assessment of the program audit findings specified in paragraph (1) of subdivision (b) of south coast district Rule 2015, as adopted October 15, 1993.

(4) The advisory committee shall conduct a peer review of the progress report to the south coast district board required pursuant to paragraph (1). The advisory committee shall present its peer review conclusions to the south coast district board as an independent report concurrently with the staff progress report. The advisory committee may request staff support from the south coast district in conducting its peer review and preparing the report.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level

of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1180

An act to add Article 1.7 (commencing with Section 52336) to Chapter 9 of Part 28 of, the Education Code, relating to vocational education.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. (a) The Legislature finds and declares as follows:

(1) Currently, approximately 16.6 percent of our state's pupils drop out before completing high school. Over the long run, the burden of some of the costs of sustaining uneducated, unproductive individuals is shouldered by our welfare and penal systems.

(2) A major contributing factor to the dropout rate is a lack of any connection between obtaining a high school diploma or continuing with the education system beyond high school and opportunities for employment and the availability of career options.

(b) It is the intent of the Legislature in enacting this act to provide a direct link between the concluding years of high school and employment and career options, thereby helping to decrease the percentage of pupils who drop out of high school.

SEC. 2. Article 1.7 (commencing with Section 52336) is added to Chapter 9 of Part 28 of the Education Code, to read:

Article 1.7. Career Preparatory Program

52336. (a) Any business, trade or professional association, union, or state or local governmental agency operating within this state may establish and operate, under the auspices of the local school district, a career preparatory program within this state that meets the requirements of this article.

(b) As part of a career preparatory program, an entity establishing and operating the program shall develop and implement a course of instruction for all pupils enrolled in the program that satisfies the requirements of Section 51225.3 applicable to grades 11 and 12.

(c) Subject to the development of the course of instruction delineated in subdivision (b) and to continuing certification by the State Department of Education, an entity establishing and operating a career preparatory program may propose and implement a program that is designed to provide on-the-job training and

instruction in specific vocational skills to prepare students for future employment.

(d) An entity establishing and operating a career preparatory program shall present pupils who have successfully completed all aspects of the program with a certificate of completion that shall supplement a high school diploma.

52336.1. Any pupil who has successfully completed his or her education through grade 10, with the written consent of his or her parent or guardian, may choose to follow either a traditional college preparatory curriculum or a career preparatory program established pursuant to Section 52336.

52336.3. (a) The State Department of Education shall adopt rules and regulations by January 1, 1996, in relation to the following:

(1) An application process for entities that are seeking to establish and operate a career preparatory program pursuant to Section 52336 that includes, but is not limited to, the name of the entity, the organizational structure of the entity, its years of operation within the state, its financial stability, and the type of career preparatory program to be offered.

(2) An application process for pupils who are seeking to enroll in a career preparatory program established pursuant to Section 52336 that includes, but is not limited to, the age of the pupil, transcripts, or other official documents that show successful completion of his or her education through grade 10, and written consent for participation in the career preparatory program from the parent or guardian of the pupil.

(3) An initial and continuing certification process to ensure that the entity seeking to establish and operate a career preparatory program pursuant to Section 52336 develops and implements the course of instruction set forth in subdivision (b) of Section 52336.

(4) A process to evaluate and certify that pupils have successfully completed the course of instruction set forth in subdivision (b) of Section 52336. This process may include the successful completion of standardized achievement tests as developed by the State Department of Education.

(5) Any other necessary standards or policies to govern the administration of career preparatory programs established under this article.

(b) The rules and regulations adopted pursuant to this section shall be published for distribution as soon as practicable after adoption.

52336.5. (a) A private entity establishing a career preparatory program pursuant to this article shall not be eligible for any moneys from the state or any school district.

(b) An entity establishing a career preparatory program pursuant to Section 52336 may contract for assistance in the development or administration of that program with one or more of the following:

(1) A community college district.

(2) A school district that operates an adult education program.

- (3) A regional occupational center or program.
- (4) Any other public vocational education program.

CHAPTER 1181

An act to amend Sections 74156 and 74157 of, and to add and repeal Article 2 (commencing with Section 79130) to Chapter 9 of Part 49 of, the Education Code, relating to schools.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 74156 of the Education Code is amended to read:

74156. Each affected district governing board shall set a date for a hearing on the petition, which shall be within 60 days of the receipt of the petition forwarded pursuant to Section 74155, and the county superintendent shall notify the chief petitioners of the times and places of the hearings, where appropriate. At the hearings, interested persons shall be given an opportunity to present their views on the petition. The affected district governing boards then shall either approve or deny the petition. No new district shall be formed unless a majority of the members of a majority of the affected district governing boards sign a statement agreeing to all conditions of the formation at the hearings. Upon completion of the hearings, each affected school district governing board shall return the petition, together with a notice of action, to the county committee.

SEC. 2. Section 74157 of the Education Code is amended to read:

74157. The county committee may approve the petition only if all of the following conditions are met:

(a) A majority of the affected district governing boards have consented to all conditions of the formation by an agreement signed by a majority of the members of each board.

(b) The county committee finds that:

(1) The formation will not result in any increased cost to the state.

(2) The formation will not result in a reduction in state aid to community college districts not party to the petition.

(3) The projected funding of the new district is adequate to meet its needs as projected during the first five years of operation.

(4) The allocation of local property tax revenues has been accurately determined and will be appropriately implemented.

(5) The formation will not significantly affect the racial or ethnic composition of the districts affected.

(6) The formation will not decrease educational opportunities for residents of the districts affected.

SEC. 3. Article 2 (commencing with Section 79130) is added to

Chapter 9 of Part 49 of the Education Code, to read:

Article 2. Eastern Madera Education Center

79130. For purposes of this article, the following definitions shall apply:

(a) "Center" means the Eastern Madera Education Center established pursuant to Section 79131.

(b) "District" means the State Center Community College District.

79131. (a) The Eastern Madera Education Center is hereby established as an off-campus center of Kings River Community College within the State Center Community College District.

(b) The Legislature, in establishing the center on a pilot basis, intends to provide expanded access to postsecondary educational services to the residents of eastern Madera County and Mariposa County.

(c) The Legislature finds and declares that the unique barriers to adequate postsecondary educational services for the residents of eastern Madera County and Mariposa County necessitate special legislative assistance. Due to geographic and transportation isolation that requires a commute of more than one hour to reach the nearest community college or education center, residents of these areas are denied meaningful access to comprehensive educational services.

79132. (a) From funds appropriated pursuant to subdivision (g) of Section 84750, in addition to any other funds that the district otherwise receives, the chancellor shall apportion to the district funds for enrollment growth equal to 90 full-time equivalent students (FTES) in fiscal year 1995-96 inclusive, at the statewide average funding rate per FTES. If the actual FTES enrolled at the center is less than the amount budgeted pursuant to this section, FTES funds in the following fiscal year shall be reduced by the difference. Funds received by the district pursuant to this subdivision may be expended only for support and operation of the center and shall supplement, and not supplant, existing district funds for support of educational services in eastern Madera County.

(b) In order to be eligible to receive funds pursuant to subdivision (a), the district shall maintain the level of support from its own funds for educational services in eastern Madera County for fiscal year 1995-96 at the level provided during the 1992-93 fiscal year.

79133. The Board of Governors shall designate Mariposa County within the service area of the district. It is the intent of the Legislature in establishing the center to expand community college services for the residents of Mariposa County.

79134. The governing board of the district shall establish a local advisory committee for the center. The President of Kings River Community College, the chancellor of the district, and the governing board of the district shall consult regularly with the committee on matters relating to the operation of the center,

including program and course schedules. The committee shall be comprised of students, educators, representatives of business and commerce, representatives of local tribes, and members of the general public, in eastern Madera County and Mariposa County.

79135. The Legislature intends that the supplemental funds provided to the district pursuant to this article are sufficient to cover any additional costs imposed on the district by this article.

79136. The California Postsecondary Education Commission, pursuant to its responsibilities as described in Section 66904, shall evaluate the center and submit its findings to appropriate committees of the Legislature and to the Governor no later than January 1, 2000. It is the intent of the Legislature that the commission conduct its evaluation from within existing resources, and that no new funds be appropriated for this purpose.

79137. This article shall become inoperative on June 30, 2000, and, as of January 1, 2001, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2001, deletes or extends that date.

SEC. 4. Due to the unique circumstances concerning access to educational services in the geographically isolated areas of Madera and Mariposa Counties, a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

SEC. 5. No reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law. Pursuant to Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the July 1 following the date on which the act takes effect pursuant to the California Constitution.

CHAPTER 1182

An act to add Section 44226 to the Education Code, relating to education, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 44226 is added to the Education Code, to read:

44226. (a) The Commission on Teacher Credentialing shall conduct a study of teacher preparation programs to assess the extent to which those programs prepare candidates for teaching credentials to teach critical thinking and problem-solving skills to pupils who are in kindergarten and grades 1 to 12, inclusive.

(b) The commission shall make a written report, based on the results of the study, on or before November 1, 1995, to the Senate Special Committee on Critical Thinking and Problem Solving in Our Schools, the Senate Committee on Education, and the Assembly Committee on Education.

SEC. 2. The sum of twenty thousand dollars (\$20,000) is hereby appropriated to the Commission on Teacher Credentialing from the Teacher Credentials Fund for the 1994-95 fiscal year for the purpose of staff costs incurred by the commission for teacher preparation programs pursuant to Section 44226 of the Education Code.

SEC. 3. The State Department of Education shall not solicit applications for the award of any funding provided pursuant to the federal Goals 2000: Educate America Act (P.L. 103-227) prior to February 28, 1995.

SEC. 4. It is the intent of the Legislature, in enacting Section 3 of this act, to provide additional time for public notice of, and input in, the development of the state plan to adopt content and performance standards for elementary and secondary education, and to increase the amount of information and time available to school districts for the development of plans to meet those standards. It is also the intent of the Legislature that, in accordance with federal law, the State Department of Education be given adequate time to develop a plan for the distribution of the money provided pursuant to Public Law 103-227, that ensures the equitable distribution of funds among school districts in the state.

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

In order to ensure that the Commission on Teacher Credentialing is paid as soon as possible for its costs in implementing teacher preparation programs, and to ensure sufficient time for public input on the use of federal funds in developing educational standards, it is necessary that this act take effect immediately.

CHAPTER 1183

An act to amend Sections 17788.3, 17791, and 17792 of, and to add Section 17792.3 to, the Education Code, relating to portable classrooms.

[Approved by Governor September 29, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 17788.3 of the Education Code is amended to read:

17788.3. (a) No school district shall qualify for the lease under this chapter, after January 1, 1990, of one or more portable classrooms except upon submitting a study examining the feasibility of implementing in the district a year-round multitrack educational program that is designed to increase pupil capacity in the district by at least 20 percent.

(b) Emergency or urgency conditions within a school district shall constitute grounds for approval by the board, pending submission of the report.

(c) Subdivision (a) does not apply to facilities that are designated as uninhabitable after July 1, 1989, due to fire or other health or safety conditions.

(d) Subdivision (a) does not apply to a school district for leases or subleases under this chapter for the purpose of providing facilities, pursuant to subdivision (c) of Section 17791, for licensed child day care programs or recreation or enrichment activities or programs for schoolage children.

SEC. 2. Section 17791 of the Education Code is amended to read:

17791. (a) The board shall have authority to adopt rules establishing priorities for the acquisition and leasing of classrooms to those school districts and county superintendents of schools whose pupils will benefit most. The board may make exceptions from the established priorities if it determines that the pupils affected will benefit.

(b) If at any time the number of portable classrooms available exceeds the number of those required by applicant districts, as determined by basic loading standards and eligibility requirements, the board may authorize additional portable classrooms to be placed in any school district that agrees to hire an additional teacher for each additional portable classroom placed in the district pursuant to this subdivision.

(c) If at any time the number of portable classrooms available exceeds the number of those required by applicant districts, as determined by basic loading standards and eligibility requirements, the board shall authorize additional portable classrooms to be placed in any school district, upon request of the school district, for the

purpose of providing licensed child day care programs or recreation or enrichment activities or programs for schoolage children on a schoolsite, unless the surplus classrooms are needed for emergency purposes.

SEC. 3. Section 17792 of the Education Code is amended to read:

17792. (a) No portable classrooms shall be made available to any school district unless the district furnishes evidence, satisfactory to the board, that the district has no available bond proceeds that could be used for the purchase of classroom facilities.

(b) Notwithstanding any other provision of law, a school district or county superintendent of schools that has received approval for a project that includes a justified number of new teaching stations pursuant to Chapter 22 (commencing with Section 17700) shall be eligible for at least the same number of emergency portable classrooms as approved new teaching stations.

(c) Subdivision (a) does not apply to leases or subleases under this chapter for the purpose of providing facilities, pursuant to subdivision (c) of Section 17791, for licensed child day care programs or any recreation or enrichment activities or programs for schoolage children.

SEC. 4. Section 17792.3 is added to the Education Code, to read:

17792.3. A school district may sublease any portable classroom obtained by the district pursuant to subdivision (c) of Section 17791 to a private provider that has entered into a contract with the district to provide any child care and development program or programs or any recreation or enrichment activities or programs for schoolage children on a schoolsite. The terms of the sublease for rental payments and other related costs shall not exceed the costs of the portable classroom to the district.

CHAPTER 1184

An act to add Section 17740.4 to the Education Code, relating to school facilities.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 17740.4 is added to the Education Code, to read:

17740.4. Notwithstanding any other provision of this part, the board may use, for purposes of determining the estimate of average daily attendance for an applicant school district, a master plan that has been prepared by a district that includes the additional pupils due to increases in housing units within the boundaries of the district or attendance area. Before a master plan may be used, both of the

following conditions shall be satisfied:

(a) The city, county, or city and county has obtained approval of a local general obligation bond or has obtained funds pursuant to the Mello-Roos Community Facilities Act of 1982, as set forth by Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code, to provide local matching funds for school facility projects for which approval is being sought pursuant to this section.

(b) At least 60 percent of the total cost of the project for which approval is being sought shall be provided by funding sources other than any state program administered by the board.

CHAPTER 1185

An act to add Section 8234 to the Education Code, relating to child care.

[Approved by Governor September 29, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 8234 is added to the Education Code, to read:

8234. (a) It is the intent of the Legislature to pilot a Migrant Family Day Care Program that trains and supports migrant workers to become family day care home providers to take care of migrant preschool children. The Legislature declares that this service approach meets the unique child care needs of migrant parents and their children by accomplishing the following:

- (1) Providing service continuity that enhances program quality.
- (2) Eliminating the need to support a facility that is only used seasonally, thereby reducing costs and allowing more children to be served with the same dollars.
- (3) Providing migrant workers higher paying employment options as child care providers.

(b) The Superintendent of Public Instruction shall establish, in the 1994-95 fiscal year, in Region IV of the service regional system established pursuant to Section 54444.1, the Migrant Family Day Care program. The program shall be a three-year pilot program for the purpose of serving the special needs of migrant children from the time of their birth to the time of their enrollment in kindergarten.

(c) To be eligible to participate in the program, a family shall meet all of the following criteria:

- (1) Be a "migrant agricultural worker family" as defined in Section 8231.
- (2) Be income eligible as defined in Section 18078 of Title 5 of the California Code of Regulations.

(3) Derive the principal source of its income from agricultural work.

(d) In accordance with the procedures set forth in Section 18000 of Title 5 of the California Code of Regulations, the superintendent shall issue a request for applications in Region IV of the regional service system established pursuant to Section 54444.1.

(e) A school district, county office of education, nonprofit entity, public entity, or a consortium thereof may submit an application to establish a Migrant Family Day Care program pursuant to this section if it is eligible for funding pursuant to Section 18001 of Title 5 of the California Code of Regulations.

(f) In developing the program, the superintendent shall do all of the following:

(1) Consult with migrant parents and interested school districts, county offices of education, nonprofit entities, or public entities to develop the design of a model pilot program and ensure that the selected pilot program design is consistent with all applicable federal funding requirements and state child care regulations.

(2) Require applicant school districts, county offices of education, nonprofit entities, or public entities to include in the program design the utilization, as day care aides, of high school pupils who perform community service as part of their curriculum.

(3) Encourage the school districts, county offices of education, nonprofit entities, or public entities to seek additional funding sources, such as contributions from private entities and other federal, state, and local sources.

(4) Encourage the school districts, county offices of education, nonprofit entities, or public entities to include in the program design an institutionalization plan that shall outline a plan for the continued operation of the program beyond the initial funding source.

(5) Select and fund, at his or her discretion, the pilot program that best meets the needs of the persons to be served by taking into account the special needs of migrant families, including, but not limited to, the need for child care in early morning and late evening hours or during weekend days and that provides the most comprehensive educational component.

(g) The school district, county office of education, nonprofit entity, or public entity that is selected to implement the pilot program shall annually collect data relevant to its implementation of the program and shall prepare a summative evaluation report that shall be submitted to the Legislature not more than six months after the conclusion of the pilot program.

(h) Any funds apportioned by the superintendent for the purposes of the pilot program shall be used in conformity with Section 8 of Article IX of the California Constitution.

SEC. 2. It is the intent of the Legislature that the Superintendent of Public Instruction explore all available sources of funding for the purposes of implementing the pilot program selected pursuant to subdivision (f) of Section 8234 of the Education Code, and develop

a funding proposal for approval by the Department of Finance. The superintendent shall report on those sources of funding to the Legislature and the Department of Finance by March 1, 1995.

CHAPTER 1186

An act to amend Sections 5019, 5020, 33050, 35501, 35542, 35704, 35707, 35722, 35753, 35780, 46304, and 48031 of, to add Sections 35735.1, 35735.2, and 35735.3 to, to repeal and add Section 35735 of, and to repeal Sections 46605 and 46621 of, the Education Code, relating to school district reorganization.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 5019 of the Education Code is amended to read:

5019. (a) Except in a school district governed by a board of education provided for in the charter of a city or city and county, in any school district or community college district the county committee on school district organization shall have the power to establish trustee areas, rearrange the boundaries of trustee areas, abolish trustee areas, and increase to seven or decrease to five the number of members of the governing board, or to adopt one of the alternative methods of electing governing board members specified in Section 5030.

(b) The county committee on school district organization shall also have the power to establish a common governing board for a high school district and an elementary school district within the boundaries of the high school district. The resolution of the county committee approving the establishment of a common governing board shall be presented to the electors of the school districts as specified in Section 5020.

(c) A proposal to make the changes described in subdivision (a) or (b) may be initiated by the county committee or made to the county committee either by a petition signed by 5 percent or 50, whichever is less, of the qualified registered voters residing in a district in which there are 2,500 or fewer qualified registered voters, or by a petition signed by 2 percent, or 250, whichever is less, of the qualified registered voters residing in a district in which there are 2,501 or more qualified registered voters or by resolution of the governing board of the district. For this purpose, the number of qualified registered voters in the district shall be determined pursuant to the most recent report submitted by the county clerk to the Secretary of State under Section 610 or 6460 of the Elections Code.

When the proposal is made, the county committee shall call and conduct at least one hearing in the district on the matter. At the conclusion of the hearing, the county committee shall approve or disapprove the proposal.

(d) If the county committee approves pursuant to subdivision (a) the rearrangement of the boundaries of trustee areas for a particular district, then the rearrangement of the trustee areas shall be effectuated for the next district election occurring at least 120 days after its approval, unless at least 5 percent of the registered voters of the district sign a petition requesting an election on the proposed rearrangement of trustee area boundaries. The petition for an election shall be submitted to the elections official within 60 days of the proposal's adoption by the county committee. If the qualified registered voters approve pursuant to subdivision (b) the rearrangement of the boundaries to the trustee areas for a particular district, then the rearrangement of the trustee areas shall be effectuated for the next district election occurring at least 120 days after its approval by the voters.

SEC. 2. Section 5020 of the Education Code is amended to read:

5020. (a) The resolution of the county committee approving a proposal to establish or abolish trustee areas or to increase or decrease the number of members of the governing board shall constitute an order of election, and the proposal shall be presented to the electors of the district not later than the next succeeding election for members of the governing board.

(b) If a petition requesting an election on a proposal to rearrange trustee area boundaries is filed, containing at least 5 percent of the signatures of the district's registered voters as determined by the elections official, the proposal shall be presented to the electors of the district, at the next succeeding election for the members of the governing board, at the next succeeding statewide primary or general election, or at the next succeeding regularly scheduled election at which the electors of the district are otherwise entitled to vote, provided that there is sufficient time to place the issue on the ballot.

(c) If a petition requesting an election on a proposal to establish or abolish trustee areas, to increase or decrease the number of members of the board, or to adopt one of the alternative methods of electing governing board members specified in Section 5030 is filed, containing at least 10 percent of the signatures of the district's registered voters as determined by the elections official, the proposal shall be presented to the electors of the district, at the next succeeding election for the members of the governing board, at the next succeeding statewide primary or general election, or at the next succeeding regularly scheduled election at which the electors of the district are otherwise entitled to vote, provided that there is sufficient time to place the issue on the ballot. Before the proposal is presented to the electors, the county committee on school district organization may call and conduct one or more public hearings on

the proposal.

(d) The resolution of the county committee approving a proposal to establish a common governing board for a high school and an elementary school district within the boundaries of the high school district shall constitute an order of election. The proposal shall be presented to the electors of the district at the next succeeding statewide primary or general election, or at the next succeeding regularly scheduled election at which the electors of the district are otherwise entitled to vote, provided that there is sufficient time to place the issue on the ballot.

(e) For each proposal there shall be a separate proposition on the ballot. The ballot shall contain the following words:

“For the establishment (or abolition or rearrangement) of trustee areas in _____ (insert name) School District—Yes” and “For the establishment (or abolition or rearrangement) of trustee areas in _____ (insert name) School District—No.”

“For increasing the number of members of the governing board of _____ (insert name) School District from five to seven—Yes” and “For increasing the number of members of the governing board of _____ (insert name) School District from five to seven—No.”

“For decreasing the number of members of the governing board of _____ (insert name) School District from seven to five—Yes” and “For decreasing the number of members of the governing board of _____ (insert name) School District from seven to five—No.”

“For the election of each member of the governing board of the _____ (insert name) School District by the registered voters of the entire _____ (insert name) School District—Yes” and “For the election of each member of the governing board of the _____ (insert name) School District by the registered voters of the entire _____ (insert name) School District—No.”

“For the election of one member of the governing board of the _____ (insert name) School District residing in each trustee area elected by the registered voters in that trustee area—Yes” and “For the election of one member of the governing board of the _____ (insert name) School District residing in each trustee area elected by the registered voters in that trustee area—No.”

“For the election of one member, or more than one member for one or more trustee areas, of the governing board of the _____ (insert name) School District residing in each trustee area elected by the registered voters of the entire _____ (insert name) School District—Yes” and “For the election of one member, or more than one member for one or more trustee areas, of the governing board of the _____ (insert name) School District residing in each trustee area elected by the registered voters of the entire _____ (insert name) School District—No.”

“For the establishment of a common governing board in the _____ (insert name) School District and the _____ (insert name) School District—Yes” and “For the establishment of a common governing board in the _____ (insert name) School

District and the _____ (insert name) School District —No.”

If more than one proposal appears on the ballot, all must carry in order for any to become effective, except that a proposal to adopt one of the methods of election of board members specified in Section 5030 which is approved by the voters shall become effective unless a proposal which is inconsistent with that proposal has been approved by a greater number of voters. An inconsistent proposal approved by a lesser number of voters than the number which have approved a proposal to adopt one of the methods of election of board members specified in Section 5030 shall not be effective.

SEC. 3. Section 33050 of the Education Code is amended to read:

33050. (a) The governing board of a school district or a county board of education may, on a districtwide or countywide basis or on behalf of one or more of its schools or programs, after a public hearing on the matter, request the State Board of Education to waive all or part of any section of this code or any regulation adopted by the State Board of Education that implements a provision of this code that may be waived, except:

(1) Article 1 (commencing with Section 15700) and Article 2 (commencing with Section 15780) of Chapter 6 of Part 10.

(2) Chapter 8 (commencing with Section 16000) and Chapter 9 (commencing with Section 16400) of Part 10.

(3) Chapter 22 (commencing with Section 17700), Chapter 23 (commencing with Section 17760), and Chapter 25 (commencing with Section 17785) of Part 10.

(4) Part 13 (commencing with Section 22000).

(5) Section 35731.1.

(6) The following provisions of Part 23:

(A) Chapter 1 (commencing with Section 39000).

(B) Article 1 (commencing with Section 39100) to Article 6 (commencing with Section 39210), inclusive, of Chapter 2.

(C) Section 39248; Sections 39313 to 39325, inclusive; Sections 39360.5 and 39363 and subdivision (a) of Section 39363.5; and Sections 39618 to 39621, inclusive.

(7) Sections 52163, 52165, 52166, and 52178.

(8) Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.

(9) The identification and assessment criteria relating to any categorical aid program, including Sections 52164.1 and 52164.6.

(10) Sections 41000 to 41360, inclusive; Sections 41420 to 41423, inclusive; Sections 41600 to 41866, inclusive; Sections 41920 to 42911, inclusive; Article 3 (commencing with Section 44930) of Chapter 4 of Part 25; Part 26 (commencing with Section 46000) and Chapter 6 (commencing with Section 48900) and Chapter 6.5 (commencing with Section 49060) of Part 27; or regulations in Title 5 of the California Code of Regulations adopted pursuant to Article 3 (commencing with Section 44930) of Chapter 4 of Part 25.

(b) Any waiver of provisions related to the programs identified in Section 52851 shall be granted only pursuant to Article 3

(commencing with Section 52850) of Chapter 12 of Part 28.

(c) The waiver of an advisory committee required by law shall be granted only pursuant to Article 4 (commencing with Section 52870) of Chapter 12 of Part 28.

(d) Any request for a waiver submitted by the governing board of a school district or a county board of education pursuant to subdivision (a) shall include a written statement as to (1) whether the exclusive representative of employees, if any, as provided in Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, participated in the development of the waiver and (2) the exclusive representative's position regarding the waiver.

(e) Any request for a waiver submitted pursuant to subdivision (a) relating to a regional occupational center or program established pursuant to Article 1 (commencing with Section 52300) of Chapter 9 of Part 28, that is operated by a joint powers entity established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, shall be submitted as a joint waiver request for each participating school district and shall meet both of the following conditions:

(1) Each joint waiver request shall comply with all of the requirements of this article.

(2) The submission of a joint waiver request shall be approved by a unanimous vote of the governing board of the joint powers agency.

(f) The governing board of any school district requesting a waiver under this section of any provision of Article 5 (commencing with Section 39390) of Chapter 3 of Part 23 shall provide written notice of any public hearing it conducted pursuant to subdivision (a), at least 30 days prior to the hearing, to each public agency identified under Section 39394.

SEC. 3.1. Section 33050 of the Education Code is amended to read:

33050. (a) The governing board of a school district or a county board of education may, on a districtwide or countywide basis or on behalf of one or more of its schools or programs, after a public hearing on the matter, request the State Board of Education to waive all or part of any section of this code or any regulation adopted by the State Board of Education that implements a provision of this code that may be waived, except:

(1) Article 1 (commencing with Section 15700) and Article 2 (commencing with Section 15780) of Chapter 6 of Part 10.

(2) Chapter 8 (commencing with Section 16000) and Chapter 9 (commencing with Section 16400) of Part 10.

(3) Chapter 22 (commencing with Section 17700), Chapter 23 (commencing with Section 17760), and Chapter 25 (commencing with Section 17785) of Part 10.

(4) Part 13 (commencing with Section 22000).

(5) Section 35735.1.

(6) Paragraph (8) of subdivision (a) of Section 37220.

(7) The following provisions of Part 23:

(A) Chapter 1 (commencing with Section 39000).

(B) Article 1 (commencing with Section 39100) to Article 6 (commencing with Section 39210), inclusive, of Chapter 2.

(C) Section 39248; Sections 39313 to 39325, inclusive; Sections 39360.5 and 39363 and subdivision (a) of Section 39363.5; and Sections 39618 to 39621, inclusive.

(8) Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.

(9) The identification and assessment criteria relating to any categorical aid program, including Sections 52164.1 and 52164.6.

(10) Sections 41000 to 41360, inclusive; Sections 41420 to 41423, inclusive; Sections 41600 to 41866, inclusive; Sections 41920 to 42911, inclusive; Article 3 (commencing with Section 44930) of Chapter 4 of Part 25; Part 26 (commencing with Section 46000) and Chapter 6 (commencing with Section 48900) and Chapter 6.5 (commencing with Section 49060) of Part 27; or regulations in Title 5 of the California Code of Regulations adopted pursuant to Article 3 (commencing with Section 44930) of Chapter 4.

(b) Any waiver of provisions related to the programs identified in Section 52851 shall be granted only pursuant to Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.

(c) The waiver of an advisory committee required by law shall be granted only pursuant to Article 4 (commencing with Section 52870) of Chapter 12 of Part 28.

(d) Any request for a waiver submitted by the governing board of a school district or a county board of education pursuant to subdivision (a) shall include a written statement as to (1) whether the exclusive representative of employees, if any, as provided in Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, participated in the development of the waiver and (2) the exclusive representative's position regarding the waiver.

(e) Any request for a waiver submitted pursuant to subdivision (a) relating to a regional occupational center or program established pursuant to Article 1 (commencing with Section 52300) of Chapter 9 of Part 28, that is operated by a joint powers entity established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, shall be submitted as a joint waiver request for each participating school district and shall meet both of the following conditions:

(1) Each joint waiver request shall comply with all of the requirements of this article.

(2) The submission of a joint waiver request shall be approved by a unanimous vote of the governing board of the joint powers agency.

(f) The governing board of any school district requesting a waiver under this section of any provision of Article 5 (commencing with Section 39390) of Chapter 3 of Part 23 shall provide written notice of any public hearing it conducted pursuant to subdivision (a), at

least 30 days prior to the hearing, to each public agency identified under Section 39394.

SEC. 3.2. Section 33050 of the Education Code is amended to read:

33050. (a) The governing board of a school district or a county board of education may, on a districtwide or countywide basis or on behalf of one or more of its schools or programs, after a public hearing on the matter, request the State Board of Education to waive all or part of any section of this code or any regulation adopted by the State Board of Education that implements a provision of this code that may be waived, except:

(1) Article 1 (commencing with Section 15700) and Article 2 (commencing with Section 15780) of Chapter 6 of Part 10.

(2) Chapter 8 (commencing with Section 16000) and Chapter 9 (commencing with Section 16400) of Part 10.

(3) Chapter 22 (commencing with Section 17700), Chapter 23 (commencing with Section 17760), and Chapter 25 (commencing with Section 17785) of Part 10.

(4) Part 13 (commencing with Section 22000).

(5) Section 35735.1.

(6) The following provisions of Part 23:

(A) Chapter 1 (commencing with Section 39000).

(B) Article 1 (commencing with Section 39100) to Article 6 (commencing with Section 39210), inclusive, of Chapter 2.

(C) Section 39248; Sections 39313 to 39325, inclusive; Sections 39360.5 and 39363 and subdivision (a) of Section 39363.5; and Sections 39618 to 39621, inclusive.

(7) Sections 52163, 52165, 52166, and 52178.

(8) Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.

(9) The identification and assessment criteria relating to any categorical aid program, including Sections 52164.1 and 52164.6.

(10) Sections 41000 to 41360, inclusive; Sections 41420 to 41423, inclusive; Sections 41600 to 41866, inclusive; Sections 41920 to 42911, inclusive; Section 44924; Article 3 (commencing with Section 44930) and Article 5 (commencing with Section 45022) of Chapter 4 of Part 25; Part 26 (commencing with Section 46000) and Chapter 6 (commencing with Section 48900) and Chapter 6.5 (commencing with Section 49060) of Part 27; or regulations in Title 5 of the California Code of Regulations adopted pursuant to Article 3 (commencing with Section 44930) of Chapter 4 of Part 25.

(b) Any waiver of provisions related to the programs identified in Section 52851 shall be granted only pursuant to Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.

(c) The waiver of an advisory committee required by law shall be granted only pursuant to Article 4 (commencing with Section 52870) of Chapter 12 of Part 28.

(d) Any request for a waiver submitted by the governing board of a school district or a county board of education pursuant to

subdivision (a) shall include a written statement as to (1) whether the exclusive representative of employees, if any, as provided in Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, participated in the development of the waiver and (2) the exclusive representative's position regarding the waiver.

(e) Any request for a waiver submitted pursuant to subdivision (a) relating to a regional occupational center or program established pursuant to Article 1 (commencing with Section 52300) of Chapter 9 of Part 28, that is operated by a joint powers entity established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, shall be submitted as a joint waiver request for each participating school district and shall meet both of the following conditions:

(1) Each joint waiver request shall comply with all of the requirements of this article.

(2) The submission of a joint waiver request shall be approved by a unanimous vote of the governing board of the joint powers agency.

(f) The governing board of any school district requesting a waiver under this section of any provision of Article 5 (commencing with Section 39390) of Chapter 3 of Part 23 shall provide written notice of any public hearing it conducted pursuant to subdivision (a), at least 30 days prior to the hearing, to each public agency identified under Section 39394.

SEC. 3.3. Section 33050 of the Education Code is amended to read:

33050. (a) The governing board of a school district or a county board of education may, on a districtwide or countywide basis or on behalf of one or more of its schools or programs, after a public hearing on the matter, request the State Board of Education to waive all or part of any section of this code or any regulation adopted by the State Board of Education that implements a provision of this code that may be waived, except:

(1) Sections 14503, 14504, 14504.2, 14505, and 35031.1.

(2) Article 1 (commencing with Section 15700) and Article 2 (commencing with Section 15780) of Chapter 6 of Part 10.

(3) Chapter 8 (commencing with Section 16000) and Chapter 9 (commencing with Section 16400) of Part 10.

(4) Chapter 22 (commencing with Section 17700), Chapter 23 (commencing with Section 17760), and Chapter 25 (commencing with Section 17785) of Part 10.

(5) Part 13 (commencing with Section 22000).

(6) Section 35735.1.

(7) The following provisions of Part 23:

(A) Chapter 1 (commencing with Section 39000).

(B) Article 1 (commencing with Section 39100) to Article 6 (commencing with Section 39210), inclusive, of Chapter 2.

(C) Section 39248; Sections 39313 to 39325, inclusive; Sections 39360.5 and 39363 and subdivision (a) of Section 39363.5; and Sections

39618 to 39621, inclusive.

(8) Sections 52163, 52165, 52166, and 52178.

(9) Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.

(10) The identification and assessment criteria relating to any categorical aid program, including Sections 52164.1 and 52164.6.

(11) Sections 41000 to 41360, inclusive; Sections 41420 to 41423, inclusive; Sections 41600 to 41866, inclusive; Sections 41920 to 42911, inclusive; Article 3 (commencing with Section 44930) of Chapter 4 of Part 25; Part 26 (commencing with Section 46000) and Chapter 6 (commencing with Section 48900) and Chapter 6.5 (commencing with Section 49060) of Part 27; or regulations in Title 5 of the California Code of Regulations adopted pursuant to Article 3 (commencing with Section 44930) of Chapter 4 of Part 25.

(b) Any waiver of provisions related to the programs identified in Section 52851 shall be granted only pursuant to Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.

(c) The waiver of an advisory committee required by law shall be granted only pursuant to Article 4 (commencing with Section 52870) of Chapter 12 of Part 28.

(d) Any request for a waiver submitted by the governing board of a school district or a county board of education pursuant to subdivision (a) shall include a written statement as to (1) whether the exclusive representative of employees, if any, as provided in Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, participated in the development of the waiver and (2) the exclusive representative's position regarding the waiver.

(e) Any request for a waiver submitted pursuant to subdivision (a) relating to a regional occupational center or program established pursuant to Article 1 (commencing with Section 52300) of Chapter 9 of Part 28, that is operated by a joint powers entity established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, shall be submitted as a joint waiver request for each participating school district and shall meet both of the following conditions:

(1) Each joint waiver request shall comply with all of the requirements of this article.

(2) The submission of a joint waiver request shall be approved by a unanimous vote of the governing board of the joint powers agency.

(f) The governing board of any school district requesting a waiver under this section of any provision of Article 5 (commencing with Section 39390) of Chapter 3 of Part 23 shall provide written notice of any public hearing it conducted pursuant to subdivision (a), at least 30 days prior to the hearing, to each public agency identified under Section 39394.

SEC. 3.4. Section 33050 of the Education Code is amended to read:

33050. (a) The governing board of a school district or a county

board of education may, on a districtwide or countywide basis or on behalf of one or more of its schools or programs, after a public hearing on the matter, request the State Board of Education to waive all or part of any section of this code or any regulation adopted by the State Board of Education that implements a provision of this code that may be waived, except:

(1) Article 1 (commencing with Section 15700) and Article 2 (commencing with Section 15780) of Chapter 6 of Part 10.

(2) Chapter 8 (commencing with Section 16000) and Chapter 9 (commencing with Section 16400) of Part 10.

(3) Chapter 22 (commencing with Section 17700), Chapter 23 (commencing with Section 17760), and Chapter 25 (commencing with Section 17785) of Part 10.

(4) Part 13 (commencing with Section 22000).

(5) Section 35735.1.

(6) Paragraph (8) of subdivision (a) of Section 37220.

(7) The following provisions of Part 23:

(A) Chapter 1 (commencing with Section 39000).

(B) Article 1 (commencing with Section 39100) to Article 6 (commencing with Section 39210), inclusive, of Chapter 2.

(C) Section 39248; Sections 39313 to 39325, inclusive; Sections 39360.5 and 39363 and subdivision (a) of Section 39363.5; and Sections 39618 to 39621, inclusive.

(8) Sections 52163, 52165, 52166, and 52178.

(9) Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.

(10) The identification and assessment criteria relating to any categorical aid program, including Sections 52164.1 and 52164.6.

(11) Sections 41000 to 41360, inclusive; Sections 41420 to 41423, inclusive; Sections 41600 to 41866, inclusive; Sections 41920 to 42911, inclusive; Article 3 (commencing with Section 44930) of Chapter 4 of Part 25; Part 26 (commencing with Section 46000) and Chapter 6 (commencing with Section 48900) and Chapter 6.5 (commencing with Section 49060) of Part 27; or regulations in Title 5 of the California Code of Regulations adopted pursuant to Article 3 (commencing with Section 44930) of Chapter 4 of Part 25.

(b) Any waiver of provisions related to the programs identified in Section 52851 shall be granted only pursuant to Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.

(c) The waiver of an advisory committee required by law shall be granted only pursuant to Article 4 (commencing with Section 52870) of Chapter 12 of Part 28.

(d) Any request for a waiver submitted by the governing board of a school district or a county board of education pursuant to subdivision (a) shall include a written statement as to (1) whether the exclusive representative of employees, if any, as provided in Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, participated in the development of the waiver and (2) the exclusive representative's position regarding the

waiver.

(e) Any request for a waiver submitted pursuant to subdivision (a) relating to a regional occupational center or program established pursuant to Article 1 (commencing with Section 52300) of Chapter 9 of Part 28, that is operated by a joint powers entity established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, shall be submitted as a joint waiver request for each participating school district and shall meet both of the following conditions:

(1) Each joint waiver request shall comply with all of the requirements of this article.

(2) The submission of a joint waiver request shall be approved by a unanimous vote of the governing board of the joint powers agency.

(f) The governing board of any school district requesting a waiver under this section of any provision of Article 5 (commencing with Section 39390) of Chapter 3 of Part 23 shall provide written notice of any public hearing it conducted pursuant to subdivision (a), at least 30 days prior to the hearing, to each public agency identified under Section 39394.

SEC. 3.5. Section 33050 of the Education Code is amended to read:

33050. (a) The governing board of a school district or a county board of education may, on a districtwide or countywide basis or on behalf of one or more of its schools or programs, after a public hearing on the matter, request the State Board of Education to waive all or part of any section of this code or any regulation adopted by the State Board of Education that implements a provision of this code that may be waived, except:

(1) Article 1 (commencing with Section 15700) and Article 2 (commencing with Section 15780) of Chapter 6 of Part 10.

(2) Chapter 8 (commencing with Section 16000) and Chapter 9 (commencing with Section 16400) of Part 10.

(3) Chapter 22 (commencing with Section 17700), Chapter 23 (commencing with Section 17760), and Chapter 25 (commencing with Section 17785) of Part 10.

(4) Part 13 (commencing with Section 22000).

(5) Section 35735.1.

(6) Paragraph (8) of subdivision (a) of Section 37220.

(7) The following provisions of Part 23:

(A) Chapter 1 (commencing with Section 39000).

(B) Article 1 (commencing with Section 39100) to Article 6 (commencing with Section 39210), inclusive, of Chapter 2.

(C) Section 39248; Sections 39313 to 39325, inclusive; Sections 39360.5 and 39363 and subdivision (a) of Section 39363.5; and Sections 39618 to 39621, inclusive.

(8) Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.

(9) The identification and assessment criteria relating to any categorical aid program, including Sections 52164.1 and 52164.6.

(10) Sections 41000 to 41360, inclusive; Sections 41420 to 41423, inclusive; Sections 41600 to 41866, inclusive; Sections 41920 to 42911, inclusive; Section 44924; Article 3 (commencing with Section 44930) and Article 5 (commencing with Section 45022) of Chapter 4 of Part 25; Part 26 (commencing with Section 46000) and Chapter 6 (commencing with Section 48900) and Chapter 6.5 (commencing with Section 49060) of Part 27; or regulations in Title 5 of the California Code of Regulations adopted pursuant to Article 3 (commencing with Section 44930) of Chapter 4 of Part 25.

(b) Any waiver of provisions related to the programs identified in Section 52851 shall be granted only pursuant to Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.

(c) The waiver of an advisory committee required by law shall be granted only pursuant to Article 4 (commencing with Section 52870) of Chapter 12 of Part 28.

(d) Any request for a waiver submitted by the governing board of a school district or a county board of education pursuant to subdivision (a) shall include a written statement as to (1) whether the exclusive representative of employees, if any, as provided in Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, participated in the development of the waiver and (2) the exclusive representative's position regarding the waiver.

(e) Any request for a waiver submitted pursuant to subdivision (a) relating to a regional occupational center or program established pursuant to Article 1 (commencing with Section 52300) of Chapter 9 of Part 28, that is operated by a joint powers entity established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, shall be submitted as a joint waiver request for each participating school district and shall meet both of the following conditions:

(1) Each joint waiver request shall comply with all of the requirements of this article.

(2) The submission of a joint waiver request shall be approved by a unanimous vote of the governing board of the joint powers agency.

(f) The governing board of any school district requesting a waiver under this section of any provision of Article 5 (commencing with Section 39390) of Chapter 3 of Part 23 shall provide written notice of any public hearing it conducted pursuant to subdivision (a), at least 30 days prior to the hearing, to each public agency identified under Section 39394.

SEC. 3.6. Section 33050 of the Education Code is amended to read:

33050. (a) The governing board of a school district or a county board of education may, on a districtwide or countywide basis or on behalf of one or more of its schools or programs, after a public hearing on the matter, request the State Board of Education to waive all or part of any section of this code or any regulation adopted by the State Board of Education that implements a provision of this code

that may be waived, except:

- (1) Sections 14503, 14504, 14504.2, 14505, and 35031.1.
- (2) Article 1 (commencing with Section 15700) and Article 2 (commencing with Section 15780) of Chapter 6 of Part 10.
- (3) Chapter 8 (commencing with Section 16000) and Chapter 9 (commencing with Section 16400) of Part 10.
- (4) Chapter 22 (commencing with Section 17700), Chapter 23 (commencing with Section 17760), and Chapter 25 (commencing with Section 17785) of Part 10.
- (5) Part 13 (commencing with Section 22000).
- (6) Section 35735.1.
- (7) Paragraph (8) of subdivision (a) of Section 37220.
- (8) The following provisions of Part 23:
 - (A) Chapter 1 (commencing with Section 39000).
 - (B) Article 1 (commencing with Section 39100) to Article 6 (commencing with Section 39210), inclusive, of Chapter 2.
 - (C) Section 39248; Sections 39313 to 39325, inclusive; Sections 39360.5 and 39363 and subdivision (a) of Section 39363.5; and Sections 39618 to 39621, inclusive.
- (9) Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.
- (10) The identification and assessment criteria relating to any categorical aid program, including Sections 52164.1 and 52164.6.
- (11) Sections 41000 to 41360, inclusive; Sections 41420 to 41423, inclusive; Sections 41600 to 41866, inclusive; Sections 41920 to 42911, inclusive; Article 3 (commencing with Section 44930) of Chapter 4 of Part 25; Part 26 (commencing with Section 46000) and Chapter 6 (commencing with Section 48900) and Chapter 6.5 (commencing with Section 49060) of Part 27; or regulations in Title 5 of the California Code of Regulations adopted pursuant to Article 3 (commencing with Section 44930) of Chapter 4 of Part 25.
 - (b) Any waiver of provisions related to the programs identified in Section 52851 shall be granted only pursuant to Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.
 - (c) The waiver of an advisory committee required by law shall be granted only pursuant to Article 4 (commencing with Section 52870) of Chapter 12 of Part 28.
 - (d) Any request for a waiver submitted by the governing board of a school district or a county board of education pursuant to subdivision (a) shall include a written statement as to (1) whether the exclusive representative of employees, if any, as provided in Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, participated in the development of the waiver and (2) the exclusive representative's position regarding the waiver.
 - (e) Any request for a waiver submitted pursuant to subdivision (a) relating to a regional occupational center or program established pursuant to Article 1 (commencing with Section 52300) of Chapter 9 of Part 28, that is operated by a joint powers entity established

pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, shall be submitted as a joint waiver request for each participating school district and shall meet both of the following conditions:

(1) Each joint waiver request shall comply with all of the requirements of this article.

(2) The submission of a joint waiver request shall be approved by a unanimous vote of the governing board of the joint powers agency.

(f) The governing board of any school district requesting a waiver under this section of any provision of Article 5 (commencing with Section 39390) of Chapter 3 of Part 23 shall provide written notice of any public hearing it conducted pursuant to subdivision (a), at least 30 days prior to the hearing, to each public agency identified under Section 39394.

SEC. 3.7. Section 33050 of the Education Code is amended to read:

33050. (a) The governing board of a school district or a county board of education may, on a districtwide or countywide basis or on behalf of one or more of its schools or programs, after a public hearing on the matter, request the State Board of Education to waive all or part of any section of this code or any regulation adopted by the State Board of Education that implements a provision of this code that may be waived, except:

(1) Sections 14503, 14504, 14504.2, 14505, and 35031.1.

(2) Article 1 (commencing with Section 15700) and Article 2 (commencing with Section 15780) of Chapter 6 of Part 10.

(3) Chapter 8 (commencing with Section 16000) and Chapter 9 (commencing with Section 16400) of Part 10.

(4) Chapter 22 (commencing with Section 17700), Chapter 23 (commencing with Section 17760), and Chapter 25 (commencing with Section 17785) of Part 10.

(5) Part 13 (commencing with Section 22000).

(6) Section 35735.1.

(7) The following provisions of Part 23:

(A) Chapter 1 (commencing with Section 39000).

(B) Article 1 (commencing with Section 39100) to Article 6 (commencing with Section 39210), inclusive, of Chapter 2.

(C) Section 39248; Sections 39313 to 39325, inclusive; Sections 39360.5 and 39363 and subdivision (a) of Section 39363.5; and Sections 39618 to 39621, inclusive.

(8) Sections 52163, 52165, 52166, and 52178.

(9) Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.

(10) The identification and assessment criteria relating to any categorical aid program, including Sections 52164.1 and 52164.6.

(11) Sections 41000 to 41360, inclusive; Sections 41420 to 41423, inclusive; Sections 41600 to 41866, inclusive; Sections 41920 to 42911, inclusive; Section 44924; Article 3 (commencing with Section 44930) Article 5 (commencing with Section 45022) of Chapter 4 of Part 25;

Part 26 (commencing with Section 46000) and Chapter 6 (commencing with Section 48900) and Chapter 6.5 (commencing with Section 49060) of Part 27; or regulations in Title 5 of the California Code of Regulations adopted pursuant to Article 3 (commencing with Section 44930) of Chapter 4 of Part 25.

(b) Any waiver of provisions related to the programs identified in Section 52851 shall be granted only pursuant to Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.

(c) The waiver of an advisory committee required by law shall be granted only pursuant to Article 4 (commencing with Section 52870) of Chapter 12 of Part 28.

(d) Any request for a waiver submitted by the governing board of a school district or a county board of education pursuant to subdivision (a) shall include a written statement as to (1) whether the exclusive representative of employees, if any, as provided in Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, participated in the development of the waiver and (2) the exclusive representative's position regarding the waiver.

(e) Any request for a waiver submitted pursuant to subdivision (a) relating to a regional occupational center or program established pursuant to Article 1 (commencing with Section 52300) of Chapter 9 of Part 28, that is operated by a joint powers entity established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, shall be submitted as a joint waiver request for each participating school district and shall meet both of the following conditions:

(1) Each joint waiver request shall comply with all of the requirements of this article.

(2) The submission of a joint waiver request shall be approved by a unanimous vote of the governing board of the joint powers agency.

(f) The governing board of any school district requesting a waiver under this section of any provision of Article 5 (commencing with Section 39390) of Chapter 3 of Part 23 shall provide written notice of any public hearing it conducted pursuant to subdivision (a), at least 30 days prior to the hearing, to each public agency identified under Section 39394.

SEC. 3.8. Section 33050 of the Education Code is amended to read:

33050. (a) The governing board of a school district or a county board of education may, on a districtwide or countywide basis or on behalf of one or more of its schools or programs, after a public hearing on the matter, request the State Board of Education to waive all or part of any section of this code or any regulation adopted by the State Board of Education that implements a provision of this code that may be waived, except:

(1) Article 1 (commencing with Section 15700) and Article 2 (commencing with Section 15780) of Chapter 6 of Part 10.

(2) Chapter 8 (commencing with Section 16000) and Chapter 9

(commencing with Section 16400) of Part 10.

(3) Chapter 22 (commencing with Section 17700), Chapter 23 (commencing with Section 17760), and Chapter 25 (commencing with Section 17785) of Part 10.

(4) Part 13 (commencing with Section 22000).

(5) Section 35735.1.

(6) Paragraph (8) of subdivision (a) of Section 37220.

(7) The following provisions of Part 23:

(A) Chapter 1 (commencing with Section 39000).

(B) Article 1 (commencing with Section 39100) to Article 6 (commencing with Section 39210), inclusive, of Chapter 2.

(C) Section 39248; Sections 39313 to 39325, inclusive; Sections 39360.5 and 39363 and subdivision (a) of Section 39363.5; and Sections 39618 to 39621, inclusive.

(8) Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.

(9) The identification and assessment criteria relating to any categorical aid program, including Sections 52164.1 and 52164.6.

(10) Sections 41000 to 41360, inclusive; Sections 41420 to 41423, inclusive; Sections 41600 to 41866, inclusive; Sections 41920 to 42911, inclusive; Article 3 (commencing with Section 44930) of Chapter 4 of Part 25; Part 26 (commencing with Section 46000) and Chapter 6 (commencing with Section 48900) and Chapter 6.5 (commencing with Section 49060) of Part 27; or regulations in Title 5 of the California Code of Regulations adopted pursuant to Article 3 (commencing with Section 44930) of Chapter 4 of Part 25.

(b) Any waiver of provisions related to the programs identified in Section 52851 shall be granted only pursuant to Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.

(c) The waiver of an advisory committee required by law shall be granted only pursuant to Article 4 (commencing with Section 52870) of Chapter 12 of Part 28.

(d) Any request for a waiver submitted by the governing board of a school district or a county board of education pursuant to subdivision (a) shall include a written statement as to (1) whether the exclusive representative of employees, if any, as provided in Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, participated in the development of the waiver and (2) the exclusive representative's position regarding the waiver.

(e) Any request for a waiver submitted pursuant to subdivision (a) relating to a regional occupational center or program established pursuant to Article 1 (commencing with Section 52300) of Chapter 9 of Part 28, that is operated by a joint powers entity established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, shall be submitted as a joint waiver request for each participating school district and shall meet both of the following conditions:

(1) Each joint waiver request shall comply with all of the

requirements of this article.

(2) The submission of a joint waiver request shall be approved by a unanimous vote of the governing board of the joint powers agency.

(f) The governing board of any school district requesting a waiver under this section of any provision of Article 5 (commencing with Section 39390) of Chapter 3 of Part 23 shall provide written notice of any public hearing it conducted pursuant to subdivision (a), at least 30 days prior to the hearing, to each public agency identified under Section 39394.

SEC. 3.9. Section 33050 of the Education Code is amended to read:

33050. (a) The governing board of a school district or a county board of education may, on a districtwide or countywide basis or on behalf of one or more of its schools or programs, after a public hearing on the matter, request the State Board of Education to waive all or part of any section of this code or any regulation adopted by the State Board of Education that implements a provision of this code that may be waived, except:

(1) Article 1 (commencing with Section 15700) and Article 2 (commencing with Section 15780) of Chapter 6 of Part 10.

(2) Chapter 8 (commencing with Section 16000) and Chapter 9 (commencing with Section 16400) of Part 10.

(3) Chapter 22 (commencing with Section 17700), Chapter 23 (commencing with Section 17760), and Chapter 25 (commencing with Section 17785) of Part 10.

(4) Part 13 (commencing with Section 22000).

(5) Section 35735.1.

(6) Paragraph (8) of subdivision (a) of Section 37220.

(7) The following provisions of Part 23:

(A) Chapter 1 (commencing with Section 39000).

(B) Article 1 (commencing with Section 39100) to Article 6 (commencing with Section 39210), inclusive, of Chapter 2.

(C) Section 39248; Sections 39313 to 39325, inclusive; Sections 39360.5 and 39363 and subdivision (a) of Section 39363.5; and Sections 39618 to 39621, inclusive.

(6) Sections 52163, 52165, 52166, and 52178.

(7) Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.

(8) The identification and assessment criteria relating to any categorical aid program, including Sections 52164.1 and 52164.6.

(9) Sections 41000 to 41360, inclusive; Sections 41420 to 41423, inclusive; Sections 41600 to 41866, inclusive; Sections 41920 to 42911, inclusive; Section 44924; Article 3 (commencing with Section 44930) and Article 5 (commencing with Section 45022) of Chapter 4 of Part 25; Part 26 (commencing with Section 46000) and Chapter 6 (commencing with Section 48900) and Chapter 6.5 (commencing with Section 49060) of Part 27; or regulations in Title 5 of the California Code of Regulations adopted pursuant to Article 3 (commencing with Section 44930) of Chapter 4 of Part 25.

(b) Any waiver of provisions related to the programs identified in Section 52851 shall be granted only pursuant to Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.

(c) The waiver of an advisory committee required by law shall be granted only pursuant to Article 4 (commencing with Section 52870) of Chapter 12 of Part 28.

(d) Any request for a waiver submitted by the governing board of a school district or a county board of education pursuant to subdivision (a) shall include a written statement as to (1) whether the exclusive representative of employees, if any, as provided in Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, participated in the development of the waiver and (2) the exclusive representative's position regarding the waiver.

(e) Any request for a waiver submitted pursuant to subdivision (a) relating to a regional occupational center or program established pursuant to Article 1 (commencing with Section 52300) of Chapter 9 of Part 28, that is operated by a joint powers entity established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, shall be submitted as a joint waiver request for each participating school district and shall meet both of the following conditions:

(1) Each joint waiver request shall comply with all of the requirements of this article.

(2) The submission of a joint waiver request shall be approved by a unanimous vote of the governing board of the joint powers agency.

(f) The governing board of any school district requesting a waiver under this section of any provision of Article 5 (commencing with Section 39390) of Chapter 3 of Part 23 shall provide written notice of any public hearing it conducted pursuant to subdivision (a), at least 30 days prior to the hearing, to each public agency identified under Section 39394.

SEC. 3.10. Section 33050 of the Education Code is amended to read:

33050. (a) The governing board of a school district or a county board of education may, on a districtwide or countywide basis or on behalf of one or more of its schools or programs, after a public hearing on the matter, request the State Board of Education to waive all or part of any section of this code or any regulation adopted by the State Board of Education that implements a provision of this code that may be waived, except:

(1) Sections 14503, 14504, 14504.2, 14505, and 35031.1.

(2) Article 1 (commencing with Section 15700) and Article 2 (commencing with Section 15780) of Chapter 6 of Part 10.

(3) Chapter 8 (commencing with Section 16000) and Chapter 9 (commencing with Section 16400) of Part 10.

(4) Chapter 22 (commencing with Section 17700), Chapter 23 (commencing with Section 17760), and Chapter 25 (commencing with Section 17785) of Part 10.

- (5) Part 13 (commencing with Section 22000).
- (6) Section 35735.1.
- (7) Paragraph (8) of subdivision (a) of Section 37220.
- (8) The following provisions of Part 23:
 - (A) Chapter 1 (commencing with Section 39000).
 - (B) Article 1 (commencing with Section 39100) to Article 6 (commencing with Section 39210), inclusive, of Chapter 2.
 - (C) Section 39248; Sections 39313 to 39325, inclusive; Sections 39360.5 and 39363 and subdivision (a) of Section 39363.5; and Sections 39618 to 39621, inclusive.
- (9) Sections 52163, 52165, 52166, and 52178.
- (10) Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.
- (11) The identification and assessment criteria relating to any categorical aid program, including Sections 52164.1 and 52164.6.
- (12) Sections 41000 to 41360, inclusive; Sections 41420 to 41423, inclusive; Sections 41600 to 41866, inclusive; Sections 41920 to 42911, inclusive; Article 3 (commencing with Section 44930) of Chapter 4 of Part 25; Part 26 (commencing with Section 46000) and Chapter 6 (commencing with Section 48900) and Chapter 6.5 (commencing with Section 49060) of Part 27; or regulations in Title 5 of the California Code of Regulations adopted pursuant to Article 3 (commencing with Section 44930) of Chapter 4 of Part 25.
 - (b) Any waiver of provisions related to the programs identified in Section 52851 shall be granted only pursuant to Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.
 - (c) The waiver of an advisory committee required by law shall be granted only pursuant to Article 4 (commencing with Section 52870) of Chapter 12 of Part 28.
 - (d) Any request for a waiver submitted by the governing board of a school district or a county board of education pursuant to subdivision (a) shall include a written statement as to (1) whether the exclusive representative of employees, if any, as provided in Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, participated in the development of the waiver and (2) the exclusive representative's position regarding the waiver.
 - (e) Any request for a waiver submitted pursuant to subdivision (a) relating to a regional occupational center or program established pursuant to Article 1 (commencing with Section 52300) of Chapter 9 of Part 28, that is operated by a joint powers entity established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, shall be submitted as a joint waiver request for each participating school district and shall meet both of the following conditions:
 - (1) Each joint waiver request shall comply with all of the requirements of this article.
 - (2) The submission of a joint waiver request shall be approved by a unanimous vote of the governing board of the joint powers agency.

(f) The governing board of any school district requesting a waiver under this section of any provision of Article 5 (commencing with Section 39390) of Chapter 3 of Part 23 shall provide written notice of any public hearing it conducted pursuant to subdivision (a), at least 30 days prior to the hearing, to each public agency identified under Section 39394.

SEC. 3.11. Section 33050 of the Education Code is amended to read:

33050. (a) The governing board of a school district or a county board of education may, on a districtwide or countywide basis or on behalf of one or more of its schools or programs, after a public hearing on the matter, request the State Board of Education to waive all or part of any section of this code or any regulation adopted by the State Board of Education that implements a provision of this code that may be waived, except:

- (1) Sections 14503, 14504, 14504.2, 14505, and 35031.1.
- (2) Article 1 (commencing with Section 15700) and Article 2 (commencing with Section 15780) of Chapter 6 of Part 10.
- (3) Chapter 8 (commencing with Section 16000) and Chapter 9 (commencing with Section 16400) of Part 10.
- (4) Chapter 22 (commencing with Section 17700), Chapter 23 (commencing with Section 17760), and Chapter 25 (commencing with Section 17785) of Part 10.
- (5) Part 13 (commencing with Section 22000).
- (6) Section 35735.1.
- (7) Paragraph (8) of subdivision (a) of Section 37220.
- (8) The following provisions of Part 23:
 - (A) Chapter 1 (commencing with Section 39000).
 - (B) Article 1 (commencing with Section 39100) to Article 6 (commencing with Section 39210), inclusive, of Chapter 2.
 - (C) Section 39248; Sections 39313 to 39325, inclusive; Sections 39360.5 and 39363 and subdivision (a) of Section 39363.5; and Sections 39618 to 39621, inclusive.
- (9) Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.
- (10) The identification and assessment criteria relating to any categorical aid program, including Sections 52164.1 and 52164.6.
- (11) Sections 41000 to 41360, inclusive; Sections 41420 to 41423, inclusive; Sections 41600 to 41866, inclusive; Sections 41920 to 42911, inclusive; Section 44924; Article 3 (commencing with Section 44930) and Article 5 (commencing with Section 45022) of Chapter 4 of Part 25; Part 26 (commencing with Section 46000) and Chapter 6 (commencing with Section 48900) and Chapter 6.5 (commencing with Section 49060) of Part 27; or regulations in Title 5 of the California Code of Regulations adopted pursuant to Article 3 (commencing with Section 44930) of Chapter 4 of Part 25.
- (b) Any waiver of provisions related to the programs identified in Section 52851 shall be granted only pursuant to Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.

(c) The waiver of an advisory committee required by law shall be granted only pursuant to Article 4 (commencing with Section 52870) of Chapter 12 of Part 28.

(d) Any request for a waiver submitted by the governing board of a school district or a county board of education pursuant to subdivision (a) shall include a written statement as to (1) whether the exclusive representative of employees, if any, as provided in Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, participated in the development of the waiver and (2) the exclusive representative's position regarding the waiver.

(e) Any request for a waiver submitted pursuant to subdivision (a) relating to a regional occupational center or program established pursuant to Article 1 (commencing with Section 52300) of Chapter 9 of Part 28, that is operated by a joint powers entity established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, shall be submitted as a joint waiver request for each participating school district and shall meet both of the following conditions:

(1) Each joint waiver request shall comply with all of the requirements of this article.

(2) The submission of a joint waiver request shall be approved by a unanimous vote of the governing board of the joint powers agency.

(f) The governing board of any school district requesting a waiver under this section of any provision of Article 5 (commencing with Section 39390) of Chapter 3 of Part 23 shall provide written notice of any public hearing it conducted pursuant to subdivision (a), at least 30 days prior to the hearing, to each public agency identified under Section 39394.

SEC. 3.12. Section 33050 of the Education Code is amended to read:

33050. (a) The governing board of a school district or a county board of education may, on a districtwide or countywide basis or on behalf of one or more of its schools or programs, after a public hearing on the matter, request the State Board of Education to waive all or part of any section of this code or any regulation adopted by the State Board of Education that implements a provision of this code that may be waived, except:

(1) Sections 14503, 14504, 14504.2, 14505, and 35031.1.

(2) Article 1 (commencing with Section 15700) and Article 2 (commencing with Section 15780) of Chapter 6 of Part 10.

(3) Chapter 8 (commencing with Section 16000) and Chapter 9 (commencing with Section 16400) of Part 10.

(4) Chapter 22 (commencing with Section 17700), Chapter 23 (commencing with Section 17760), and Chapter 25 (commencing with Section 17785) of Part 10.

(5) Part 13 (commencing with Section 22000).

(6) Section 35735.1.

(7) Paragraph (8) of subdivision (a) of Section 37220.

(8) The following provisions of Part 23:

(A) Chapter 1 (commencing with Section 39000).

(B) Article 1 (commencing with Section 39100) to Article 6 (commencing with Section 39210), inclusive, of Chapter 2.

(C) Section 39248; Sections 39313 to 39325, inclusive; Sections 39360.5 and 39363 and subdivision (a) of Section 39363.5; and Sections 39618 to 39621, inclusive.

(9) Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.

(10) The identification and assessment criteria relating to any categorical aid program, including Sections 52164.1 and 52164.6.

(11) Sections 41000 to 41360, inclusive; Sections 41420 to 41423, inclusive; Sections 41600 to 41866, inclusive; Sections 41920 to 42911, inclusive; Article 3 (commencing with Section 44930) of Chapter 4 of Part 25; Part 26 (commencing with Section 46000) and Chapter 6 (commencing with Section 48900) and Chapter 6.5 (commencing with Section 49060) of Part 27; or regulations in Title 5 of the California Code of Regulations adopted pursuant to Article 3 (commencing with Section 44930) of Chapter 4 of Part 25.

(b) Any waiver of provisions related to the programs identified in Section 52851 shall be granted only pursuant to Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.

(c) The waiver of an advisory committee required by law shall be granted only pursuant to Article 4 (commencing with Section 52870) of Chapter 12 of Part 28.

(d) Any request for a waiver submitted by the governing board of a school district or a county board of education pursuant to subdivision (a) shall include a written statement as to (1) whether the exclusive representative of employees, if any, as provided in Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, participated in the development of the waiver and (2) the exclusive representative's position regarding the waiver.

(e) Any request for a waiver submitted pursuant to subdivision (a) relating to a regional occupational center or program established pursuant to Article 1 (commencing with Section 52300) of Chapter 9 of Part 28, that is operated by a joint powers entity established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, shall be submitted as a joint waiver request for each participating school district and shall meet both of the following conditions:

(1) Each joint waiver request shall comply with all of the requirements of this article.

(2) The submission of a joint waiver request shall be approved by a unanimous vote of the governing board of the joint powers agency.

(f) The governing board of any school district requesting a waiver under this section of any provision of Article 5 (commencing with Section 39390) of Chapter 3 of Part 23 shall provide written notice of any public hearing it conducted pursuant to subdivision (a), at

least 30 days prior to the hearing, to each public agency identified under Section 39394.

SEC. 3.13. Section 33050 of the Education Code is amended to read:

33050. (a) The governing board of a school district or a county board of education may, on a districtwide or countywide basis or on behalf of one or more of its schools or programs, after a public hearing on the matter, request the State Board of Education to waive all or part of any section of this code or any regulation adopted by the State Board of Education that implements a provision of this code that may be waived, except:

(1) Article 1 (commencing with Section 15700) and Article 2 (commencing with Section 15780) of Chapter 6 of Part 10.

(2) Chapter 8 (commencing with Section 16000) and Chapter 9 (commencing with Section 16400) of Part 10.

(3) Chapter 22 (commencing with Section 17700), Chapter 23 (commencing with Section 17760), and Chapter 25 (commencing with Section 17785) of Part 10.

(4) Part 13 (commencing with Section 22000).

(5) Section 35735.1.

(6) Paragraph (8) of subdivision (a) of Section 37220.

(7) The following provisions of Part 23:

(A) Chapter 1 (commencing with Section 39000).

(B) Article 1 (commencing with Section 39100) to Article 6 (commencing with Section 39210), inclusive, of Chapter 2.

(C) Section 39248; Sections 39313 to 39325, inclusive; Sections 39360.5 and 39363 and subdivision (a) of Section 39363.5; and Sections 39618 to 39621, inclusive.

(8) Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.

(9) The identification and assessment criteria relating to any categorical aid program, including Sections 52164.1 and 52164.6.

(10) Sections 41000 to 41360, inclusive; Sections 41420 to 41423, inclusive; Sections 41600 to 41866, inclusive; Sections 41920 to 42911, inclusive; Section 44924; Article 3 (commencing with Section 44930) and Article 5 (commencing with Section 45022) of Chapter 4 of Part 25; Part 26 (commencing with Section 46000) and Chapter 6 (commencing with Section 48900) and Chapter 6.5 (commencing with Section 49060) of Part 27; or regulations in Title 5 of the California Code of Regulations adopted pursuant to Article 3 (commencing with Section 44930) of Chapter 4.

(b) Any waiver of provisions related to the programs identified in Section 52851 shall be granted only pursuant to Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.

(c) The waiver of an advisory committee required by law shall be granted only pursuant to Article 4 (commencing with Section 52870) of Chapter 12 of Part 28.

(d) Any request for a waiver submitted by the governing board of a school district or a county board of education pursuant to

subdivision (a) shall include a written statement as to (1) whether the exclusive representative of employees, if any, as provided in Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, participated in the development of the waiver and (2) the exclusive representative's position regarding the waiver.

(e) Any request for a waiver submitted pursuant to subdivision (a) relating to a regional occupational center or program established pursuant to Article 1 (commencing with Section 52300) of Chapter 9 of Part 28, that is operated by a joint powers entity established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, shall be submitted as a joint waiver request for each participating school district and shall meet both of the following conditions:

(1) Each joint waiver request shall comply with all of the requirements of this article.

(2) The submission of a joint waiver request shall be approved by a unanimous vote of the governing board of the joint powers agency.

(f) The governing board of any school district requesting a waiver under this section of any provision of Article 5 (commencing with Section 39390) of Chapter 3 of Part 23 shall provide written notice of any public hearing it conducted pursuant to subdivision (a), at least 30 days prior to the hearing, to each public agency identified under Section 39394.

SEC. 3.14. Section 33050 of the Education Code is amended to read:

33050. (a) The governing board of a school district or a county board of education may, on a districtwide or countywide basis or on behalf of one or more of its schools or programs, after a public hearing on the matter, request the State Board of Education to waive all or part of any section of this code or any regulation adopted by the State Board of Education that implements a provision of this code that may be waived, except:

(1) Sections 14503, 14504, 14504.2, 14505, and 35031.1.

(2) Article 1 (commencing with Section 15700) and Article 2 (commencing with Section 15780) of Chapter 6 of Part 10.

(3) Chapter 8 (commencing with Section 16000) and Chapter 9 (commencing with Section 16400) of Part 10.

(4) Chapter 22 (commencing with Section 17700), Chapter 23 (commencing with Section 17760), and Chapter 25 (commencing with Section 17785) of Part 10.

(5) Part 13 (commencing with Section 22000).

(6) Section 35735.1.

(7) Paragraph (8) of subdivision (a) of Section 37220.

(8) The following provisions of Part 23:

(A) Chapter 1 (commencing with Section 39000).

(B) Article 1 (commencing with Section 39100) to Article 6 (commencing with Section 39210), inclusive, of Chapter 2.

(C) Section 39248; Sections 39313 to 39325, inclusive; Sections

39360.5 and 39363 and subdivision (a) of Section 39363.5; and Sections 39618 to 39621, inclusive.

(9) Sections 52163, 52165, 52166, and 52178.

(10) Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.

(11) The identification and assessment criteria relating to any categorical aid program, including Sections 52164.1 and 52164.6.

(12) Sections 41000 to 41360, inclusive; Sections 41420 to 41423, inclusive; Sections 41600 to 41866, inclusive; Sections 41920 to 42911, inclusive; Section 44924; Article 3 (commencing with Section 44930) and Article 5 (commencing with Section 45022) of Chapter 4 of Part 25; Part 26 (commencing with Section 46000) and Chapter 6 (commencing with Section 48900) and Chapter 6.5 (commencing with Section 49060) of Part 27; or regulations in Title 5 of the California Code of Regulations adopted pursuant to Article 3 (commencing with Section 44930) of Chapter 4 of Part 25.

(b) Any waiver of provisions related to the programs identified in Section 52851 shall be granted only pursuant to Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.

(c) The waiver of an advisory committee required by law shall be granted only pursuant to Article 4 (commencing with Section 52870) of Chapter 12 of Part 28.

(d) Any request for a waiver submitted by the governing board of a school district or a county board of education pursuant to subdivision (a) shall include a written statement as to (1) whether the exclusive representative of employees, if any, as provided in Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, participated in the development of the waiver and (2) the exclusive representative's position regarding the waiver.

(e) Any request for a waiver submitted pursuant to subdivision (a) relating to a regional occupational center or program established pursuant to Article 1 (commencing with Section 52300) of Chapter 9 of Part 28, that is operated by a joint powers entity established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, shall be submitted as a joint waiver request for each participating school district and shall meet both of the following conditions:

(1) Each joint waiver request shall comply with all of the requirements of this article.

(2) The submission of a joint waiver request shall be approved by a unanimous vote of the governing board of the joint powers agency.

(f) The governing board of any school district requesting a waiver under this section of any provision of Article 5 (commencing with Section 39390) of Chapter 3 of Part 23 shall provide written notice of any public hearing it conducted pursuant to subdivision (a), at least 30 days prior to the hearing, to each public agency identified under Section 39394.

SEC. 3.15. Section 33050 of the Education Code is amended to

read:

33050. (a) The governing board of a school district or a county board of education may, on a districtwide or countywide basis or on behalf of one or more of its schools or programs, after a public hearing on the matter, request the State Board of Education to waive all or part of any section of this code or any regulation adopted by the State Board of Education that implements a provision of this code that may be waived, except:

(1) Sections 14503, 14504, 14504.2, 14505, and 35031.1.

(2) Article 1 (commencing with Section 15700) and Article 2 (commencing with Section 15780) of Chapter 6 of Part 10.

(3) Chapter 8 (commencing with Section 16000) and Chapter 9 (commencing with Section 16400) of Part 10.

(4) Chapter 22 (commencing with Section 17700), Chapter 23 (commencing with Section 17760), and Chapter 25 (commencing with Section 17785) of Part 10.

(5) Part 13 (commencing with Section 22000).

(6) Section 35735.1.

(7) Paragraph (8) of subdivision (a) of Section 37220.

(8) The following provisions of Part 23:

(A) Chapter 1 (commencing with Section 39000).

(B) Article 1 (commencing with Section 39100) to Article 6 (commencing with Section 39210), inclusive, of Chapter 2.

(C) Section 39248; Sections 39313 to 39325, inclusive; Sections 39360.5 and 39363 and subdivision (a) of Section 39363.5; and Sections 39618 to 39621, inclusive.

(9) Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.

(10) The identification and assessment criteria relating to any categorical aid program, including Sections 52164.1 and 52164.6.

(11) Sections 41000 to 41360, inclusive; Sections 41420 to 41423, inclusive; Sections 41600 to 41866, inclusive; Sections 41920 to 42911, inclusive; Section 44924; Article 3 (commencing with Section 44930) and Article 5 (commencing with Section 45022) of Chapter 4 of Part 25; Part 26 (commencing with Section 46000) and Chapter 6 (commencing with Section 48900) and Chapter 6.5 (commencing with Section 49060) of Part 27; or regulations in Title 5 of the California Code of Regulations adopted pursuant to Article 3 (commencing with Section 44930) of Chapter 4 of Part 25.

(b) Any waiver of provisions related to the programs identified in Section 52851 shall be granted only pursuant to Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.

(c) The waiver of an advisory committee required by law shall be granted only pursuant to Article 4 (commencing with Section 52870) of Chapter 12 of Part 28.

(d) Any request for a waiver submitted by the governing board of a school district or a county board of education pursuant to subdivision (a) shall include a written statement as to (1) whether the exclusive representative of employees, if any, as provided in

Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, participated in the development of the waiver and (2) the exclusive representative's position regarding the waiver.

(e) Any request for a waiver submitted pursuant to subdivision (a) relating to a regional occupational center or program established pursuant to Article 1 (commencing with Section 52300) of Chapter 9 of Part 28, that is operated by a joint powers entity established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, shall be submitted as a joint waiver request for each participating school district and shall meet both of the following conditions:

(1) Each joint waiver request shall comply with all of the requirements of this article.

(2) The submission of a joint waiver request shall be approved by a unanimous vote of the governing board of the joint powers agency.

(f) The governing board of any school district requesting a waiver under this section of any provision of Article 5 (commencing with Section 39390) of Chapter 3 of Part 23 shall provide written notice of any public hearing it conducted pursuant to subdivision (a), at least 30 days prior to the hearing, to each public agency identified under Section 39394.

SEC. 4. Section 35501 of the Education Code is amended to read:

35501. On and after January 1, 1981, this chapter and Chapter 4 (commencing with Section 35700) shall apply to an action to reorganize school districts.

SEC. 5. Section 35542 of the Education Code is amended to read:

35542. (a) Whenever the boundaries of an elementary school district and a high school district become coterminous, the districts are merged into a new unified district.

(b) Notwithstanding subdivision (a), an elementary school district that has boundaries that are totally within a high school district may be excluded from an action to unify those districts if the governing board receives approval for an exclusion from the State Board of Education. Any elementary school district authorized by the State Board of Education to be excluded from an action to unify, may continue to feed into the coterminous high school under the same terms that existed before any action to unify pursuant to subdivision (a).

SEC. 6. Section 35704 of the Education Code is amended to read:

35704. The county superintendent of schools, within 20 days after any petition for reorganization is filed, shall examine the petition and, if he or she finds it to be sufficient and signed as required by law, transmit the petition simultaneously to the county committee and to the State Board of Education.

SEC. 7. Section 35707 of the Education Code is amended to read:

35707. (a) Except for petitions for the transfer of territory, the county committee shall forthwith transmit the petition to the State Board of Education together with its recommendations thereon. It

shall also report whether any of the following, in the opinion of the committee, would be true regarding the proposed reorganization as described in the petition:

(1) It would adversely affect the school district organization of the county.

(2) It would be compatible with any master plans submitted by the county committee and approved by the State Board of Education.

(3) It would comply with the provisions of Section 35753.

(b) Petitions for transfers of territory shall be transmitted pursuant to Section 35704.

SEC. 8. Section 35722 of the Education Code is amended to read: 35722. Following the public hearing, or last public hearing, required by Section 35720.5 or subdivision (b) of Section 35721, the county committee may adopt a final recommendation for unification or other reorganization and shall transmit that recommendation together with the petition filed under subdivision (a) of Section 35721, if any, to the State Board of Education for hearing as provided in Article 4 (commencing with Section 35750); or shall transmit the petition to the State Board of Education and order the reorganization granted if the requirements of Section 35709 are satisfied; or shall transmit the petition to the State Board of Education and order that an election be held if the requirements of Section 35710 are satisfied.

SEC. 9. Section 35735 of the Education Code is repealed.

SEC. 10. Section 35735 is added to the Education Code, to read: 35735. (a) Each proposal for the reorganization of school districts shall include a computation of the base revenue limit per unit of average daily attendance for the districts. That computation shall be an integral part of the proposal and shall not be considered separately from the proposal. The computation of the base revenue limit for the newly organized school districts shall be based on the current information available for each affected school district for the second principal apportionment period for the fiscal year two years prior to the fiscal year in which the reorganization is to become effective. The computation of any adjustments for employee salaries and benefits shall be based on information from the fiscal year two years prior to the fiscal year in which the reorganization is to become effective. For the purposes of this article "affected school district" means a school district affected by a reorganization because all or a portion of its average daily attendance is to be included in the newly organized school districts.

(b) The county superintendent of schools shall compute the base revenue limit per unit of average daily attendance pursuant to Section 35735.1 for a school district involved in an action to reorganize and in an action to transfer territory.

(c) The State Department of Education shall use information provided pursuant to subdivision (a) by the county superintendent of schools in each county that has a school district affected by an

action to unify or by an appeal of a transfer of territory to compute the base revenue limit per unit of average daily attendance for a newly organized school district pursuant to Section 35735.1.

(d) This section shall not apply to any reorganization proposal approved by the State Board of Education prior to January 1, 1995.

(e) Any costs incurred by the county superintendent of schools in preparing reports pursuant to this section or Section 35735.1 or 35735.2 may be billed to the affected school districts on a proportionate basis.

SEC. 11. Section 35735.1 is added to the Education Code, to read:

35735.1. (a) The base revenue limit per unit of average daily attendance for newly organized school districts shall be equal to the total of the amount of blended revenue limit per unit of average daily attendance of the affected school districts computed pursuant to paragraph (1), the amount based on salaries and benefits of classified employees computed pursuant to paragraph (2), the amount based on salaries and benefits of certificated employees calculated pursuant to paragraph (3), and the amount of the inflation adjustment calculated pursuant to paragraph (4). The following computations shall be made to determine the base revenue limit per unit of average daily attendance for the newly organized school districts:

(1) Divide the average daily attendance computed pursuant to Section 42238.5 into the base revenue limit computed pursuant to Section 42238 for each affected district, and then perform the following computation to arrive at the blended revenue limit:

(A) For each school district affected by the reorganization, multiply the amount determined pursuant to paragraph (1) by the number of units of average daily attendance for that school district that the county superintendent of schools determines will be included in the proposed school district.

(B) Add the amounts calculated pursuant to subparagraph (A).

(2) For each affected school district for which the employment of 25 percent or more of the classified full-time equivalent employees of the district is attributable to average daily attendance that the county superintendent of schools determines will be included in the newly organized school districts, the following computation shall be made to determine the amount to be included in the base revenue limit per unit of average daily attendance for the newly organized school districts that is based on the salaries and benefits of classified employees:

(A) For each of those school districts, make the following computation to arrive at the highest average amount expended for salaries and benefits for classified full-time employees by the districts:

(i) Add the amount of all salaries and benefits for classified employees of the district, including both part-time and full-time employees.

(ii) Divide the amount computed in clause (i) by the total

number of full-time equivalent classified employees in the district.

(B) Compare the amounts determined for each of those school districts pursuant to subparagraph (A) and identify the highest average amount expended for salaries and benefits for classified employees.

(C) For each of those school districts, subtract the amount determined for the district pursuant to subparagraph (A) from the amount identified pursuant to subparagraph (B).

(D) For each of those school districts, multiply the amount determined for the district pursuant to subparagraph (C) by the number of full-time equivalent classified employees employed by the district, and then multiply by the percentage of the district's average daily attendance to be included in the new district.

(E) Add the amounts computed for each school district pursuant to subparagraph (D).

(3) For each affected school district for which the employment of 25 percent or more of the certificated full-time equivalent employees of the district is attributable to average daily attendance that the county superintendent of schools determines will be included in the newly organized school districts, the following computation shall be made to determine the amount to be included in the base revenue limit per unit of average daily attendance for the newly organized school districts that is based on the salaries and benefits of certificated employees:

(A) For each of those school districts, make the following computation to determine the highest average amount expended for salaries and benefits for certificated full-time employees:

(i) Add the amount of all salaries and benefits for certificated employees, including both part-time and full-time employees.

(ii) Divide the amount determined in clause (i) by the total number of full-time equivalent certificated employees in the district.

(B) Compare the amounts determined for each school district pursuant to subparagraph (A) and identify the highest average amount expended for salaries and benefits for certificated employees.

(C) For each of those school districts, subtract the amount determined for the district pursuant to subparagraph (A) from the amount identified pursuant to subparagraph (B).

(D) For each of those school districts, multiply the amount determined for the district pursuant to subparagraph (C) by the number of full-time equivalent certificated employees of the school district, and then multiply by the percentage of the district's average daily attendance to be included in the new district.

(E) Add the amount calculated for each school district identified pursuant to subparagraph (D).

(4) The base revenue limit per unit of average daily attendance shall be adjusted for inflation as follows:

(A) Add the amounts determined pursuant to subparagraph (B) of paragraph (1), subparagraph (E) of paragraph (2), and

subparagraph (E) of paragraph (3), and divide that sum by the number of units of average daily attendance in the newly organized school districts. The amount determined pursuant to this subparagraph shall not exceed 110 percent of the blended revenue limit per unit of average daily attendance calculated pursuant to paragraph (1).

(B) Increase the amount determined pursuant to subparagraph (A) by the amount of the inflation adjustment calculated and used for apportionment purposes pursuant to Section 42238.1 for the fiscal year immediately preceding the year in which the reorganization becomes effective.

(C) Increase the amount determined pursuant to subparagraph (B) by the amount of the inflation adjustment calculated and used for apportionment purposes pursuant to Section 42238.1 for the fiscal year in which the reorganization becomes effective for all purposes.

(D) Increase the amount determined pursuant to subparagraph (C) by any other adjustments to the base revenue limit per unit of average daily attendance that the newly organized school districts would have been eligible to receive had they been reorganized in the fiscal year two years prior to the year in which the reorganization becomes effective for all purposes.

(b) The amount determined pursuant to subparagraph (D) of paragraph (4) of subdivision (a) shall be the base revenue limit per unit of average daily attendance for the newly organized school districts.

(c) The base revenue limit per unit of average daily attendance for the newly organized school district shall not be greater than the amount set forth in the proposal for reorganization that is approved by the State Board of Education. The Superintendent of Public Instruction may make adjustments to base revenue limit apportionments to a newly organized school district, if necessary to cause those apportionments to be consistent with this section.

(d) If the territorial jurisdiction of any school district was revised pursuant to a unification, consolidation, or other reorganization, occurring on or before July 1, 1989, that resulted in a school district having a larger territorial jurisdiction than the original school district prior to the reorganization, and a reorganization of school districts occurs on or after the effective date of the act that added this subdivision that results in a school district having a territorial jurisdiction that is substantially the same, as determined by the State Board of Education, as the territorial jurisdiction of that original school district prior to the most recent reorganization occurring on or before July 1, 1989, the revenue limit of the school district resulting from the subsequent reorganization shall be the same, notwithstanding subdivision (b), as the revenue limit that was determined for the original school district prior to the most recent reorganization occurring on or before July 1, 1989.

(e) The average daily attendance of a newly organized school district, for purposes of subdivision (d) of Section 42238, shall be the

average daily attendance that is attributable to the area reorganized for the fiscal year two years prior to the fiscal year in which the new district becomes effective for all purposes.

(f) For purposes of computing average daily attendance pursuant to subdivision (d) of Section 42238 for each school district that exists prior to the reorganization and whose average daily attendance is directly affected by the reorganization, the following calculation shall apply for the fiscal year two years prior to the fiscal year in which the newly reorganized school district becomes effective:

(1) Divide the 1982-83 fiscal year average daily attendance, computed pursuant to subdivision (d) of Section 42238, by the total average daily attendance of the district pursuant to Section 42238.5.

(2) Multiply the percentage computed pursuant to paragraph (1) by the total average daily attendance of the district pursuant to 42238.5 excluding the average daily attendance of pupils attributable to the area reorganized.

(g) This section shall not apply to any reorganization proposal approved by the State Board of Education prior to January 1, 1995.

(h) Notwithstanding any other provision of law, this section shall not be subject to waiver by the State Board of Education pursuant to Section 33050 or by the Superintendent of Public Instruction.

SEC. 12. Section 35735.2 is added to the Education Code, to read:

35735.2. (a) If a newly organized school district is unable to provide the school facilities necessary to provide instructional services by employees of the district to all of the pupils who are residents of that district during the fiscal year in which the reorganization becomes effective for all purposes, the base revenue limit per unit of average daily attendance of the newly organized district shall be the blended revenue limit arrived at pursuant to paragraph (1) of subdivision (a) of Section 35735.1. As the newly organized school district as adjusted by the calculations pursuant to subparagraphs (B), (C), and (D) of paragraph (4) of subdivision (a) of Section 35735.1 and subdivision (b) of Section 35735.1 obtains the school facilities necessary to provide instructional services by employees of the district to all or a portion of those pupils, the following adjustment shall be made to the base revenue limit per unit of average daily attendance of the district each fiscal year subsequent to the fiscal year in which the reorganization becomes effective until the fiscal year in which the district provides the facilities necessary to provide those services for all of those pupils:

(1) Determine the total number of pupils who are residents of the district to whom the district was unable to provide school facilities necessary to provide that instruction during the fiscal year in which the reorganization becomes effective for all purposes.

(2) Determine the total number of pupils identified in paragraph (1) that will attend school in school facilities located in, and receive instructional services provided by employees of, that district in the current fiscal year.

(3) Divide the number determined pursuant to paragraph (2) by

the number determined pursuant to paragraph (1) to determine the percentage of pupils identified in paragraph (1) who will attend school in school facilities located in, and receive instructional services provided by employees of, that district in the current fiscal year.

(4) Multiply the numbers determined pursuant to paragraphs (2) and (3) of subdivision (a) of Section 35735.1 by the percentage determined pursuant to paragraph (3) for that fiscal year, and total the amounts. Divide that sum by the number of units of average daily attendance residing in the proposed district in the current fiscal year.

(5) Increase the base revenue limit calculated pursuant to subdivision (a) of this section for the school district by the amount arrived at pursuant to paragraph (4) as adjusted by the calculations pursuant to subparagraphs (B), (C), and (D) of paragraph (4) of subdivision (a) of Section 35735.1. In no event shall the amount determined pursuant to this paragraph exceed that amount that would otherwise be calculated pursuant to subdivision (a) of Section 35735.1.

(b) For the purposes of making the adjustments described in subdivision (a), the annual audit of the school district required pursuant to Section 41020 shall include an audit of the average daily attendance of pupils by grade level and the numbers of certificated and classified employees on which the adjustments to the base revenue limit of the district were made pursuant to paragraphs (1), (2), and (3) of subdivision (a) of Section 35735.1. Until the newly organized school district provides the school facilities necessary to provide instructional services by employees of the district to pupils who are residents of the district in the manner and in the timeframes set forth in the proposal to reorganize that was approved by the State Board of Education, the county superintendent of schools shall, for each fiscal year, inform the Superintendent of Public Instruction of the extent to which the district is providing those facilities to those pupils. The county superintendent of schools may charge the school district for the cost of preparation of the report. Based on that information, the superintendent shall make base revenue limit apportionments to the school district in a manner consistent with subdivision (a).

(c) If the newly organized school district is unable to provide the school facilities necessary to provide instructional services by employees of the district to all of the pupils who are residents of the district five years from the date on which the reorganization becomes effective for all purposes, the State Department of Education shall recommend to the State Board of Education whether or not the district should be lapsed pursuant to Article 5 (commencing with Section 35780). The State Department of Education shall make that recommendation for each fiscal year until either the school district provides the school facilities necessary to provide instructional services by employees of the district to all of the pupils who are residents of the district or the district is lapsed. Upon recommendation by the State Department of Education, the State

Board of Education may direct the county committee on school district organization to lapse the school district according to the procedures set forth in Article 5 (commencing with Section 35780).

(d) This section shall not apply to any reorganization proposal approved by the State Board of Education prior to January 1, 1995.

SEC. 13. Section 35735.3 is added to the Education Code, to read:

35735.3. No transfer of seventh and eighth grade pupils between an elementary school district and a high school district shall result in the receiving district receiving a revenue limit apportionment for those pupils that exceeds 105 percent of the statewide average revenue limit for the type and size of the receiving school district.

SEC. 14. Section 35753 of the Education Code is amended to read:

35753. (a) The State Board of Education may approve proposals for the reorganization of districts, if the board has determined, with respect to the proposal and the resulting districts, that all of the following conditions are substantially met:

(1) The new districts will be adequate in terms of number of pupils enrolled.

(2) The districts are each organized on the basis of a substantial community identity.

(3) The proposal will result in an equitable division of property and facilities of the original district or districts.

(4) The reorganization of the districts will not promote racial or ethnic discrimination or segregation.

(5) The proposed reorganization will not result in any substantial increase in costs to the state.

(6) The proposed reorganization will not significantly disrupt the educational programs in the proposed districts and districts affected by the proposed reorganization and will continue to promote sound education performance in those districts.

(7) The proposed reorganization will not result in a significant increase in school housing costs.

(8) The proposed reorganization is not primarily designed to result in a significant increase in property values causing financial advantage to property owners because territory was transferred from one school district to an adjoining district.

(9) The proposed reorganization will not cause a substantial negative effect on the fiscal management or fiscal status of the proposed district or any existing district affected by the proposed reorganization.

(10) Any other criteria as the board may, by regulation, prescribe.

(b) The State Board of Education may approve a proposal for the reorganization of school districts if the board determines that it is not practical or possible to apply the criteria of this section literally, and that the circumstances with respect to the proposals provide an exceptional situation sufficient to justify approval of the proposals.

SEC. 15. Section 35780 of the Education Code is amended to read:

35780. (a) Any school district which has been organized for more than three years shall be lapsed as provided in this article if the

number of registered electors in the district is less than six or if the average daily attendance of pupils in the school or schools maintained by the district is less than six in grades 1 through 8 or is less than 11 in grades 9 through 12, except that for any unified district which has established and continues to operate at least one senior high school, the board of supervisors shall defer the lapsation of the district for one year upon a written request of the governing board of the district and written concurrence of the county committee. The board of supervisors shall make no more than three such deferments.

(b) For a newly organized school district that has been unable to provide the school facilities necessary for instructional services by employees of the district to all of the pupils who are residents of the district after five years from the date that the reorganization became effective, the county committee on school district organization, upon direction from the State Board of Education, shall initiate lapsation procedures pursuant to Section 35783 or revert the reorganized district to its original status.

(c) A school district may also be lapsed when there are no school facilities or sites on which to maintain any school in the district.

SEC. 16. Section 46304 of the Education Code is amended to read:

46304. (a) Notwithstanding anything in this code to the contrary when as a result of the unification or other reorganization of school districts, or the change of school district boundaries, and if the Superintendent of Public Instruction determines that a school district in which pupils reside does not have suitable facilities in which to maintain school for all the day pupils of the district, or that for other good and sufficient reasons the education of pupils in the district in which they reside is not practical or in the best interests of the pupils, the governing board of the district of residence shall contract with the governing board of another school district for the education of those pupils for whom suitable facilities are not available, or who should be educated in another district, as determined by the Superintendent of Public Instruction.

(b) Except as provided in subdivision (b) of Section 46607 and Sections 46610 and 46611, the average daily attendance of pupils attending a district other than the district in which they reside pursuant to a contract described in subdivision (a) shall be credited to the district of attendance for apportionment purposes.

(c) Any reorganization proposal approved by the State Board of Education on or before December 31, 1994, shall be governed by Section 46304 as it existed on December 31, 1994.

SEC. 17. Section 46605 of the Education Code is repealed.

SEC. 18. Section 46621 of the Education Code is repealed.

SEC. 19. Section 48031 of the Education Code is amended to read:

48031. Any person who is eligible to attend high school and who does not reside in a high school district or in a unified school district may attend high school in any high school district or unified school district in the county in which he or she resides or in another county.

SEC. 20. (a) Section 3.1 of this bill incorporates amendments to

Section 33050 of the Education Code proposed by both this bill and SB 33. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1995, (2) each bill amends Section 33050 of the Education Code, (3) AB 3399, AB 3516, and AB 2457 are not enacted or as enacted do not amend Section 33050 of the Education Code, and (4) this bill is enacted after SB 33, in which case Section 33 and Sections 3.2 to 3.15, inclusive, of this bill shall not become operative.

(b) Section 3.2 of this bill incorporates amendments to Section 33050 of the Education Code proposed by both this bill and AB 3399. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1995, (2) each bill amends Section 33050 of the Education Code, (3) SB 33, AB 3516, and AB 2457 are not enacted or as enacted do not amend Section 33050 of the Education Code, and (4) this bill is enacted after AB 3399, in which case Section 3 and 3.1, and Sections 3.3 to 3.15, inclusive, of this bill shall not become operative.

(c) Section 3.3 of this bill incorporates amendments to Section 33050 of the Education Code proposed by both this bill and AB 3516. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1995, (2) each bill amends Section 33050 of the Education Code, (3) SB 33, AB 3399, and AB 2457 are not enacted or as enacted do not amend Section 33050 of the Education Code, and (4) this bill is enacted after AB 3516, in which case Section 33050 of the Education Code, as amended by AB 3516, shall remain operative only until the operative date of this bill, at which time Section 3.3 shall become operative, and Sections 3, 3.1, and 3.2 and Sections 3.14 to 3.15, inclusive, of this bill shall not become operative.

(d) Section 3.4 of this bill incorporates amendments to Section 33050 of the Education Code proposed by both this bill and AB 2457. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1995, (2) each bill amends Section 33050 of the Education Code, (3) SB 33, AB 3399, AB 3516, are not enacted or as enacted do not amend Section 33050 of the Education Code, and (4) this bill is enacted after AB 2457, in which case Sections 3, 3.1, 3.2, and 3.3, and Sections 3.5 to 3.15, inclusive, of this bill shall not become operative.

(e) Section 3.5 of this bill incorporates amendments to Section 33050 of the Education Code proposed by both this bill, and SB 33, and AB 3399. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1995, (2) all three bills amend Section 33050 of the Education Code, (3) AB 3516 and AB 2457 are not enacted or as enacted do not amend Section 33050 of the Education Code, and (4) this bill is enacted after SB 33 and AB 3399, in which case Sections 3 to 3.4, inclusive, and Sections 3.6 to 3.15, inclusive, of this bill shall not become operative.

(f) Section 3.6 of this bill incorporates amendments to Section 33050 of the Education Code proposed by both this bill, SB 33, and

AB 3516. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1995, (2) all three bills amend Section 33050 of the Education Code, (3) AB 3399 and AB 2457 are not enacted or as enacted do not amend Section 33050 of the Education Code, and (4) this bill is enacted after SB 33 and AB 3516, in which case Section 33050 of the Education Code, as amended by AB 3516, shall remain operative only until the operative date of this bill, at which time Section 3.6 of this bill shall become operative, and Sections 3 to 3.5, inclusive, and Sections 3.6 to 3.15, inclusive, of this bill shall not become operative.

(g) Section 3.7 of this bill incorporates amendments to Section 33050 of the Education Code proposed by this bill, AB 3399, and AB 3316. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1995, (2) all three bills amend Section 33050 of the Education Code, (3) SB 33 and AB 2457 are not enacted or as enacted do not amend Section 33050 of the Education Code, and (4) this bill is enacted after AB 3399 and AB 3516, in which case Section 33050 of the Education Code, as amended by AB 3516, shall remain operative only until the operative date of this bill, at which time Section 3.7 of this bill shall become operative, and Sections 3 to 3.6, inclusive, and Sections 3.8 to 3.15, inclusive, of this bill shall not become operative.

(h) Section 3.8 of this bill incorporates amendments to Section 33050 of the Education Code proposed by this bill, SB 33, and AB 2457. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1995, (2) all three bills amend Section 33050 of the Education Code, (3) AB 3399 and AB 3516 are not enacted or as enacted do not amend Section 33050 of the Education Code, and (4) this bill is enacted after SB 33, and AB 2457, in which case Sections 3 to 3.7 inclusive, and Sections 3.9 to 3.15 of this bill shall not become operative.

(i) Section 3.9 of this bill incorporates amendments to Section 33050 of the Education Code proposed by this bill, AB 3399, and AB 2457. It shall only become operative if (1) all three bills are enacted and become effective on January 1, 1995, (2) all three bills amend Section 33050 of the Education Code, (3) SB 33 and AB 3516 are not enacted or as enacted do not amend Section 33050 of the Education Code, and (4) this bill is enacted after AB 3399, and AB 2457, in which case Sections 3 to 3.8 inclusive, and Sections 3.10 to 3.15, inclusive, of this bill, shall not become operative.

(j) Section 3.10 of this bill incorporates amendments made to Section 33050 of the Education Code proposed by this bill, AB 3516, and AB 2457. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1995, (2) all three bills amend Section 33050 of the Education Code, (3) SB 33 and AB 3399 are not enacted or as enacted do not amend Section 33050 of the Education Code, and (4) this bill is enacted after AB 3516 and AB 2457, in which case Section 33050 of the Education Code, as amended by AB 3516 shall remain operative only until the operative

date of this bill, at which time Section 3.10 of this bill shall become operative, and Sections 3 to 3.9, inclusive, and Sections 3.11 to 3.15, inclusive, of this bill shall not become operative.

(k) Section 3.11 of this bill incorporates amendments made to Section 33050 of the Education Code proposed by this bill, SB 33, AB 3399, and AB 3516. It shall only become operative if (1) all four bills are enacted and become effective on or before January 1, 1995, (2) all four bills amend Section 33050 of the Education Code, (3) AB 2457 is not enacted or as enacted does not amend Section 33050 of the Education Code, and (4) this bill is enacted after SB 33, AB 3399, and AB 3516, in which case Section 33050 of the Education Code, as amended by AB 3516, shall remain operative only until the operative date of this bill, at which time Section 3.11 of this bill shall become operative, and Sections 3 to 3.10, inclusive, and Sections 3.12 to 3.15, inclusive, of this bill shall not become operative.

(l) Section 3.12 of this bill incorporates amendments made to Section 33050 of the Education Code proposed by this bill, SB 33, AB 3516, and AB 2457. It shall only become operative if (1) all four bills are enacted and become effective on or before January 1, 1995, (2) all four bills amend Section 33050 of the Education Code, (3) AB 3399 is not enacted or as enacted does not amend Section 33050 of the Education Code, and (4) this bill is enacted after SB 33, AB 3516, and AB 2457, in which case Section 33050 of the Education Code, as amended by AB 3516, shall remain operative only until the operative date of this bill, at which time Section 3.12 of this bill shall become operative, and Sections 3 to 3.11, inclusive, and Sections 3.13 to 3.15, inclusive, of this bill shall not become operative.

(m) Section 3.13 of this bill incorporates amendments made to Section 33050 of the Education Code proposed by this bill SB 33, AB 3399, and AB 2457. It shall only become operative if (1) all four bills are enacted and become effective on or before January 1, 1995, (2) all four bills amend Section 33050 of the Education Code, (3) AB 3516 is not enacted or as enacted does not amend Section 33050 of the Education Code, and (4) this bill is enacted after SB 33, AB 3399, and AB 2457, in which case Sections 3 to 3.12, inclusive, and Sections 3.14 and 3.15, of this bill shall not become operative.

(n) Section 3.14 of this bill incorporates amendments made to Section 33050 of the Education Code proposed by this bill, AB 3399, AB 3516, and AB 2457. It shall only become operative if (1) all four bills are enacted and become effective on or before January 1, 1995, (2) all four bills amend Section 33050 of the Education Code, (3) SB 33 is not enacted or as enacted does not amend Section 33050 of the Education Code, and (4) this bill is enacted after AB 3399, AB 3516, and A.B 2457, in which case Section 33050 of the Education Code, as amended by AB 3516, shall remain operative only until the operative date of this bill, at which time Section 3.14 of this bill shall become operative, and Sections 3 to 3.13, inclusive, and Section 3.15 of this bill shall not become operative.

(o) Section 3.15 of this bill incorporates amendments to Section

33050 of the Education Code proposed by this bill, SB 33, AB 3399, AB 3516, and A.B. 2457. It shall only become operative if (1) all five bills are enacted and become effective on or before January 1, 1995, (2) all five bills amend Section 33050 of the Education Code, and (3) this bill is enacted after SB 33, AB 3399, AB 3516, and AB 2457, in which case Section 33050 of the Education Code, as amended by AB 3516 shall remain operative only until the operative date of this bill, at which time Section 3.15 of this bill shall become operative, and Sections 3 to 3.14, inclusive, of this bill shall not become operative.

SEC. 21. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1187

An act to amend Sections 186.9, 186.10, 1170.1, 14161, and 14166 of the Penal Code, relating to crimes.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 186.9 of the Penal Code is amended to read: 186.9. As used in this chapter:

(a) "Conducts" includes, but is not limited to, initiating, concluding, or participating in conducting, initiating, or concluding a transaction.

(b) "Financial institution" means, when located or doing business in this state, any national bank or banking association, state bank or banking association, commercial bank or trust company organized under the laws of the United States or any state, any private bank, industrial savings bank, savings bank or thrift institution, savings and loan association, or building and loan association organized under the laws of the United States or any state, any insured institution as defined in Section 401 of the National Housing Act (12 U.S.C. Sec. 1724(a)), any credit union organized under the laws of the United States or any state, any national banking association or corporation acting under Chapter 6 (commencing with Section 601) of Title 12

of the United States Code, any agency, agent or branch of a foreign bank, any currency dealer or exchange, any person or business engaged primarily in the cashing of checks, any person or business who regularly engages in the issuing, selling, or redeeming of traveler's checks, money orders, or similar instruments, any broker or dealer in securities registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 or with the Commissioner of Corporations under Part 3 (commencing with Section 25200) of Division 1 of Title 4 of the Corporations Code, any licensed transmitter of funds or other person or business regularly engaged in transmitting funds to a foreign nation for others, any investment banker or investment company, any insurer, any dealer in gold, silver, or platinum bullion or coins, diamonds, emeralds, rubies, or sapphires, any pawnbroker, any telegraph company, any personal property broker, any person or business acting as a real property securities dealer within the meaning of Section 10237 of the Business and Professions Code, whether licensed to do so or not, any person or business acting within the meaning and scope of subdivisions (d) and (e) of Section 10131 and Section 10131.1 of the Business and Professions Code, whether licensed to do so or not, any person or business regularly engaged in gaming within the meaning and scope of Section 330, any person or business regularly engaged in pool selling or bookmaking within the meaning and scope of Section 337a, any person or business regularly engaged in horseracing whether licensed to do so or not under the Business and Professions Code, any person or business engaged in the operation of a gambling ship within the meaning and scope of Section 11317, any person or business engaged in legal gambling or gaming within the meaning and scope of subdivisions (a) and (b) of Section 19802 of the Business and Professions Code, whether registered to do so or not, and any person or business defined as a "bank," "financial agency," or "financial institution" by Section 5312 of Title 31 of the United States Code or Section 103.11 of Title 31 of the Code of Federal Regulations and any successor provisions thereto.

(c) "Transaction" includes the deposit, withdrawal, transfer, bailment, loan, pledge, payment, or exchange of currency, or a monetary instrument, as defined by subdivision (d), or the electronic, wire, magnetic, or manual transfer of funds between accounts by, through, or to, a financial institution as defined by subdivision (b).

(d) "Monetary instrument" means United States currency and coin; the currency, coin, and foreign bank drafts of any foreign country; payment warrants issued by the United States, this state, or any city, county, or city and county of this state or any other political subdivision thereof; any bank check, cashier's check, traveler's check, personal check, money order, stock, investment security, or negotiable instrument in bearer form or otherwise in such form that title thereto passes upon delivery; gold, silver, or platinum bullion or

coins; and diamonds, emeralds, rubies, or sapphires. Except for foreign bank drafts and federal, state, county, or city warrants, "monetary instrument" does not include bank checks, cashier's checks, traveler's checks, personal checks, or money orders made payable to the order of a named party which have not been endorsed or which bear restrictive endorsements, and also does not include personal checks which have been endorsed by the named party and deposited by the named party into the named party's account with a financial institution.

(e) "Criminal activity" means a criminal offense punishable under the laws of this state by death or imprisonment in the state prison or from a criminal offense committed in another jurisdiction punishable under the laws of that jurisdiction by death or imprisonment for a term exceeding one year.

(f) "Foreign bank draft" means a bank draft or check issued or made out by a foreign bank, savings and loan, casa de cambio, credit union, currency dealer or exchanger, check cashing business, money transmitter, insurance company, investment or private bank, or any other foreign financial institution that provides similar financial services, on an account in the name of the foreign bank or foreign financial institution held at a bank or other financial institution located in the United States or a territory of the United States.

SEC. 2. Section 186.10 of the Penal Code is amended to read:

186.10. (a) Any person who conducts or attempts to conduct a transaction or more than one transaction within a 24-hour period involving a monetary instrument or instruments of a total value exceeding five thousand dollars (\$5,000) through one or more financial institutions (1) with the intent to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of any criminal activity, or (2) knowing that the monetary instrument represents the proceeds of, or is derived directly or indirectly from the proceeds of, criminal activity, is guilty of the crime of money laundering. In consideration of the constitutional right to counsel afforded by the Sixth Amendment to the United States Constitution and Section 15 of Article 1 of the California Constitution, when a case involves an attorney who accepts a fee for representing a client in a criminal investigation or proceeding, the prosecution shall additionally be required to prove that the monetary instrument was accepted by the attorney with the intent to disguise or aid in disguising the source of the funds or the nature of the criminal activity.

A violation of this section shall be punished by imprisonment in the county jail for not more than one year or in the state prison, by a fine of not more than two hundred fifty thousand dollars (\$250,000) or twice the value of the property transacted, whichever is greater, or by both that imprisonment and fine. However, for a second or subsequent conviction for a violation of this section, the maximum fine that may be imposed is five hundred thousand dollars (\$500,000) or five times the value of the property transacted, whichever is

greater.

(b) Notwithstanding any other law, for purposes of this section, each individual transaction conducted in excess of five thousand dollars (\$5,000), or each series of transactions conducted within a 24-hour period that total in excess of five thousand dollars (\$5,000), shall constitute a separate, punishable offense.

(c) (1) Any person who is punished under subdivision (a) by imprisonment in the state prison shall also be subject to an additional term of imprisonment in the state prison as follows:

(A) If the value of the transaction or transactions exceeds fifty thousand dollars (\$50,000) but is less than one hundred fifty thousand dollars (\$150,000), the court, in addition to and consecutive to the felony punishment otherwise imposed pursuant to this section, shall impose an additional term of imprisonment of one year.

(B) If the value of the transaction or transactions exceeds one hundred fifty thousand dollars (\$150,000) but is less than one million dollars (\$1,000,000), the court, in addition to and consecutive to the felony punishment otherwise imposed pursuant to this section, shall impose an additional term of imprisonment of two years.

(C) If the value of the transaction or transactions exceeds one million dollars (\$1,000,000), but is less than two million five hundred thousand dollars (\$2,500,000), the court, in addition to and consecutive to the felony punishment otherwise imposed pursuant to this section, shall impose an additional term of imprisonment of three years.

(D) If the value of the transaction or transactions exceeds two million five hundred thousand dollars (\$2,500,000), the court, in addition to and consecutive to the felony punishment otherwise prescribed by this section, shall impose an additional term of imprisonment of four years.

(2) (A) An additional term of imprisonment as provided for in this subdivision shall not be imposed unless the facts of a transaction or transactions, or attempted transaction or transactions, of a value described in paragraph (1), are charged in the accusatory pleading, and are either admitted to by the defendant or are found to be true by the trier of fact.

(B) An additional term of imprisonment as provided for in this subdivision may be imposed with respect to an accusatory pleading charging multiple violations of this section, regardless of whether any single violation charged in that pleading involves a transaction or attempted transaction of a value covered by paragraph (1), if the violations charged in that pleading arise from a common scheme or plan and the aggregate value of the alleged transactions or attempted transactions is of a value covered by paragraph (1).

(d) All pleadings under this section shall remain subject to the rules of joinder and severance stated in Section 954.

(e) This chapter shall remain in effect until January 1, 1997, and as of that date is repealed.

SEC. 3. Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as provided in subdivision (c) and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1, and pursuant to Section 11370.2 of the Health and Safety Code. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any enhancements imposed pursuant to subdivision (c) of Section 186.10 or Section 667.15, 667.8, 667.85, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, or 12022.9 of this code, and an enhancement imposed pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code. The subordinate term for each consecutive offense which is not a "violent felony" as defined in subdivision (c) of Section 667.5 shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is not a violent felony for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for these consecutive offenses which are not "violent felonies" as defined in subdivision (c) of Section 667.5 exceed five years. The subordinate term for each consecutive offense which is a "violent felony" as defined in subdivision (c) of Section 667.5, including those offenses described in paragraph (8), (9), or (17) of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is a violent felony for which a consecutive term of imprisonment is imposed, and shall include one-third of any enhancements imposed pursuant to Section 667.15, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9.

(b) (1) When a consecutive term of imprisonment is imposed under Sections 669 and 1170 for two or more convictions for kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions, the aggregate term shall be calculated as provided in subdivision (a), except that the subordinate term for each subsequent kidnapping conviction shall consist of the middle term for each kidnapping conviction for which a consecutive term of imprisonment is imposed and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9. The five-year limitation on the total of subordinate terms provided in subdivision (a) shall not apply to subordinate terms for second and subsequent convictions of kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions.

(2) As used in this subdivision, "separate occasion" means the

defendant committed a second violation of Section 207 involving the same victim after at least 24 hours elapsed following his or her release of the victim.

(c) In the case of any person convicted of one or more felonies committed while the person is confined in a state prison, or is subject to reimprisonment for escape from custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the convictions which the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a), except that the total of subordinate terms may exceed five years. This subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.

(d) When the court imposes a prison sentence for a felony pursuant to Section 1170, the court shall also impose the additional terms provided in subdivision (c) of Section 186.10 and Sections 667, 667.15, 667.5, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, and 12022.9 of this code, and the additional terms provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, unless the additional punishment therefor is stricken pursuant to subdivision (h). The court shall also impose any other additional term which the court determines in its discretion or as required by law shall run consecutive to the term imposed under Section 1170. In considering the imposition of the additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) When two or more enhancements under Sections 12022, 12022.4, 12022.5, 12022.55, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply. However, in cases of lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, as described in Section 288, kidnapping, as defined in Section 207, sexual battery, as defined in Section 243.4, penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, carjacking, rape or burglary, or attempted lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, kidnapping, sexual battery, penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, carjacking, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or subdivision (a) of, or paragraph (2) of subdivision (b) of, Section 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in subdivision (c) of Section

186.10 and Sections 667, 667.15, 667.5, 667.6, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, and 12022.9 of this code, and in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, shall be pleaded and proven as provided by law.

(g) (1) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170, unless the defendant stands convicted of a "violent felony" as defined in subdivision (c) of Section 667.5, or a consecutive sentence is being imposed pursuant to subdivision (b) or (c) of this section, or an enhancement is imposed pursuant to subdivision (c) of Section 186.10 or Section 667, 667.15, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, or 12022.9 of this code, or an enhancement is being imposed pursuant to Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, or the defendant stands convicted of felony escape from an institution in which he or she is lawfully confined.

(2) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170 unless an enhancement is imposed pursuant to Section 12022.1 and both the primary and secondary offenses specified in Section 12022.1 are serious felonies as specified in subdivision (c) of Section 1192.7.

(h) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in subdivision (c) of Section 186.10 and Sections 667.15, 667.5, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.6, 12022.7, 12022.75, and 12022.9 of this code, or the enhancements provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(i) For any violation of paragraph (2) or (3) of subdivision (a) of Section 261, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person as provided in Section 286 or 288a, the number of enhancements which may be imposed shall not be limited, regardless of whether the enhancements are pursuant to this or some other section of law. Each of the enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 3.3. Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as provided in subdivision (c) and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed

under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1, and pursuant to Section 11370.2 of the Health and Safety Code. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any enhancements imposed pursuant to subdivision (c) of Section 186.10 or Section 667.15, 667.8, 667.85, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, or 12022.9 of this code, and an enhancement imposed pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code. The subordinate term for each consecutive offense which is not a "violent felony" as defined in subdivision (c) of Section 667.5 shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is not a violent felony for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for these consecutive offenses which are not "violent felonies" as defined in subdivision (c) of Section 667.5 exceed five years. The subordinate term for each consecutive offense which is a "violent felony" as defined in subdivision (c) of Section 667.5, including those offenses described in paragraph (8), (9), or (17) of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is a violent felony for which a consecutive term of imprisonment is imposed, and shall include one-third of any enhancements imposed pursuant to Section 667.15, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9.

(b) (1) When a consecutive term of imprisonment is imposed under Sections 669 and 1170 for two or more convictions for kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions, the aggregate term shall be calculated as provided in subdivision (a), except that the subordinate term for each subsequent kidnapping conviction shall consist of the middle term for each kidnapping conviction for which a consecutive term of imprisonment is imposed and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9. The five-year limitation on the total of subordinate terms provided in subdivision (a) shall not apply to subordinate terms for second and subsequent convictions of kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions.

(2) As used in this subdivision, "separate occasion" means the defendant committed a second violation of Section 207 involving the same victim after at least 24 hours elapsed following his or her release of the victim.

(c) In the case of any person convicted of one or more felonies committed while the person is confined in a state prison, or is subject

to reimprisonment for escape from custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the convictions which the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a), except that the total of subordinate terms may exceed five years. This subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.

(d) When the court imposes a prison sentence for a felony pursuant to Section 1170, the court shall also impose the additional terms provided in subdivision (c) of Section 186.10 and Sections 667, 667.15, 667.5, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, and 12022.9 of this code, and the additional terms provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, unless the additional punishment therefor is stricken pursuant to subdivision (h). The court shall also impose any other additional term which the court determines in its discretion or as required by law shall run consecutive to the term imposed under Section 1170. In considering the imposition of the additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) When two or more enhancements under Sections 12022, 12022.4, 12022.5, 12022.55, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply. However, in cases of lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, as described in Section 288, kidnapping, as defined in Section 207, sexual battery, as defined in Section 243.4, spousal rape, as defined in Section 262, penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, carjacking, rape or burglary, or attempted lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, kidnapping, sexual battery, spousal rape, penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, carjacking, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or subdivision (a) of, or paragraph (2) of subdivision (b) of, Section 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in subdivision (c) of Section 186.10 and Sections 667, 667.15, 667.5, 667.6, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, and 12022.9 of this code, and in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, shall be pleaded

and proven as provided by law.

(g) (1) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170, unless the defendant stands convicted of a "violent felony" as defined in subdivision (c) of Section 667.5, or a consecutive sentence is being imposed pursuant to subdivision (b) or (c) of this section, or an enhancement is imposed pursuant to subdivision (c) of Section 186.10 or Section 667, 667.15, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, or 12022.9 of this code, or an enhancement is being imposed pursuant to Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, or the defendant stands convicted of felony escape from an institution in which he or she is lawfully confined.

(2) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170 unless an enhancement is imposed pursuant to Section 12022.1 and both the primary and secondary offenses specified in Section 12022.1 are serious felonies as specified in subdivision (c) of Section 1192.7.

(h) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in subdivision (c) of Section 186.10 and Sections 667.15, 667.5, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.6, 12022.7, 12022.75, and 12022.9 of this code, or the enhancements provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(i) For any violation of paragraph (2) or (6) of subdivision (a) of Section 261, paragraph (1) or (4) of subdivision (a) of Section 262, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person as provided in Section 286 or 288a, the number of enhancements which may be imposed shall not be limited, regardless of whether the enhancements are pursuant to this or some other section of law. Each of the enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 3.5. Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as provided in subdivision (c) and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed pursuant to

Section 667, 667.5, 667.6, or 12022.1, and pursuant to Section 11370.2 of the Health and Safety Code. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any enhancements imposed pursuant to subdivision (c) of Section 186.10 or Section 667.15, 667.8, 667.83, 667.85, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, or 12022.9 of this code, and an enhancement imposed pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code. The subordinate term for each consecutive offense which is not a "violent felony" as defined in subdivision (c) of Section 667.5 shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is not a violent felony for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for these consecutive offenses which are not "violent felonies" as defined in subdivision (c) of Section 667.5 exceed five years. The subordinate term for each consecutive offense which is a "violent felony" as defined in subdivision (c) of Section 667.5, including those offenses described in paragraph (8), (9), or (17) of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is a violent felony for which a consecutive term of imprisonment is imposed, and shall include one-third of any enhancements imposed pursuant to Section 667.15, 667.8, 667.83, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9.

(b) (1) When a consecutive term of imprisonment is imposed under Sections 669 and 1170 for two or more convictions for kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions, the aggregate term shall be calculated as provided in subdivision (a), except that the subordinate term for each subsequent kidnapping conviction shall consist of the middle term for each kidnapping conviction for which a consecutive term of imprisonment is imposed and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.83, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9. The five-year limitation on the total of subordinate terms provided in subdivision (a) shall not apply to subordinate terms for second and subsequent convictions of kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions.

(2) As used in this subdivision, "separate occasion" means the defendant committed a second violation of Section 207 involving the same victim after at least 24 hours elapsed following his or her release of the victim.

(c) In the case of any person convicted of one or more felonies committed while the person is confined in a state prison, or is subject to reimprisonment for escape from custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the convictions

which the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a), except that the total of subordinate terms may exceed five years. This subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.

(d) When the court imposes a prison sentence for a felony pursuant to Section 1170, the court shall also impose the additional terms provided in subdivision (c) of Section 186.10 and Sections 667, 667.15, 667.5, 667.8, 667.83, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, and 12022.9 of this code, and the additional terms provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, unless the additional punishment therefor is stricken pursuant to subdivision (h). The court shall also impose any other additional term which the court determines in its discretion or as required by law shall run consecutive to the term imposed under Section 1170. In considering the imposition of the additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) When two or more enhancements under Sections 12022, 12022.4, 12022.5, 12022.55, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply. However, in cases of lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, as described in Section 288, kidnapping, as defined in Section 207, sexual battery, as defined in Section 243.4, penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, carjacking, rape or burglary, or attempted lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, kidnapping, sexual battery, penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, carjacking, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or subdivision (a) of, or paragraph (2) of subdivision (b) of, Section 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in subdivision (c) of Section 186.10 and Sections 667, 667.15, 667.5, 667.6, 667.8, 667.83, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, and 12022.9 of this code, and in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, shall be pleaded and proven as provided by law.

(g) (1) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170, unless the defendant stands

convicted of a "violent felony" as defined in subdivision (c) of Section 667.5, or a consecutive sentence is being imposed pursuant to subdivision (b) or (c) of this section, or an enhancement is imposed pursuant to subdivision (c) of Section 186.10 or Section 667, 667.15, 667.5, 667.8, 667.83, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, or 12022.9 of this code, or an enhancement is being imposed pursuant to Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, or the defendant stands convicted of felony escape from an institution in which he or she is lawfully confined.

(2) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170 unless an enhancement is imposed pursuant to Section 12022.1 and both the primary and secondary offenses specified in Section 12022.1 are serious felonies as specified in subdivision (c) of Section 1192.7.

(h) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in subdivision (c) of Section 186.10 and Sections 667.15, 667.5, 667.8, 667.83, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.6, 12022.7, 12022.75, and 12022.9 of this code, or the enhancements provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(i) For any violation of paragraph (2) or (3) of subdivision (a) of Section 261, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person as provided in Section 286 or 288a, the number of enhancements which may be imposed shall not be limited, regardless of whether the enhancements are pursuant to this or some other section of law. Each of the enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 3.7. Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as provided in subdivision (c) and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1, and pursuant to Section 11370.2 of the Health and Safety Code. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any enhancements imposed pursuant to subdivision (c) of Section 186.10 or Section 667.15, 667.8, 667.83,

667.85, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, or 12022.9 of this code, and an enhancement imposed pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code. The subordinate term for each consecutive offense which is not a "violent felony" as defined in subdivision (c) of Section 667.5 shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is not a violent felony for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for these consecutive offenses which are not "violent felonies" as defined in subdivision (c) of Section 667.5 exceed five years. The subordinate term for each consecutive offense which is a "violent felony" as defined in subdivision (c) of Section 667.5, including those offenses described in paragraph (8), (9), or (17) of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is a violent felony for which a consecutive term of imprisonment is imposed, and shall include one-third of any enhancements imposed pursuant to Section 667.15, 667.8, 667.83, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9.

(b) (1) When a consecutive term of imprisonment is imposed under Sections 669 and 1170 for two or more convictions for kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions, the aggregate term shall be calculated as provided in subdivision (a), except that the subordinate term for each subsequent kidnapping conviction shall consist of the middle term for each kidnapping conviction for which a consecutive term of imprisonment is imposed and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.83, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9. The five-year limitation on the total of subordinate terms provided in subdivision (a) shall not apply to subordinate terms for second and subsequent convictions of kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions.

(2) As used in this subdivision, "separate occasion" means the defendant committed a second violation of Section 207 involving the same victim after at least 24 hours elapsed following his or her release of the victim.

(c) In the case of any person convicted of one or more felonies committed while the person is confined in a state prison, or is subject to reimprisonment for escape from custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the convictions which the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a), except that the total of subordinate terms may

exceed five years. This subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.

(d) When the court imposes a prison sentence for a felony pursuant to Section 1170, the court shall also impose the additional terms provided in subdivision (c) of Section 186.10 and Sections 667, 667.15, 667.5, 667.8, 667.83, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, and 12022.9 of this code, and the additional terms provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, unless the additional punishment therefor is stricken pursuant to subdivision (h). The court shall also impose any other additional term which the court determines in its discretion or as required by law shall run consecutive to the term imposed under Section 1170. In considering the imposition of the additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) When two or more enhancements under Sections 12022, 12022.4, 12022.5, 12022.55, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply. However, in cases of lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, as described in Section 288, kidnapping, as defined in Section 207, sexual battery, as defined in Section 243.4, spousal rape, as defined in Section 262, penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, carjacking, rape or burglary, or attempted lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, kidnapping, sexual battery, spousal rape, penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, carjacking, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or subdivision (a) of, or paragraph (2) of subdivision (b) of, Section 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in subdivision (c) of Section 186.10 and Sections 667, 667.15, 667.5, 667.6, 667.8, 667.83, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, and 12022.9 of this code, and in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, shall be pleaded and proven as provided by law.

(g) (1) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170, unless the defendant stands convicted of a "violent felony" as defined in subdivision (c) of Section 667.5, or a consecutive sentence is being imposed pursuant to subdivision (b) or (c) of this section, or an enhancement is imposed pursuant to subdivision (c) of Section 186.10 or Section 667,

667.15, 667.5, 667.8, 667.83, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, or 12022.9 of this code, or an enhancement is being imposed pursuant to Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, or the defendant stands convicted of felony escape from an institution in which he or she is lawfully confined.

(2) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170 unless an enhancement is imposed pursuant to Section 12022.1 and both the primary and secondary offenses specified in Section 12022.1 are serious felonies as specified in subdivision (c) of Section 1192.7.

(h) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in subdivision (c) of Section 186.10 and Sections 667.15, 667.5, 667.8, 667.83, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.6, 12022.7, 12022.75, and 12022.9 of this code, or the enhancements provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(i) For any violation of paragraph (2) or (6) of subdivision (a) of Section 261, paragraph (1) or (4) of subdivision (a) of Section 262, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person as provided in Section 286 or 288a, the number of enhancements which may be imposed shall not be limited, regardless of whether the enhancements are pursuant to this or some other section of law. Each of the enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 4. Section 14161 of the Penal Code is amended to read:
14161. As used in this title:

(a) "Financial institution" means, when located or doing business in this state, any national bank or banking association, state bank or banking association, commercial bank or trust company organized under the laws of the United States or any state, any private bank, industrial savings bank, savings bank or thrift institution, savings and loan association, or building and loan association organized under the laws of the United States or any state, any insured institution as defined in Section 401 of the National Housing Act, any credit union organized under the laws of the United States or any state, any national banking association or corporation acting under Chapter 6 (commencing with Section 601) of Title 12 of the United States Code, any foreign bank, any currency dealer or exchange, any person or business engaged primarily in the cashing of checks, any person or business who regularly engages in the issuing, selling, or redeeming of traveler's checks, money orders, or similar instruments, any broker

or dealer in securities registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, any licensed sender of money, any investment banker or investment company, any insurance company, any dealer in coins, precious metals, stones, or jewelry, any pawnbroker, any telegraph company, and any person or business defined as a "bank," "financial agency," or "financial institution" by Section 5312 of Title 31 of the United States Code or Section 103.11 of Title 31 of the Code of Federal Regulations and any successor provisions thereto.

(b) "Transaction" includes the deposit, withdrawal, transfer, bailment, loan, payment, or exchange of currency, or a monetary instrument, as defined by subdivision (d), by, through, or to, a financial institution, as defined by subdivision (a). "Transaction" does not include the purchase of gold, silver, or platinum bullion or coins, or diamonds, emeralds, rubies, or sapphires by a bona fide dealer therein, and does not include the sale of gold, silver, or platinum bullion or coins, or diamonds, emeralds, rubies, or sapphires by a bona fide dealer therein in exchange for other than a monetary instrument, and does not include the exchange of gold, silver, or platinum bullion or coins, or diamonds, emeralds, rubies, or sapphires by a bona fide dealer therein for gold, silver, or platinum bullion or coins, or diamonds, emeralds, rubies, or sapphires.

(c) "Monetary instrument" means United States currency and coin; the currency and coin of any foreign country; and any instrument defined as a "monetary instrument" by Section 5312 of Title 31 of the United States Code or Section 103.11 of Title 31 of the Code of Federal Regulations, or the successor of either. Notwithstanding any other provision of this subdivision, "monetary instrument" does not include bank checks, cashier's checks, traveler's checks, personal checks, or money orders made payable to the order of a named party that have not been endorsed or that bear restrictive endorsements.

(d) "Department" means the Department of Justice.

(e) "Criminal justice agency" means the Department of Justice and any district attorney's office, sheriff's department, police department, or city attorney's office of this state.

(f) "Currency" means United States currency or coin, the currency or coin of any foreign country, and any legal tender or coin defined as currency by Section 103.11 of Title 31 of the Code of Federal Regulations or any succeeding provision.

SEC. 5. Section 14166 of the Penal Code is amended to read:

14166. Any person (a) who willfully violates any provision of this title or any regulation adopted to implement Section 14162, (b) who, knowingly and with the intent either (1) to disguise the fact that a monetary instrument was derived from criminal activity or (2) to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of any criminal activity, furnishes or provides to a financial institution or any officer, employee, or agent thereof or to the department, any false,

inaccurate, or incomplete information or conceals a material fact in connection with a transaction for which a report is required to be filed pursuant to either Section 14162 of this code or Section 5313 of Title 31 of the United States Code, or in connection with an exemption prescribed in Section 14163, or (c) who, knowingly and with the intent either (1) to disguise the fact that a monetary instrument was derived from criminal activity or (2) to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of any criminal activity, conducts a monetary instrument transaction or series of transactions by or through one or more financial institutions as part of a scheme and with the intent to avoid the making or filing of a report required under either Section 14162 of this code or Section 5313 of Title 31 of the United States Code, shall be punished by imprisonment in the county jail for not more than one year or in the state prison, by a fine of not more than the greater of two hundred fifty thousand dollars (\$250,000) or twice the monetary value of the financial transaction or transactions, or by both that imprisonment and fine.

Notwithstanding any other provision of law, any violation of this section as to each monetary instrument transaction or exemption constitutes a separate, punishable offense.

SEC. 6. (a) Section 3.3 of this bill incorporates amendments to Section 1170.1 of the Penal Code proposed by both this bill and SB 59. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 1170.1 of the Penal Code, (3) SB 1997 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 59, in which case Sections 3, 3.5, and 3.7 of this bill shall not become operative.

(b) Section 3.5 of this bill incorporates amendments to Section 1170.1 of the Penal Code proposed by both this bill and SB 1997. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 1170.1 of the Penal Code, (3) SB 59 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1997, in which case Sections 3, 3.3, and 3.7 of this bill shall not become operative.

(c) Section 3.7 of this bill incorporates amendments to Section 1170.1 of the Penal Code proposed by this bill, SB 59, and SB 1997. It shall only become operative if (1) all three bills are enacted and become effective on January 1, 1995, (2) all three bills amend Section 1170.1 of the Penal Code, and (3) this bill is enacted after SB 59 and SB 1997, in which case Sections 3, 3.3, and 3.5 of this bill shall not become operative.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1188

An act to amend Sections 261.6, 264.1, 266c, 273.7, 292, 667.5, 667.6, 667.8, 667.9, 1048, 1127e, 1170.1, 1192.5, 1203.075, 1203.08, 1203.09, 1601, 2933.5, 3057, and 12022.8 of the Penal Code, relating to sex offenses.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 261.6 of the Penal Code is amended to read:

261.6. In prosecutions under Section 261, 262, 286, 288a, or 289, in which consent is at issue, "consent" shall be defined to mean positive cooperation in act or attitude pursuant to an exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved.

A current or previous dating or marital relationship shall not be sufficient to constitute consent where consent is at issue in a prosecution under Section 261, 262, 286, 288a, or 289.

Nothing in this section shall affect the admissibility of evidence or the burden of proof on the issue of consent.

SEC. 2. Section 264.1 of the Penal Code is amended to read:

264.1. The provisions of Section 264 notwithstanding, in any case in which the defendant, voluntarily acting in concert with another person, by force or violence and against the will of the victim, committed an act described in Section 261, 262, or 289, either personally or by aiding and abetting the other person, that fact shall be charged in the indictment or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court trial, or if admitted by the defendant, the defendant shall suffer confinement in the state prison for five, seven, or nine years.

SEC. 3. Section 266c of the Penal Code is amended to read:

266c. Every person who induces any other person to engage in sexual intercourse, penetration of the genital or anal openings by a foreign object, substance, instrument, or device, oral copulation, or sodomy when his or her consent is procured by false or fraudulent representation or pretense that is made with the intent to create fear, and which does induce fear, and that would cause a reasonable person in like circumstances to act contrary to the person's free will, and does cause the victim to so act, is punishable by imprisonment in a county jail for not more than one year or in the state prison for two, three, or four years.

As used in this section, "fear" means the fear of physical injury or death to the person or to any relative of the person or member of the person's family.

SEC. 4. Section 273.7 of the Penal Code is amended to read:

273.7. (a) Any person who maliciously publishes, disseminates, or otherwise discloses the location of any domestic violence shelter or any place designated as a domestic violence shelter, without the authorization of that domestic violence shelter, is guilty of a misdemeanor.

(b) (1) For purposes of this section, "domestic violence shelter" means a confidential location which provides emergency housing on a 24-hour basis for victims of sexual assault, spousal abuse, or both, and their families.

(2) Sexual assault, spousal abuse, or both, includes but is not limited to, those crimes described in Sections 240, 242, 243.4, 261, 261.5, 262, 264.1, 266, 266a, 266b, 266c, 266f, 273.5, 273.6, 285, 288, and 289.

(c) Nothing in this section shall apply to confidential communications between an attorney and his or her client.

SEC. 5. Section 292 of the Penal Code is amended to read:

292. It is the intention of the Legislature in enacting this section to clarify that for the purposes of subdivisions (b) and (c) of Section 12 of Article I of the California Constitution, a violation of paragraph (2) or (6) of subdivision (a) of Section 261, paragraph (1) or (4) of subdivision (a) of Section 262, Section 264.1, subdivision (c) or (d) of Section 286, subdivision (b) of Section 288, subdivision (c) or (d) of Section 288a, or subdivision (a) of Section 289, shall be deemed to be a felony offense involving an act of violence and a felony offense involving great bodily harm.

SEC. 6. Section 667.5 of the Penal Code is amended to read:

667.5. Enhancement of prison terms for new offenses because of prior prison terms shall be imposed as follows:

(a) Where one of the new offenses is one of the violent felonies specified in subdivision (c), in addition and consecutive to any other prison terms therefor, the court shall impose a three-year term for each prior separate prison term served by the defendant where the prior offense was one of the violent felonies specified in subdivision (c). However, no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(b) Except where subdivision (a) applies, where the new offense is any felony for which a prison sentence is imposed, in addition and consecutive to any other prison terms therefor, the court shall impose a one-year term for each prior separate prison term served for any felony; provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of five years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony

conviction.

(c) For the purpose of this section, "violent felony" shall mean any of the following:

- (1) Murder or voluntary manslaughter.
- (2) Mayhem.
- (3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.
- (4) Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.
- (5) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.
- (6) Lewd acts on a child under the age of 14 years as defined in Section 288.
- (7) Any felony punishable by death or imprisonment in the state prison for life.
- (8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7 or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in Section 12022.5 or 12022.55.
- (9) Any robbery perpetrated in an inhabited dwelling house, vessel, as defined in Section 21 of the Harbors and Navigation Code, which is inhabited and designed for habitation, an inhabited floating home as defined in subdivision (d) of Section 18075.55 of the Health and Safety Code, an inhabited trailer coach, as defined in the Vehicle Code, or in the inhabited portion of any other building, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that robbery.
- (10) Arson, in violation of subdivision (a) of Section 451.
- (11) The offense defined in subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.
- (12) Attempted murder.
- (13) A violation of Section 12308.
- (14) Kidnapping, in violation of subdivision (b) of Section 207.
- (15) Kidnapping, as punished in subdivision (b) of Section 208.
- (16) Continuous sexual abuse of a child, in violation of Section 288.5.
- (17) Carjacking, as defined in subdivision (a) of Section 215, if it is charged and proved that the defendant personally used a dangerous or deadly weapon as provided in subdivision (b) of Section 12022 in the commission of the carjacking.

The Legislature finds and declares that these specified crimes

merit special consideration when imposing a sentence to display society's condemnation for these extraordinary crimes of violence against the person.

(d) For the purposes of this section, the defendant shall be deemed to remain in prison custody for an offense until the official discharge from custody or until release on parole, whichever first occurs, including any time during which the defendant remains subject to reimprisonment for escape from custody or is reimprisoned on revocation of parole. The additional penalties provided for prior prison terms shall not be imposed unless they are charged and admitted or found true in the action for the new offense.

(e) The additional penalties provided for prior prison terms shall not be imposed for any felony for which the defendant did not serve a prior separate term in state prison.

(f) A prior conviction of a felony shall include a conviction in another jurisdiction for an offense which, if committed in California, is punishable by imprisonment in the state prison if the defendant served one year or more in prison for the offense in the other jurisdiction. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense which includes all of the elements of the particular felony as defined under California law if the defendant served one year or more in prison for the offense in the other jurisdiction.

(g) A prior separate prison term for the purposes of this section shall mean a continuous completed period of prison incarceration imposed for the particular offense alone or in combination with concurrent or consecutive sentences for other crimes, including any reimprisonment on revocation of parole which is not accompanied by a new commitment to prison, and including any reimprisonment after an escape from incarceration.

(h) Serving a prison term includes any confinement time in any state prison or federal penal institution as punishment for commission of an offense, including confinement in a hospital or other institution or facility credited as service of prison time in the jurisdiction of the confinement.

(i) For the purposes of this section, a commitment to the State Department of Mental Health as a mentally disordered sex offender following a conviction of a felony, which commitment exceeds one year in duration, shall be deemed a prior prison term.

(j) For the purposes of this section, when a person subject to the custody, control, and discipline of the Director of Corrections is incarcerated at a facility operated by the Department of the Youth Authority, that incarceration shall be deemed to be a term served in state prison.

(k) Notwithstanding subdivisions (d) and (g) or any other provision of law, where one of the new offenses is committed while the defendant is temporarily removed from prison pursuant to Section 2690 or while the defendant is transferred to a community facility pursuant to Section 3416, 6253, or 6263, or while the defendant

is on furlough pursuant to Section 6254, the defendant shall be subject to the full enhancements provided for in this section.

This subdivision shall not apply when a full, separate, and consecutive term is imposed pursuant to any other provision of law.

SEC. 7. Section 667.6 of the Penal Code is amended to read:

667.6. (a) Any person who is found guilty of violating paragraph (2), (3), (6), or (7) of subdivision (a) of Section 261, paragraph (1), (4), or (5) of subdivision (a) of Section 262, Section 264.1, subdivision (b) of Section 288, Section 288.5 or subdivision (a) of Section 289, of committing sodomy in violation of subdivision (k) of Section 286, of committing oral copulation in violation of subdivision (k) of Section 288a, or of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person who has been convicted previously of any of those offenses shall receive a five-year enhancement for each of those prior convictions provided that no enhancement shall be imposed under this subdivision for any conviction occurring prior to a period of 10 years in which the person remained free of both prison custody and the commission of an offense which results in a felony conviction. In addition to the five-year enhancement imposed under this subdivision, the court also may impose a fine not to exceed twenty thousand dollars (\$20,000) for anyone sentenced under these provisions. The fine imposed and collected pursuant to this subdivision shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs established pursuant to Section 13837.

(b) Any person convicted of an offense specified in subdivision (a) who has served two or more prior prison terms as defined in Section 667.5 for any offense specified in subdivision (a), shall receive a 10-year enhancement for each of those prior terms provided that no additional enhancement shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the person remained free of both prison custody and the commission of an offense which results in a felony conviction. In addition to the 10-year enhancement imposed under this subdivision, the court also may impose a fine not to exceed twenty thousand dollars (\$20,000) for any person sentenced under this subdivision. The fine imposed and collected pursuant to this subdivision shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs established pursuant to Section 13837.

(c) In lieu of the term provided in Section 1170.1, a full, separate, and consecutive term may be imposed for each violation of Section 220, other than an assault with intent to commit mayhem, provided that the person has been convicted previously of violating Section 220 for an offense other than an assault with intent to commit

mayhem, paragraph (2), (6), (3), or (7) of subdivision (a) of Section 261, paragraph (1), (4), or (5) of subdivision (a) of Section 262, Section 264.1, subdivision (b) of Section 288, Section 288.5 or subdivision (a) of Section 289, of committing sodomy in violation of subdivision (k) of Section 286, of committing oral copulation in violation of subdivision (k) of Section 288a, or of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person whether or not the crimes were committed during a single transaction. If the term is imposed consecutively pursuant to this subdivision, it shall be served consecutively to any other term of imprisonment, and shall commence from the time the person otherwise would have been released from imprisonment. The term shall not be included in any determination pursuant to Section 1170.1. Any other term imposed subsequent to that term shall not be merged therein but shall commence at the time the person otherwise would have been released from prison.

(d) A full, separate, and consecutive term shall be served for each violation of Section 220, other than an assault with intent to commit mayhem, provided that the person has been convicted previously of violating Section 220 for an offense other than an assault with intent to commit mayhem, paragraph (2), (3), (6), or (7) of subdivision (a) of Section 261, paragraph (1), (4), or (5) of subdivision (a) of Section 262, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, of committing sodomy in violation of subdivision (k) of Section 286, of committing oral copulation in violation of subdivision (k) of Section 288a, or of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person if the crimes involve separate victims or involve the same victim on separate occasions.

In determining whether crimes against a single victim were committed on separate occasions under this subdivision, the court shall consider whether, between the commission of one sex crime and another, the defendant had a reasonable opportunity to reflect upon his or her actions and nevertheless resumed sexually assaultive behavior. Neither the duration of time between crimes, nor whether or not the defendant lost or abandoned his or her opportunity to attack, shall be, in and of itself, determinative on the issue of whether the crimes in question occurred on separate occasions.

The term shall be served consecutively to any other term of imprisonment and shall commence from the time the person otherwise would have been released from imprisonment. The term shall not be included in any determination pursuant to Section 1170.1. Any other term imposed subsequent to that term shall not be merged therein but shall commence at the time the person otherwise would have been released from prison.

(e) If the court orders a fine to be imposed pursuant to subdivision

(a) or (b), the actual administrative cost of collecting that fine, not to exceed 2 percent of the total amount paid, may be paid into the general fund of the county treasury for the use and benefit of the county.

SEC. 8. Section 667.8 of the Penal Code is amended to read:

667.8. (a) Except as provided in subdivision (b), any person convicted of a felony violation of Section 261, 262, 264.1, 286, 288a, or 289 who, for the purpose of committing that sexual offense, kidnapped the victim in violation of Section 207, shall be punished by an additional term of three years.

(b) Any person convicted of a felony violation of subdivision (c) of Section 286, Section 288, or subdivision (c) of Section 288a who, for the purpose of committing that sexual offense, kidnapped the victim, who was under the age of 14 years at the time of the offense, in violation of Section 207, shall be punished by an additional term of nine years. This subdivision is not applicable to conduct proscribed by Section 277, 278, or 278.5.

SEC. 8.5. Section 667.8 of the Penal Code is amended to read:

667.8. (a) Except as provided in subdivision (b), any person convicted of a felony violation of Section 261, 262, 264.1, 286, 288a, or 289 who, for the purpose of committing that sexual offense, kidnapped the victim in violation of Section 207, shall be punished by an additional term of nine years.

(b) Any person convicted of a felony violation of subdivision (c) of Section 286, Section 288, or subdivision (c) of Section 288a who, for the purpose of committing that sexual offense, kidnapped the victim, who was under the age of 14 years at the time of the offense, in violation of Section 207, shall be punished by an additional term of 15 years. This subdivision is not applicable to conduct proscribed by Section 277, 278, or 278.5.

(c) The following shall govern the imposition of an enhancement pursuant to this section:

(1) Only one enhancement shall be imposed for a victim per incident.

(2) If there are two or more victims, one enhancement can be imposed for each victim per incident.

(3) The enhancement may be in addition to the punishment for either, but not both, of the following:

(A) A violation of Section 207.

(B) A violation of the sexual offenses enumerated in this section.

SEC. 9. Section 667.9 of the Penal Code is amended to read:

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

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

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

- (1) Robbery, in violation of Section 211.
- (2) Kidnapping, in violation of Section 207.
- (3) Kidnapping, in violation of Section 209.
- (4) Rape by force, violence, or fear of immediate and unlawful bodily injury on the victim or another person in violation of paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.
- (5) Sodomy or oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person in violation of Section 286 or 288a.

(6) Mayhem, as defined in Section 203.

(7) Carjacking, in violation of Section 215.

(8) Kidnapping, in violation of Section 209.5.

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

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

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

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

(2) Likely to continue indefinitely.

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

(A) Self-care.

(B) Receptive and expressive language.

(C) Learning.

(D) Mobility.

(E) Self-direction.

(F) Capacity for independent living.

(G) Economic self-sufficiency.

SEC. 10. Section 1048 of the Penal Code is amended to read:

1048. (a) The issues on the calendar shall be disposed of in the following order, unless for good cause the court directs an action to be tried out of its order:

(1) Prosecutions for felony, when the defendant is in custody.

(2) Prosecutions for misdemeanor, when the defendant is in custody.

(3) Prosecutions for felony, when the defendant is on bail.

(4) Prosecutions for misdemeanor, when the defendant is on bail.

(b) Notwithstanding subdivision (a), all criminal actions in which (1) a minor is detained as a material witness or is the victim of the alleged offense, (2) a person who was 70 years of age or older at the time of the alleged offense or is a dependent adult, as defined in subdivision (d) of Section 368, was a witness to, or is the victim of, the alleged offense or (3) any person is a victim of an alleged violation of Section 261, 262, 264.1, 273a, 273d, 285, 286, 288, 288a, or 289, committed by the use of force, violence, or the threat thereof, shall be given precedence over all other criminal actions in the order of trial. In those actions, continuations shall be granted by the court only after a hearing and determination of the necessity thereof, and in any event, the trial shall be commenced within 30 days after arraignment, unless for good cause the court shall direct the action to be continued, after a hearing and determination of the necessity of the continuance, and states the findings for a determination of good cause on the record.

(c) Nothing in this section shall be deemed to provide a statutory right to a trial within 30 days.

SEC. 11. Section 1127e of the Penal Code is amended to read:

1127e. The term "unchaste character" shall not be used by any court in any criminal case in which the defendant is charged with a violation of Section 261, 261.5, or 262 of the Penal Code, or attempt to commit or assault with intent to commit any crime defined in any of these sections, in any instruction to the jury.

SEC. 12. Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as provided in subdivision (c) and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1, and pursuant to Section 11370.2 of the Health and Safety Code. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any enhancements imposed pursuant to Section 667.15, 667.8, 667.85, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, or 12022.9 and an enhancement imposed pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code. The subordinate term for each consecutive offense which is not a "violent felony" as defined in subdivision (c) of Section 667.5 shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is not a violent felony for which a consecutive term of imprisonment is

imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for these consecutive offenses which are not "violent felonies" as defined in subdivision (c) of Section 667.5 exceed five years. The subordinate term for each consecutive offense which is a "violent felony" as defined in subdivision (c) of Section 667.5, including those offenses described in paragraph (8), (9), or (17) of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is a violent felony for which a consecutive term of imprisonment is imposed, and shall include one-third of any enhancements imposed pursuant to Section 667.15, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9.

(b) (1) When a consecutive term of imprisonment is imposed under Sections 669 and 1170 for two or more convictions for kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions, the aggregate term shall be calculated as provided in subdivision (a), except that the subordinate term for each subsequent kidnapping conviction shall consist of the middle term for each kidnapping conviction for which a consecutive term of imprisonment is imposed and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9. The five-year limitation on the total of subordinate terms provided in subdivision (a) shall not apply to subordinate terms for second and subsequent convictions of kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions.

(2) As used in this subdivision, "separate occasion" means the defendant committed a second violation of Section 207 involving the same victim after at least 24 hours elapsed following his or her release of the victim.

(c) In the case of any person convicted of one or more felonies committed while the person is confined in a state prison, or is subject to reimprisonment for escape from custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the convictions which the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a), except that the total of subordinate terms may exceed five years. This subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.

(d) When the court imposes a prison sentence for a felony pursuant to Section 1170 the court shall also impose the additional terms provided in Sections 667, 667.15, 667.5, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75,

and 12022.9, and the additional terms provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, unless the additional punishment therefor is stricken pursuant to subdivision (h). The court shall also impose any other additional term which the court determines in its discretion or as required by law shall run consecutive to the term imposed under Section 1170. In considering the imposition of the additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) When two or more enhancements under Sections 12022, 12022.4, 12022.5, 12022.55, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply. However, in cases of lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, as described in Section 288, kidnapping, as defined in Section 207, sexual battery, as defined in Section 243.4, spousal rape, as defined in Section 262, penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, carjacking, rape or burglary, or attempted lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, kidnapping, sexual battery, spousal rape, penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, carjacking, rape, murder, or burglary, the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or subdivision (a) of, or paragraph (2) of subdivision (b) of, Section 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in Sections 667, 667.15, 667.5, 667.6, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, and 12022.9, and in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, shall be pleaded and proven as provided by law.

(g) (1) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170, unless the defendant stands convicted of a "violent felony" as defined in subdivision (c) of Section 667.5, or a consecutive sentence is being imposed pursuant to subdivision (b) or (c) of this section, or an enhancement is imposed pursuant to Section 667, 667.15, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, or 12022.9, or an enhancement is being imposed pursuant to Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, or the defendant stands convicted of felony escape from an institution in which he or she is lawfully confined.

(2) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170 unless an enhancement is imposed pursuant to Section 12022.1 and both the primary and secondary offenses specified in Section 12022.1 are serious felonies as specified

in subdivision (c) of Section 1192.7.

(h) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in Sections 667.15, 667.5, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.6, 12022.7, 12022.75, and 12022.9, or the enhancements provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(i) For any violation of paragraph (2), (3), or (6) of subdivision (a) of Section 261, paragraph (1) or (4) of subdivision (a) of Section 262, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person as provided in Section 286 or 288a, the number of enhancements which may be imposed shall not be limited, regardless of whether the enhancements are pursuant to this or some other section of law. Each of the enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 12.3. Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as provided in subdivision (c) and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1, and pursuant to Section 11370.2 of the Health and Safety Code. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any enhancements imposed pursuant to subdivision (c) of Section 186.10 or Section 667.15, 667.8, 667.85, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, or 12022.9 of this code, and an enhancement imposed pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code. The subordinate term for each consecutive offense which is not a "violent felony" as defined in subdivision (c) of Section 667.5 shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is not a violent felony for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for these consecutive offenses which are not "violent felonies" as defined in subdivision (c) of Section 667.5 exceed five years. The subordinate term for each consecutive offense which is a "violent felony" as defined in subdivision (c) of Section 667.5, including those offenses described in paragraph (8), (9), or (17) of subdivision (c) of Section 667.5, shall consist of one-third of

the middle term of imprisonment prescribed for each other felony conviction for an offense that is a violent felony for which a consecutive term of imprisonment is imposed, and shall include one-third of any enhancements imposed pursuant to Section 667.15, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9.

(b) (1) When a consecutive term of imprisonment is imposed under Sections 669 and 1170 for two or more convictions for kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions, the aggregate term shall be calculated as provided in subdivision (a), except that the subordinate term for each subsequent kidnapping conviction shall consist of the middle term for each kidnapping conviction for which a consecutive term of imprisonment is imposed and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9. The five-year limitation on the total of subordinate terms provided in subdivision (a) shall not apply to subordinate terms for second and subsequent convictions of kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions.

(2) As used in this subdivision, "separate occasion" means the defendant committed a second violation of Section 207 involving the same victim after at least 24 hours elapsed following his or her release of the victim.

(c) In the case of any person convicted of one or more felonies committed while the person is confined in a state prison, or is subject to reimprisonment for escape from custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the convictions which the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a), except that the total of subordinate terms may exceed five years. This subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.

(d) When the court imposes a prison sentence for a felony pursuant to Section 1170, the court shall also impose the additional terms provided in subdivision (c) of Section 186.10 and Sections 667, 667.15, 667.5, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, and 12022.9 of this code, and the additional terms provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, unless the additional punishment therefor is stricken pursuant to subdivision (h). The court shall also impose any other additional term which the court determines in its discretion or as required by law shall run consecutive to the term imposed under Section 1170. In considering the imposition of the

additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) When two or more enhancements under Sections 12022, 12022.4, 12022.5, 12022.55, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply. However, in cases of lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, as described in Section 288, kidnapping, as defined in Section 207, sexual battery, as defined in Section 243.4, spousal rape, as defined in Section 262, penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, carjacking, rape or burglary, or attempted lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, kidnapping, sexual battery, spousal rape, penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, carjacking, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or subdivision (a) of, or paragraph (2) of subdivision (b) of, Section 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in subdivision (c) of Section 186.10 and Sections 667, 667.15, 667.5, 667.6, 667.8, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, and 12022.9 of this code, and in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, shall be pleaded and proven as provided by law.

(g) (1) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170, unless the defendant stands convicted of a "violent felony" as defined in subdivision (c) of Section 667.5, or a consecutive sentence is being imposed pursuant to subdivision (b) or (c) of this section, or an enhancement is imposed pursuant to subdivision (c) of Section 186.10 or Section 667, 667.15, 667.5, 667.8, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, or 12022.9 of this code, or an enhancement is being imposed pursuant to Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, or the defendant stands convicted of felony escape from an institution in which he or she is lawfully confined.

(2) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170 unless an enhancement is imposed pursuant to Section 12022.1 and both the primary and secondary offenses specified in Section 12022.1 are serious felonies as specified in subdivision (c) of Section 1192.7.

(h) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in subdivision (c) of Section 186.10 and Sections 667.15, 667.5, 667.8,

667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.6, 12022.7, 12022.75, and 12022.9 of this code, or the enhancements provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(i) For any violation of paragraph (2), (3), or (6) of subdivision (a) of Section 261, paragraph (1) or (4) of subdivision (a) of Section 262, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person as provided in Section 286 or 288a, the number of enhancements which may be imposed shall not be limited, regardless of whether the enhancements are pursuant to this or some other section of law. Each of the enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 12.5. Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as provided in subdivision (c) and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1, and pursuant to Section 11370.2 of the Health and Safety Code. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any enhancements imposed pursuant to Section 667.15, 667.8, 667.83, 667.85, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, or 12022.9 and an enhancement imposed pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code. The subordinate term for each consecutive offense which is not a "violent felony" as defined in subdivision (c) of Section 667.5 shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is not a violent felony for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for these consecutive offenses which are not "violent felonies" as defined in subdivision (c) of Section 667.5 exceed five years. The subordinate term for each consecutive offense which is a "violent felony" as defined in subdivision (c) of Section 667.5, including those offenses described in paragraph (8), (9), or (17) of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is a violent felony for which a consecutive term of imprisonment is imposed, and shall include one-third of any enhancements imposed pursuant to Section

667.15, 667.8, 667.83, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9.

(b) (1) When a consecutive term of imprisonment is imposed under Sections 669 and 1170 for two or more convictions for kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions, the aggregate term shall be calculated as provided in subdivision (a), except that the subordinate term for each subsequent kidnapping conviction shall consist of the middle term for each kidnapping conviction for which a consecutive term of imprisonment is imposed and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.83, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9. The five-year limitation on the total of subordinate terms provided in subdivision (a) shall not apply to subordinate terms for second and subsequent convictions of kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions.

(2) As used in this subdivision, "separate occasion" means the defendant committed a second violation of Section 207 involving the same victim after at least 24 hours elapsed following his or her release of the victim.

(c) In the case of any person convicted of one or more felonies committed while the person is confined in a state prison, or is subject to reimprisonment for escape from custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the convictions which the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a), except that the total of subordinate terms may exceed five years. This subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.

(d) When the court imposes a prison sentence for a felony pursuant to Section 1170 the court shall also impose the additional terms provided in Sections 667, 667.15, 667.5, 667.8, 667.83, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, and 12022.9, and the additional terms provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, unless the additional punishment therefor is stricken pursuant to subdivision (h). The court shall also impose any other additional term which the court determines in its discretion or as required by law shall run consecutive to the term imposed under Section 1170. In considering the imposition of the additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) When two or more enhancements under Sections 12022, 12022.4, 12022.5, 12022.55, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply.

However, in cases of lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, as described in Section 288, kidnapping, as defined in Section 207, sexual battery, as defined in Section 243.4, spousal rape, as defined in Section 262, penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery, carjacking, rape or burglary, or attempted lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, kidnapping, sexual battery, spousal rape, penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, carjacking, rape, murder, or burglary, the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or subdivision (a) of, or paragraph (2) of subdivision (b) of, Section 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in Sections 667, 667.15, 667.5, 667.6, 667.8, 667.83, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, and 12022.9, and in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, shall be pleaded and proven as provided by law.

(g) (1) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170, unless the defendant stands convicted of a "violent felony" as defined in subdivision (c) of Section 667.5, or a consecutive sentence is being imposed pursuant to subdivision (b) or (c) of this section, or an enhancement is imposed pursuant to Section 667, 667.15, 667.5, 667.8, 667.83, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, or 12022.9, or an enhancement is being imposed pursuant to Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, or the defendant stands convicted of felony escape from an institution in which he or she is lawfully confined.

(2) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170 unless an enhancement is imposed pursuant to Section 12022.1 and both the primary and secondary offenses specified in Section 12022.1 are serious felonies as specified in subdivision (c) of Section 1192.7.

(h) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in Sections 667.15, 667.5, 667.8, 667.83, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.6, 12022.7, 12022.75, and 12022.9, or the enhancements provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(i) For any violation of paragraph (2), (3), or (6) of subdivision (a) of Section 261, paragraph (1) or (4) of subdivision (a) of Section

262, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person as provided in Section 286 or 288a, the number of enhancements which may be imposed shall not be limited, regardless of whether the enhancements are pursuant to this or some other section of law. Each of the enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 12.7. Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as provided in subdivision (c) and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1, and pursuant to Section 11370.2 of the Health and Safety Code. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any enhancements imposed pursuant to subdivision (c) of Section 186.10 or Section 667.15, 667.8, 667.83, 667.85, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, or 12022.9 of this code, and an enhancement imposed pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code. The subordinate term for each consecutive offense which is not a "violent felony" as defined in subdivision (c) of Section 667.5 shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is not a violent felony for which a consecutive term of imprisonment is imposed, and shall exclude any enhancements. In no case shall the total of subordinate terms for these consecutive offenses which are not "violent felonies" as defined in subdivision (c) of Section 667.5 exceed five years. The subordinate term for each consecutive offense which is a "violent felony" as defined in subdivision (c) of Section 667.5, including those offenses described in paragraph (8), (9), or (17) of subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is a violent felony for which a consecutive term of imprisonment is imposed, and shall include one-third of any enhancements imposed pursuant to Section 667.15, 667.8, 667.83, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9.

(b) (1) When a consecutive term of imprisonment is imposed under Sections 669 and 1170 for two or more convictions for kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions, the aggregate term shall be calculated as provided in subdivision (a), except that the subordinate

term for each subsequent kidnapping conviction shall consist of the middle term for each kidnapping conviction for which a consecutive term of imprisonment is imposed and shall include one-third of any enhancements imposed pursuant to Section 667.8, 667.83, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9. The five-year limitation on the total of subordinate terms provided in subdivision (a) shall not apply to subordinate terms for second and subsequent convictions of kidnapping, as defined in Section 207, involving separate victims or the same victim on separate occasions.

(2) As used in this subdivision, "separate occasion" means the defendant committed a second violation of Section 207 involving the same victim after at least 24 hours elapsed following his or her release of the victim.

(c) In the case of any person convicted of one or more felonies committed while the person is confined in a state prison, or is subject to reimprisonment for escape from custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the convictions which the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison. If the new offenses are consecutive with each other, the principal and subordinate terms shall be calculated as provided in subdivision (a), except that the total of subordinate terms may exceed five years. This subdivision shall be applicable in cases of convictions of more than one offense in different proceedings, and convictions of more than one offense in the same or different proceedings.

(d) When the court imposes a prison sentence for a felony pursuant to Section 1170, the court shall also impose the additional terms provided in subdivision (c) of Section 186.10 and Sections 667, 667.15, 667.5, 667.8, 667.83, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, and 12022.9 of this code, and the additional terms provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, unless the additional punishment therefor is stricken pursuant to subdivision (h). The court shall also impose any other additional term which the court determines in its discretion or as required by law shall run consecutive to the term imposed under Section 1170. In considering the imposition of the additional term, the court shall apply the sentencing rules of the Judicial Council.

(e) When two or more enhancements under Sections 12022, 12022.4, 12022.5, 12022.55, 12022.7, and 12022.9 may be imposed for any single offense, only the greatest enhancement shall apply. However, in cases of lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, as described in Section 288, kidnapping, as defined in Section 207, sexual battery, as defined in Section 243.4, spousal rape, as defined in Section 262, penetration of a genital or anal opening by a foreign object, as defined in Section 289, oral copulation, sodomy, robbery,

carjacking, rape or burglary, or attempted lewd or lascivious acts upon or with a child under the age of 14 years accomplished by means of force or fear, kidnapping, sexual battery, spousal rape, penetration of a genital or anal opening by a foreign object, oral copulation, sodomy, robbery, carjacking, rape, murder, or burglary the court may impose both (1) one enhancement for weapons as provided in either Section 12022, 12022.4, or subdivision (a) of, or paragraph (2) of subdivision (b) of, Section 12022.5 and (2) one enhancement for great bodily injury as provided in either Section 12022.7 or 12022.9.

(f) The enhancements provided in subdivision (c) of Section 186.10 and Sections 667, 667.15, 667.5, 667.6, 667.8, 667.83, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, and 12022.9 of this code, and in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, shall be pleaded and proven as provided by law.

(g) (1) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170, unless the defendant stands convicted of a "violent felony" as defined in subdivision (c) of Section 667.5, or a consecutive sentence is being imposed pursuant to subdivision (b) or (c) of this section, or an enhancement is imposed pursuant to subdivision (c) of Section 186.10 or Section 667, 667.15, 667.5, 667.8, 667.83, 667.85, 12022, 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, or 12022.9 of this code, or an enhancement is being imposed pursuant to Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, or the defendant stands convicted of felony escape from an institution in which he or she is lawfully confined.

(2) The term of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term pursuant to subdivision (b) of Section 1170 unless an enhancement is imposed pursuant to Section 12022.1 and both the primary and secondary offenses specified in Section 12022.1 are serious felonies as specified in subdivision (c) of Section 1192.7.

(h) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in subdivision (c) of Section 186.10 and Sections 667.15, 667.5, 667.8, 667.83, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.6, 12022.7, 12022.75, and 12022.9 of this code, or the enhancements provided in Section 11370.2, 11370.4, or 11379.8 of the Health and Safety Code, if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(i) For any violation of paragraph (2), (3), or (6) of subdivision (a) of Section 261, paragraph (1) or (4) of subdivision (a) of Section 262, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the

victim or another person as provided in Section 286 or 288a, the number of enhancements which may be imposed shall not be limited, regardless of whether the enhancements are pursuant to this or some other section of law. Each of the enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement.

SEC. 13. Section 1192.5 of the Penal Code is amended to read:

1192.5. Upon a plea of guilty or nolo contendere to an accusatory pleading charging a felony, other than a violation of paragraph (2), (3), or (6) of subdivision (a) of Section 261, paragraph (1) or (4) of subdivision (a) of Section 262, Section 264.1, Section 286 by force, violence, duress, menace or threat of great bodily harm, subdivision (b) of Section 288, Section 288a by force, violence, duress, menace or threat of great bodily harm, or subdivision (a) of Section 289, the plea may specify the punishment to the same extent as it may be specified by the jury on a plea of not guilty or fixed by the court on a plea of guilty, nolo contendere, or not guilty, and may specify the exercise by the court thereafter of other powers legally available to it.

Where the plea is accepted by the prosecuting attorney in open court and is approved by the court, the defendant, except as otherwise provided in this section, cannot be sentenced on the plea to a punishment more severe than that specified in the plea and the court may not proceed as to the plea other than as specified in the plea.

If the court approves of the plea, it shall inform the defendant prior to the making of the plea that (1) its approval is not binding, (2) it may, at the time set for the hearing on the application for probation or pronouncement of judgment, withdraw its approval in the light of further consideration of the matter, and (3) in that case, the defendant shall be permitted to withdraw his or her plea if he or she desires to do so. The court shall also cause an inquiry to be made of the defendant to satisfy itself that the plea is freely and voluntarily made, and that there is a factual basis for the plea.

If the plea is not accepted by the prosecuting attorney and approved by the court, the plea shall be deemed withdrawn and the defendant may then enter the plea or pleas as would otherwise have been available.

If the plea is withdrawn or deemed withdrawn, it may not be received in evidence in any criminal, civil, or special action or proceeding of any nature, including proceedings before agencies, commissions, boards, and tribunals.

SEC. 14. Section 1203.075 of the Penal Code is amended to read:

1203.075. Notwithstanding the provisions of Section 1203:

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

commission or attempted commission of any of the following crimes:

- (1) Murder.
- (2) Robbery, in violation of Section 211.
- (3) Kidnapping, in violation of Section 207.
- (4) Kidnapping, in violation of Section 209.
- (5) Burglary of the first degree, as defined in Section 460.
- (6) Rape, in violation of paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.
- (7) Assault with intent to commit rape or sodomy, in violation of Section 220.
- (8) Escape, in violation of Section 4530 or 4532.
- (9) A violation of subdivision (a) of Section 289.
- (10) Sodomy, in violation of Section 286.
- (11) Oral copulation, in violation of Section 288a.
- (12) Carjacking, in violation of Section 215.
- (13) Kidnapping, in violation of Section 209.5.

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

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

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

SEC. 15. Section 1203.08 of the Penal Code is amended to read:

1203.08. (a) Notwithstanding any other law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any adult person convicted of a designated felony who has been previously convicted as an adult under charges separately brought and tried two or more times of any designated felony or in any other place of a public offense which, if committed in this state, would have been punishable as a designated felony, if all the convictions occurred within a 10-year period. The 10-year period shall be calculated exclusive of any period of time during which the person has been confined in a state or federal prison.

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

(2) Except where the existence of the fact was not admitted or found to be true pursuant to paragraph (1), or the court finds that a prior conviction was invalid, the court shall not strike or dismiss any prior convictions alleged in the information or indictment.

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

(c) As used in this section, "designated felony" means any felony specified in Section 187, 192, 207, 209, 209.5, 211, 215, 217, 245, 288, or paragraph (2), (6), or (7) of subdivision (a) of Section 261, paragraph (1), (4), or (5) of subdivision (a) of Section 262, subdivision (a) of Section 460, or when great bodily injury occurs in perpetration of an assault to commit robbery, mayhem, or rape, as defined in Section 220.

SEC. 16. Section 1203.09 of the Penal Code is amended to read:

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

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

- (1) Murder.
- (2) Robbery, in violation of Section 211.
- (3) Kidnapping, in violation of Section 207.
- (4) Kidnapping, in violation of Section 209.
- (5) Burglary of the first degree, as defined in Section 460.
- (6) Rape by force or violence, in violation of paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.
- (7) Assault with intent to commit rape or sodomy, in violation of Section 220.

(8) Carjacking, in violation of Section 215.

(9) Kidnapping, in violation of Section 209.5.

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

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

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

(f) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to, nor shall the execution or imposition of sentence be

suspended for, any person convicted of having committed one or more of the following crimes against a person who is 60 years of age or older: assault with a deadly weapon or instrument, battery which results in physical injury which requires professional medical treatment, carjacking, robbery, or mayhem.

SEC. 17. Section 1601 of the Penal Code is amended to read:

1601. (a) In the case of any person charged with and found incompetent on a charge of, convicted of, or found not guilty by reason of insanity of murder, mayhem, aggravated mayhem, a violation of Section 207, 209, or 209.5 in which the victim suffers intentionally inflicted great bodily injury, robbery or carjacking with a deadly or dangerous weapon or in which the victim suffers great bodily injury, a violation of subdivision (a) or (b) of Section 451, a violation of paragraph (2), (3), or (6) of subdivision (a) of Section 261, a violation of paragraph (1) or (4) of subdivision (a) of Section 262, a violation of Section 459 in the first degree, a violation of Section 220 in which the victim suffers great bodily injury, a violation of Section 288, a violation of Section 12303.1, 12303.2, 12303.3, 12308, 12309, or 12310, or any felony involving death, great bodily injury, or an act which poses a serious threat of bodily harm to another person, outpatient status under this title shall not be available until that person has actually been confined in a state hospital or other facility for 180 days or more after having been committed under the provisions of law specified in Section 1600.

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

SEC. 18. Section 2933.5 of the Penal Code is amended to read:

2933.5. (a) Notwithstanding any other provision of law, the following persons shall be ineligible to earn credit on their terms of imprisonment pursuant to this chapter.

(1) Every person convicted of any felony offense listed in paragraph (2), and who has been previously convicted two or more times, on charges separately brought and tried, and who previously has served two or more separate prior prison terms, as defined in subdivision (g) of Section 667.5, of any offense or offenses listed in paragraph (2).

(2) As used in this subdivision, "felony offense" includes any of the following:

(A) Murder, as defined in Sections 187 and 189.

(B) Voluntary manslaughter, as defined in subdivision (a) of Section 192.

(C) Mayhem as defined in Section 203.

(D) Aggravated mayhem, as defined in Section 205.

(E) Kidnapping for the purpose of committing child molestation,

as described in subdivision (b) of Section 207, in which great bodily injury was personally inflicted as provided in Section 12022.7.

(F) Assault with vitriol, corrosive acid, or caustic chemical of any nature, as described in Section 244.

(G) Rape, as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.

(H) Sodomy by means of force, violence, duress, menace or fear of immediate and unlawful bodily injury on the victim or another person, as described in subdivision (c) of Section 286.

(I) Sodomy while voluntarily acting in concert, as described in subdivision (d) of Section 286.

(J) Lewd or lascivious acts on a child under the age of 14 years, as described in subdivision (b) of Section 288.

(K) Oral copulation by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, as described in subdivision (c) of Section 288a.

(L) Continuous sexual abuse of a child, as described in Section 288.5.

(M) Penetration by foreign object, as described in subdivision (a) of Section 289.

(N) Exploding a destructive device or explosive with intent to injure, as described in Section 12303.3, with intent to murder, as described in Section 12308, or resulting in great bodily injury or mayhem, as described in Section 12309.

(O) Any felony in which the defendant personally inflicted great bodily injury as provided in Section 12022.7.

(b) A prior conviction of an offense listed in subdivision (a) shall include a conviction in another jurisdiction for an offense which includes all of the elements of the particular felony as defined under California law.

(c) This section shall apply whenever the present felony is committed on or after the effective date of this section, regardless of the date of commission of the prior offense or offenses resulting in credit-earning ineligibility.

(d) This section shall be in addition to, and shall not preclude the imposition of, any applicable sentence enhancement terms, or probation ineligibility and habitual offender provisions authorized under any other section.

SEC. 19. Section 3057 of the Penal Code is amended to read:

3057. (a) Confinement pursuant to a revocation of parole in the absence of a new conviction and commitment to prison under other provisions of law, shall not exceed 12 months, except as provided in subdivision (c).

(b) Upon completion of confinement pursuant to parole revocation without a new commitment to prison, the inmate shall be released on parole for a period which shall not extend beyond that portion of the maximum statutory period of parole specified by Section 3000 which was unexpired at the time of each revocation.

(c) Notwithstanding the limitations in subdivision (a) and in

Section 3060.5 upon confinement pursuant to a parole revocation, the parole authority may extend the confinement pursuant to parole revocation for a maximum of an additional 12 months for subsequent acts of misconduct committed by the parolee while confined pursuant to that parole revocation. Upon a finding of good cause to believe that a parolee has committed a subsequent act of misconduct and utilizing procedures governing parole revocation proceedings, the parole authority may extend the period of confinement pursuant to parole revocation as follows: (1) not more than 180 days for an act punishable as a felony whether or not prosecution is undertaken, (2) not more than 90 days for an act punishable as a misdemeanor, whether or not prosecution is undertaken, and (3) not more than 30 days for an act defined as a serious disciplinary offense pursuant to subdivision (a) of Section 2932.

(d) (1) Except for parolees specified in paragraph (2), any revocation period imposed under subdivision (a) may be reduced in the same manner and to the same extent as a term of imprisonment may be reduced by worktime credits under Section 2933. Worktime credit must be earned and may be forfeited pursuant to the provisions of Section 2932.

Worktime credit forfeited shall not be restored.

(2) The following parolees shall not be eligible for credit under this subdivision:

(A) Parolees who are sentenced under Section 1168 with a maximum term of life imprisonment.

(B) Parolees who violated a condition of parole relating to association with specified persons, entering prohibited areas, attendance at parole outpatient clinic, or psychiatric attention.

(C) Parolees who were revoked for conduct described in, or that could be prosecuted under any of the following sections, whether or not prosecution is undertaken: Section 189, Section 191.5, subdivision (a) or paragraph (3) of subdivision (c) of Section 192, Section 203, 207, 211, 215, 217.1, or 220, subdivision (b) of Section 241, Section 244, paragraph (1) or (2) of subdivision (a) of Section 245, paragraph (2) or (6) of subdivision (a) of Section 261, paragraph (1) or (4) of subdivision (a) of Section 262, Section 264.1, subdivision (c) or (d) of Section 286, Section 288, subdivision (c) or (d) of Section 288a, subdivision (a) of Section 289, 347, or 404, subdivision (a) of Section 451, Section 12020, 12021, 12022, 12022.5, 12022.7, 12022.8, 12025, or 12560, or Section 664 for any attempt to engage in conduct described in or that could be prosecuted under any of the above-mentioned sections.

(D) Parolees who were revoked for any reason if they had been granted parole after conviction of any of the offenses specified in subparagraph (C).

(E) Parolees who the parole authority finds at a revocation hearing to be unsuitable for reduction of the period of confinement because of the circumstances and gravity of the parole violation, or because of prior criminal history.

SEC. 20. Section 12022.8 of the Penal Code is amended to read: 12022.8. Any person who inflicts great bodily injury, as defined in Section 12022.7, on any victim in a violation of paragraph (2), (3), or (6) of subdivision (a) of Section 261, paragraph (1) or (4) of subdivision (a) of Section 262, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person as provided in Section 286 or 288a shall receive a five-year enhancement for each such violation in addition to the sentence provided for the felony conviction.

SEC. 21. Section 8.5 of this bill incorporates amendments to Section 667.8 of the Penal Code proposed by both this bill and AB 19 of the 1993-94 First Extraordinary Session. It shall only become operative if (1) both bills are enacted and become effective, (2) each bill amends Section 667.8 of the Penal Code, and (3) this bill is enacted after AB 19. In which case, one of the following alternatives shall apply:

(a) If this bill becomes operative before AB 19, Section 8 of this bill shall be operative until the operative date of AB 19, at which time Section 8.5 of this bill shall become operative.

(b) If this bill becomes operative after AB 19, Section 667.8 of the Penal Code, as amended by AB 19, shall remain operative until the operative date of this bill, at which time Section 8.5 of this bill shall become operative, and Section 8 of this bill shall not become operative.

SEC. 22. (a) Section 12.3 of this bill incorporates amendments to Section 1170.1 of the Penal Code proposed by both this bill and AB 3205. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 1170.1 of the Penal Code, (3) SB 1997 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 3205, in which case Sections 12, 12.5, and 12.7 of this bill shall not become operative.

(b) Section 12.5 of this bill incorporates amendments to Section 1170.1 of the Penal Code proposed by both this bill and SB 1997. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 1170.1 of the Penal Code, (3) AB 3205 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1997, in which case Sections 12, 12.3, and 12.7 of this bill shall not become operative.

(c) Section 12.7 of this bill incorporates amendments to Section 1170.1 of the Penal Code proposed by this bill, AB 3205, and SB 1997. It shall only become operative if (1) all three bills are enacted and become effective on January 1, 1995, (2) all three bills amend Section 1170.1 of the Penal Code, and (3) this bill is enacted after AB 3205 and SB 1997, in which case Sections 12, 12.3, and 12.5 of this bill shall not become operative.

SEC. 23. No reimbursement is required by this act pursuant to

Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1189

An act to amend Section 3578 of, to add Sections 9094, 14005.1, and 14105.5 to, and to repeal Sections 11702, 11703, 11704, 11705, 18300, 18320, 20002, 20003, 20004, 20005, 29413, and 29430 of, the Elections Code, relating to elections.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 3578 of the Elections Code is amended to read:

3578. (a) The Secretary of State shall mail ballot pamphlets to voters, in those instances in which the county clerk uses data processing equipment to store the information set forth in the affidavits of registration, before the election at which measures contained in the ballot pamphlet are to be voted on. The mailing shall commence not less than 40 days before the election and shall be completed no later than 21 days before the election for those voters who registered on or before the 60th day before the election. The Secretary of State shall mail one copy of the ballot pamphlet to each registered voter at the postal address stated on the voter's affidavit of registration, or the Secretary of State may mail only one ballot pamphlet to two or more registered voters having the same surname and the same postal address.

(b) In those instances in which the county clerk does not utilize data processing equipment to store the information set forth in the affidavits of registration, the Secretary of State shall furnish ballot pamphlets to the county clerk not less than 45 days before the election at which measures contained in the ballot pamphlet are to be voted on and the county clerk shall mail ballot pamphlets to voters, on the same dates and in the same manner provided by subdivision (a).

(c) The Secretary of State shall provide for the mailing of ballot pamphlets to voters registering after the 60th day before the election and before the 28th day before the election, by either: (1) mailing

in the manner as provided in subdivision (a), or (2) requiring the county clerk to mail ballot pamphlets to those voters registering in the county after the 60th day before the election and before the 28th day before the election pursuant to the provisions of this section. The second mailing of ballot pamphlets shall be completed no later than 10 days before the election. The county clerk shall mail a ballot pamphlet to any person requesting a ballot pamphlet. Three copies, to be supplied by the Secretary of State, shall be kept at every polling place, while an election is in progress, so that they may be freely consulted by the voters.

SEC. 2. Section 9094 is added to the Elections Code, to read:

9094. (a) The Secretary of State shall mail ballot pamphlets to voters, in those instances in which the county clerk uses data processing equipment to store the information set forth in the affidavits of registration, before the election at which measures contained in the ballot pamphlet are to be voted on. The mailing shall commence not less than 40 days before the election and shall be completed no later than 21 days before the election for those voters who registered on or before the 60th day before the election. The Secretary of State shall mail one copy of the ballot pamphlet to each registered voter at the postal address stated on the voter's affidavit of registration, or the Secretary of State may mail only one ballot pamphlet to two or more registered voters having the same surname and the same postal address.

(b) In those instances in which the county clerk does not utilize data processing equipment to store the information set forth in the affidavits of registration, the Secretary of State shall furnish ballot pamphlets to the county clerk not less than 45 days before the election at which measures contained in the ballot pamphlet are to be voted on and the county clerk shall mail ballot pamphlets to voters, on the same dates and in the same manner provided by subdivision (a).

(c) The Secretary of State shall provide for the mailing of ballot pamphlets to voters registering after the 60th day before the election and before the 28th day before the election, by either: (1) mailing in the manner as provided in subdivision (a), or (2) requiring the county clerk to mail ballot pamphlets to those voters registering in the county after the 60th day before the election and before the 28th day before the election pursuant to the provisions of this section. The second mailing of ballot pamphlets shall be completed no later than 10 days before the election. The county clerk shall mail a ballot pamphlet to any person requesting a ballot pamphlet. Three copies, to be supplied by the Secretary of State, shall be kept at every polling place, while an election is in progress, so that they may be freely consulted by the voters.

SEC. 3. Section 11702 of the Elections Code is repealed.

SEC. 4. Section 11703 of the Elections Code is repealed.

SEC. 5. Section 11704 of the Elections Code is repealed.

SEC. 6. Section 11705 of the Elections Code is repealed.

SEC. 7. Section 14005.1 is added to the Elections Code, to read:
14005.1. Members of the precinct board shall not display, distribute, or make available at the polling place any materials other than those required pursuant to this division without the express approval of the county elections official.

SEC. 8. Section 14105.5 is added to the Elections Code, to read:
14105.5. Members of the precinct board shall not display, distribute, or make available at the polling place any materials other than those required pursuant to this division without the express approval of the county elections official.

SEC. 9. Section 18300 of the Elections Code, as added by Senate Bill 1547 of the 1993-94 Regular Session, is repealed.

SEC. 10. Section 18320 of the Elections Code, as added by Senate Bill 1547 of the 1993-94 Regular Session, is repealed.

SEC. 11. Section 20002 of the Elections Code, as added by Senate Bill 1547 of the 1993-94 Regular Session, is repealed.

SEC. 12. Section 20003 of the Elections Code, as added by Senate Bill 1547 of the 1993-94 Regular Session, is repealed.

SEC. 13. Section 20004 of the Elections Code, as added by Senate Bill 1547 of the 1993-94 Regular Session, is repealed.

SEC. 14. Section 20005 of the Elections Code, as added by Senate Bill 1547 of the 1993-94 Regular Session, is repealed.

SEC. 15. Section 29413 of the Elections Code is repealed.

SEC. 16. Section 29430 of the Elections Code is repealed.

SEC. 17. Sections 2 and 8 of this bill shall become operative only if both this bill and SB 1547 are chaptered, in which case Sections 1 and 7 of this bill shall not become operative.

SEC. 18. Sections 9, 10, 11, 12, 13, and 14 of this bill shall become operative only if this bill and SB 1547 are both chaptered.

SEC. 19. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1190

An act to amend Sections 1365 and 7555 of, and to add Sections 1366 and 7505 to, the Penal Code, relating to prisons, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 1365 of the Penal Code is amended to read:
1365. The program described in Section 1364 shall be established according to a valid experimental design in order that the most effective, newest, and promising methods of treatment of sex offenders may be rigorously tested. The State Department of Mental Health shall submit an evaluation report to the Legislature by July 1, 1985. Subsequent evaluation reports shall include treatment outcome measures and shall be submitted every two years thereafter until the termination of the program. The program established pursuant to Section 1364 shall terminate on January 1, 1998.

SEC. 2. Section 1366 is added to the Penal Code, to read:

1366. This chapter is repealed on January 1, 1998, unless a later enacted statute, which becomes effective on or before January 1, 1998, deletes or extends that date.

SEC. 3. Section 7505 is added to the Penal Code, to read:

7505. This title is intended to provide the authority for correctional, custodial, and law enforcement agencies to perform medical testing for the purposes specified herein. However, notwithstanding any other provision of this title, this title shall only be operative in a city, county, or city and county the governing body of which adopts a resolution affirming that it shall be operative in that city, county, or city and county.

SEC. 4. Section 7555 of the Penal Code is amended to read:

7555. This title shall remain operative only until July 1, 1999, and as of January 1, 2000, is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends the dates upon which this title becomes inoperative and is repealed.

Notwithstanding this section, whenever, prior to July 1, 1999, a law enforcement agency employee has filed a report pursuant to Section 7510, or a request for a human immunodeficiency virus (HIV) test has been filed pursuant to Section 7512, or any other procedure for requiring a test has been commenced pursuant to this title, the proceedings shall be permitted to continue on or after July 1, 1999, until they have been concluded.

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

In order to continue the operation of provisions enacted to reduce the spread of AIDS in correctional institutions, which would otherwise become inoperative on July 1, 1994, it is necessary that this act go into immediate effect.

CHAPTER 1191

An act to amend Sections 25299.32, 25299.37, 25299.52, 25299.57, and 25299.58 of, and to add Sections 25299.38 and 25299.43 to, the Health and Safety Code, relating to hazardous substances.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 25299.32 of the Health and Safety Code is amended to read:

25299.32. (a) (1) Claimants who meet the qualifications of paragraph (1) of subdivision (b) of Section 25299.52 shall be deemed in compliance with Section 25299.31 if the claimant is eligible for reimbursement from the fund pursuant to Section 25299.54 and subdivision (d) of Sections 25299.57 and 25299.58.

(2) For claimants who meet the qualifications of paragraph (2) or (3) of subdivision (b) of Section 25299.52, the level of financial responsibility required to be obtained pursuant to Section 25299.31 shall be at least five thousand dollars (\$5,000) for each occurrence and at least five thousand dollars (\$5,000) annual aggregate coverage for taking corrective action.

(3) For claimants who meet the qualifications of paragraph (4) of subdivision (b) of Section 25299.52, the level of financial responsibility required to be obtained pursuant to Section 25299.31 shall be at least ten thousand dollars (\$10,000) for each occurrence, and at least ten thousand dollars (\$10,000) annual aggregate coverage for taking corrective action.

(b) The level of financial responsibility required to be obtained pursuant to Section 25299.31 for each occurrence for bodily injury and property damage shall be in the amount specified by the board in the regulations adopted pursuant to Section 25299.77.

(c) The level of financial responsibility required to be obtained pursuant to Section 25299.31 shall be in the amount specified by the board for annual aggregate coverage for both corrective action and bodily injury and property damage.

(d) The board may periodically increase the minimum level of financial responsibility specified in subdivision (a) upon its determination that private insurance is available and affordable.

(e) The changes made to this section by the act adding this subdivision shall apply to all claimants with claims, or portions of

claims, for corrective action at sites that have not been completed, and for which reimbursement by the fund has not been fully paid by the board.

SEC. 2. Section 25299.37 of the Health and Safety Code is amended to read:

25299.37. (a) Each owner, operator, or other responsible party shall take corrective action in response to an unauthorized release in compliance with this section and regulations adopted pursuant to Section 25299.77.

(b) Any corrective action conducted pursuant to this section shall ensure protection of human health, safety, and the environment. The corrective action shall be consistent with any applicable waste discharge requirements or other order issued pursuant to Division 7 (commencing with Section 13000) of the Water Code, all applicable state policies for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code, and all applicable water quality control plans adopted pursuant to Section 13170 of the Water Code and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7 of the Water Code.

(c) (1) When a local agency, the board, or a regional board requires an owner, operator, or other responsible party to undertake corrective action, including preliminary site assessment and investigation, pursuant to an oral or written order, direction, notification, or approval issued pursuant to this section, or pursuant to a cleanup and abatement order or other oral or written directive issued pursuant to Division 7 (commencing with Section 13000) of the Water Code, the owner, operator, or other responsible party shall prepare a workplan that details the actions to be taken by the owner, operator, or other responsible party to achieve the required corrective action.

(2) The workplan required by paragraph (1) shall be prepared in accordance with the regulations adopted pursuant to Section 25299.77. The workplan shall include a schedule and timeline for corrective action.

(3) At the request of the owner, operator, or other responsible party, the local agency, the board, or the regional board shall review and accept a workplan that meets the requirements of this section.

(4) In the interests of minimizing environmental contamination and promoting prompt cleanup, the responsible party may begin implementation of the proposed actions after the workplan has been submitted but before the workplan has received regulatory agency acceptance, except that implementation of the workplan may not begin until 60 calendar days from the date of submittal, unless the responsible party is otherwise directed in writing by the regulatory agency. However, before beginning implementation pursuant to this paragraph, the responsible party shall notify the regulatory agency of the intent to initiate proposed actions set forth in the submitted workplan.

(5) The owner, operator, or other responsible party shall conduct corrective actions in accordance with the workplan approved pursuant to the section.

(6) The local agency, the board, or the regional board shall advise the owner, operator, or other responsible party of the opportunity to seek preapproval of corrective action costs pursuant to Section 2811.4 of Title 23 of the California Code of Regulations.

(7) When the local agency, the board, or the regional board requires a responsible party to conduct corrective action pursuant to this article, it shall inform the responsible party of its right to request the designation of an administering agency to oversee the site investigation and remedial action at its site pursuant to Section 25262 and, if requested to do so by the responsible party, the local agency shall provide assistance to the responsible party in preparing and processing a request for that designation.

(8) (A) A claimant may request review of any claim or portion of a claim not paid. The review shall be conducted and a decision rendered within 30 days from the date of receipt of the request.

(B) The claimant may file an appeal, in writing, with the board with regard to any unpaid claim that is unresolved to the satisfaction of the claimant upon expiration of the 30-day period and the appeal shall be heard and decided by the board within 90 days from the date of the board's receipt of the appeal.

(C) All claims that are approved shall be forwarded to the Controller within 10 days from the date of approval for payment by the Controller.

(d) A person to whom an order is issued pursuant to subdivision (c), shall have the same rights of administrative and judicial appeal and review as are provided by law for cleanup and abatement orders issued pursuant to Section 13304 of the Water Code.

(e) Until the board adopts regulations pursuant to Section 25299.77, the owner, operator, or other responsible party shall take corrective action in accordance with Chapter 6.7 (commencing with Section 25280) and the federal act.

(f) If a person to whom an order is issued pursuant to subdivision (c) does not comply with the order, the regional board or the local agency may undertake or contract for corrective action and recover costs pursuant to Section 25299.70.

SEC. 2.1. Section 25299.37 of the Health and Safety Code is amended to read:

25299.37. (a) Each owner, operator, or other responsible party shall take corrective action in response to an unauthorized release in compliance with this section and regulations adopted pursuant to Section 25299.77. In adopting regulations pursuant to Section 25299.77, the board shall develop corrective action requirements for health hazards and protection of the environment, based on the severity of the health hazards and the other factors listed in subdivision (b).

(b) Any corrective action conducted pursuant to this section shall

ensure protection of human health, safety, and the environment. The corrective action shall be consistent with any applicable waste discharge requirements or other order issued pursuant to Division 7 (commencing with Section 13000) of the Water Code, all applicable state policies for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code, and all applicable water quality control plans adopted pursuant to Section 13170 of the Water Code and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7 of the Water Code.

(c) (1) When a local agency, the board, or a regional board requires an owner, operator, or other responsible party to undertake corrective action, including preliminary site assessment and investigation, pursuant to an oral or written order, direction, notification, or approval issued pursuant to this section, or pursuant to a cleanup and abatement order or other oral or written directive issued pursuant to Division 7 (commencing with Section 13000) of the Water Code, the owner, operator, or other responsible party shall prepare a workplan that details the actions to be taken by the owner, operator, or other responsible party to achieve the required corrective action.

(2) The workplan required by paragraph (1) shall be prepared in accordance with the regulations adopted pursuant to Section 25299.77. The workplan shall include a schedule and timeline for corrective action.

(3) At the request of the owner, operator, or other responsible party, the local agency, the board, or the regional board shall review and accept a workplan that meets the requirements of this section.

(4) In the interests of minimizing environmental contamination and promoting prompt cleanup, the responsible party may begin implementation of the proposed actions after the workplan has been submitted but before the workplan has received regulatory agency acceptance, except that implementation of the workplan may not begin until 60 calendar days from the date of submittal, unless the responsible party is otherwise directed in writing by the regulatory agency. However, before beginning implementation pursuant to this paragraph, the responsible party shall notify the regulatory agency of the intent to initiate proposed actions set forth in the submitted workplan.

(5) The owner, operator, or other responsible party shall conduct corrective actions in accordance with the workplan approved pursuant to the section.

(6) The local agency, the board, or the regional board shall advise the owner, operator, or other responsible party of the opportunity to seek preapproval of corrective action costs pursuant to Section 2811.4 of Title 23 of the California Code of Regulations.

(7) When the local agency, the board, or the regional board requires a responsible party to conduct corrective action pursuant to this article, it shall inform the responsible party of its right to request

the designation of an administering agency to oversee the site investigation and remedial action at its site pursuant to Section 25262 and, if requested to do so by the responsible party, the local agency shall provide assistance to the responsible party in preparing and processing a request for that designation.

(8) (A) A claimant may request review of any claim or portion of a claim not paid. The review shall be conducted and a decision rendered within 30 days from the date of receipt of the request.

(B) The claimant may file an appeal, in writing, with the board with regard to any unpaid claim that is unresolved to the satisfaction of the claimant upon expiration of the 30-day period and the appeal shall be heard and decided by the board within 90 days from the date of the board's receipt of the appeal.

(C) All claims that are approved shall be forwarded to the Controller within 10 days from the date of approval for payment by the Controller.

(d) A person to whom an order is issued pursuant to subdivision (c), shall have the same rights of administrative and judicial appeal and review as are provided by law for cleanup and abatement orders issued pursuant to Section 13304 of the Water Code.

(e) Until the board adopts regulations pursuant to Section 25299.77, the owner, operator, or other responsible party shall take corrective action in accordance with Chapter 6.7 (commencing with Section 25280) and the federal act.

(f) If a person to whom an order is issued pursuant to subdivision (c) does not comply with the order, the regional board or the local agency may undertake or contract for corrective action and recover costs pursuant to Section 25299.70.

SEC. 3. Section 25299.38 is added to the Health and Safety Code, to read:

25299.38. (a) On or before February 1, 1995, the board shall convene an advisory committee consisting of distinguished chemists, biologists, health professionals, geologists, engineers, and other appropriate professionals. The advisory committee shall conduct a comprehensive review of groundwater monitoring requirements, remediation techniques, and methodologies; criteria for determining that remediation has been satisfactorily completed; the cleanup standards which responsible parties conducting corrective action pursuant to this article are required to meet; and the policies, guidelines, and methods which are used to establish those standards. On or before September 1, 1995, the advisory committee shall recommend to the board any changes which it believes are necessary to ensure that cleanup standards are both technologically feasible and necessary to ensure the protection of human health and safety and the environment.

(b) On or before March 1, 1997, after consulting with representatives of local agencies, regional boards, tank owners and operators, environmental organizations, the advisory committee, and any other interested party, the board shall adopt regulations

pursuant to Section 25299.77 for local agencies and regional boards to follow in requiring corrective actions pursuant to this article. The regulations shall include procedures for at least all of the following:

- (1) Selection and prioritization of sites for corrective action.
- (2) Selection of remediation techniques and methodologies.
- (3) Determination that remediation has been satisfactorily completed.

- (4) Availability to responsible parties of formal and informal appeal and negotiation processes.

- (5) A statewide closure certification letter to be issued by local agencies, regional boards, and the board upon satisfactory remediation of a site.

(c) Any regulations governing cleanup standards and required corrective actions adopted pursuant to this article shall ensure the protection of human health and safety and the environment.

SEC. 4. Section 25299.43 is added to the Health and Safety Code, to read:

25299.43. (a) To implement the changes to this chapter made by the act adding this section, and consistent with Section 25299.40, effective January 1, 1995, every owner subject to Section 25299.41 shall pay a storage fee of one mill (\$.001) for each gallon of petroleum placed in an underground storage tank which the person owns, in addition to the fee required by Section 25299.41. The fee imposed pursuant to this section shall be paid to the State Board of Equalization pursuant to Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code in the same manner as, and consistent with, the fees imposed pursuant to Section 24299.41.

(b) On and after January 1, 1996, the storage fee imposed pursuant to subdivision (a) shall be increased by two mills (\$.002) for each gallon of petroleum placed in an underground storage tank.

(c) On and after January 1, 1997, the storage fee imposed pursuant to subdivisions (a) and (b) shall be increased by three mills (\$.003) for each gallon of petroleum placed in an underground storage tank.

(d) The State Board of Equalization shall amend the regulations adopted pursuant to Section 25299.41 to carry out this section.

SEC. 5. Section 25299.52 of the Health and Safety Code is amended to read:

25299.52. (a) The board shall adopt a priority ranking list at least annually for awarding claims pursuant to Section 25299.57 or 25299.58. Any owner or operator eligible for payment of a claim pursuant to Section 25299.54 shall file an application with the board within a reasonable period, to be determined by the board, prior to adoption of the priority ranking list.

(b) Except as provided in subdivision (c), in awarding claims pursuant to Section 25299.57 or 25299.58, the board shall pay claims in accordance with the following order of priority:

- (1) Owners of tanks who are eligible to file a claim pursuant to subdivision (e) of Section 25299.54.

(2) Owners and operators of tanks which are either of the following:

(A) An owner or operator which is a small business, as defined in subdivision (c) of Section 14837 of the Government Code.

(B) An owner or operator which is a city, county, district, or nonprofit organization that receives total annual revenues of not more than seven million dollars (\$7,000,000). In determining the amount of a nonprofit organization's annual revenues, the board shall calculate only those revenues directly attributable to the particular site at which the tank or tanks for which the claim is submitted are located.

(3) Owners or operators of tanks which are either of the following:

(A) The owner or operator owns and operates a business which employs fewer than 500 full-time and part-time employees, is independently owned and operated, is not dominant in its field of operation, the principal office is located in California, and all of the officers of the business are domiciled in California.

(B) The owner or operator is a city, county, district, or nonprofit organization that employs fewer than 500 full-time and part-time employees. In determining the number of employees employed by a nonprofit organization, the board shall calculate only those employees employed at the particular site at which the tank or tanks for which the claim is submitted are located.

(4) All other tank owners and operators.

(c) (1) In any year in which the board is not otherwise authorized to award at least 15 percent of the total amount of funds committed for that year to tank owners or operators in those categories set forth in paragraph (3) or (4) of subdivision (b) due to the priority ranking list award limitations set forth in subdivision (b), the board shall allocate between 14 and 16 percent of the total amount of funds committed for that year to each category that is not otherwise entitled to at least that level of committed funding for that year.

(2) If the total amount of claims outstanding in one or more of the priority categories specified in paragraph (3) or (4) of subdivision (b) is less than 15 percent of the total amount annually appropriated from the fund for the purpose of awarding claims, the board shall reserve for making claims in that category only the amount that is necessary to satisfy the outstanding claims in that category.

(d) The board shall give priority to a claim which is filed before the effective date of the act adding this subdivision by a city, county, or district that is eligible for payment pursuant to Section 25299.54 in the following manner:

(1) The board shall determine whether the priority category specified for a city, county, or district pursuant to subparagraph (B) of paragraph (2), or pursuant to subparagraph (B) of paragraph (3), of subdivision (b) requires that the priority ranking of the claim be changed.

(2) If the priority ranking of the claim is changed and the claim is placed into either the priority category specified in subparagraph

(B) of paragraph (2), or specified in subparagraph (B) of paragraph (3), of subdivision (b), the board shall pay all other claims that were assigned to that priority category prior to the effective date of the act adding this subdivision before paying the claim of the city, county, or district.

(e) The board may, to carry out the intent specified in paragraph (1) of subdivision (b) of Section 25299.10 and to expedite the processing and awarding of claims pursuant to Sections 25299.57 and 25299.58, implement the contracting procedures required by Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code, as may be necessary, to alleviate the claims processing and award backlog. If, at the conclusion of any fiscal year, 25 percent or more of the funds appropriated annually for awards to claimants during that year have not actually been obligated by the board, the board shall, at its next regularly scheduled meeting, determine, in a public hearing, whether, given the circumstances of the awards backlog, it is appropriate to implement those contracting procedures for some, or all, of the claims filed with the board.

(f) For purposes of this section, the following definitions shall apply:

(1) "Nonprofit organization" means a nonprofit public benefit organization incorporated pursuant to Part 2 (commencing with Section 511) of Division 2 of Title 1 of the Corporations Code.

(2) "Annual revenue," with respect to public entities, means the total annual general purpose revenues, excluding all restricted revenues over which the governing agency has no discretion, as reported in the Annual Report of Financial Transactions submitted to the Controller, for the latest fiscal year ending prior to the date the fund reimbursement claim application was filed.

(3) "Annual revenue," with respect to nonprofit organizations, means the total annual revenues, as shown in an annual fiscal report filed with the Registry of Charitable Trusts of state and federal tax records, based on the latest fiscal year ending prior to the date the fund reimbursement claim application was filed.

(4) "General purpose revenues," as used in paragraph (2), means revenues consisting of all of the following: secured and unsecured revenues; less than countywide funds, secured and unsecured; prior year secured and unsecured penalties and delinquent taxes; sales and use taxes; transportation taxes (nontransit); property transfer taxes; transient lodging taxes; timber yield taxes; aircraft taxes; franchise taxes; fines, forfeitures, and penalties; revenues from use of money and property; motor vehicle in-lieu taxes; trailer coach in-lieu taxes; homeowner property tax relief; open-space tax relief; and cigarette taxes.

(g) The fund may sue and be sued in its own name.

SEC. 6. Section 25299.57 of the Health and Safety Code, as amended by Chapter 183 of the Statutes of 1994, is amended to read: 25299.57. (a) If the board makes the determination specified in subdivision (d), the board may only pay for the costs of corrective

actions which exceed the level of financial responsibility required to be obtained pursuant to Section 25299.32, but not more than one million dollars (\$1,000,000) for each occurrence. In the case of an owner or operator who, as of January 1, 1988, was required to perform corrective action, who initiated that corrective action in accordance with Division 7 (commencing with Section 13000) of the Water Code or Chapter 6.7 (commencing with Section 25280), and who is undertaking the corrective action in compliance with waste discharge requirements or other orders issued pursuant to Division 7 (commencing with Section 13000) of the Water Code or Chapter 6.7 (commencing with Section 25280), the owner or operator may apply to the board for satisfaction of a claim filed pursuant to this article. It is the intent of the Legislature that claimants applying for satisfaction of claims from the fund be notified of eligibility for reimbursement in a prompt and timely manner and that a letter of credit or commitment which will obligate funds for reimbursement follow the notice of eligibility as soon thereafter as possible.

(b) (1) For claims eligible for reimbursement pursuant to subdivision (c) of Section 25299.55, the claimant shall submit the actual cost of corrective action to the board, which shall either approve or disapprove the costs incurred as reasonable and necessary.

(2) The board shall not reject any actual costs of corrective action in a claim solely on the basis that the invoices submitted fail to sufficiently detail the actual costs incurred, if all of the following applies:

(A) Auxiliary documentation is provided which documents to the board's satisfaction that the invoice is for necessary corrective action work.

(B) The costs of corrective action work in the claim are reasonably commensurate with similar corrective action work performed during the same time period covered by the invoice for which reimbursement is sought.

(C) The invoices include a brief description of the work performed, the date that the work was performed, the vendor, and the amount.

(c) For claims eligible for prepayment pursuant to subdivision (c) of Section 25299.55, the claimant shall submit the estimated cost of the corrective action to the board, which shall approve or disapprove the reasonableness of the cost estimate.

(d) A claim specified in subdivision (a) may be paid if the board makes all of the following findings:

(1) There has been an unauthorized release of petroleum into the environment from an underground storage tank.

(2) The claimant is required to undertake or contract for corrective action pursuant to Section 25299.37, or, as of January 1, 1988, the claimant has initiated corrective action in accordance with Division 7 (commencing with Section 13000) of the Water Code.

(3) (A) Except as provided in subparagraph (B), the claimant

has complied with Section 25299.31 and the permit requirements of Chapter 6.7 (commencing with Section 25280).

(B) All claimants who file their claim on or after January 1, 1994, and all claimants who filed their claim prior to that date but are not eligible for a waiver of the permit requirement pursuant to board regulations in effect on the date of the filing of the claim, and who did not obtain or apply for any permit required by subdivision (a) of Section 25284 by January 1, 1990, shall be subject to subparagraph (A) regardless of the reason or reasons that the permit was not obtained or applied for. However, on and after January 1, 1994, the board may waive the provisions of subparagraph (A) as a condition for payment from the fund if the board finds all of the following:

(i) The claimant was unaware of the permit requirement prior to January 1, 1990, and there was no intent to intentionally avoid the permit requirement or the fees associated with the permit.

(ii) Prior to submittal of the application to the fund, the claimant has complied with Section 25299.31 and has obtained and paid for all permits currently required by this paragraph.

(iii) Prior to submittal of the application to the fund, the claimant has paid all current underground storage tank fees imposed pursuant to Section 25299.41 and all prior fees due on and after January 1, 1991.

(C) (i) A claimant exempted pursuant to subparagraph (B) shall obtain a level of financial responsibility twice as great as the amount which the claimant is otherwise required to obtain pursuant to subdivision (a) of Section 25299.32.

(ii) The board may waive the requirements of clause (i) if the claimant can demonstrate that the conditions specified in clauses (i) to (iii), inclusive, of subparagraph (B) were satisfied prior to the causing of any contamination. That demonstration may be made through a certification issued by the permitting agency based on site and tank tests at the time of permit application or in any other manner acceptable to the board.

(D) The board shall rank all claims resubmitted pursuant to subparagraph (B) lower than all claims filed before January 1, 1994, within their respective priority classes specified in subdivision (b) of Section 25299.52.

(4) The board has approved either the costs incurred for the corrective action pursuant to subdivision (b) or the estimated costs for corrective action pursuant to subdivision (c).

(e) The board shall provide the claimant, whose cost estimate has been approved, a letter of credit authorizing payment of the costs from the fund.

(f) The claimant may submit a claim for partial payment to cover the costs of corrective action performed in stages, as approved by the board.

(g) (1) Any claimant who submits a claim for payment to the board shall submit multiple bids for prospective costs as prescribed in regulations adopted by the board pursuant to Section 25299.77.

(2) Any claimant who submits a claim to the board for the

payment of professional engineering and geologic work shall submit multiple proposals and fee estimates, as required by the regulations adopted by the board pursuant to Section 25299.70. The claimant's selection of the provider of these services is not required to be based on the lowest estimated fee, if the fee estimate conforms with the range of acceptable costs established by the board.

(3) Any claimant who submits a claim for payment to the board for remediation construction contracting work shall submit multiple bids, as required in the regulations adopted by the board pursuant to Section 25299.77.

(4) Paragraphs (1), (2), and (3) do not apply to a tank owned or operated by a public agency if the prospective costs are for private professional services within the meaning of Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code and those services are procured in accordance with the requirements of that chapter.

(h) The board shall provide, upon the request of a claimant, assistance to the claimant in the selection of contractors retained by the claimant to conduct reimbursable work related to corrective actions. The board shall develop a summary of expected costs for common remedial actions. This summary of expected costs may be used by claimants as a guide in the selection and supervision of consultants and contractors.

(i) The board shall pay, within 60 days from the date of receipt of an invoice of expenditures, all costs specified in the workplan developed pursuant to Section 25299.37, and all costs which are otherwise necessary to comply with an order issued by a local, state, or federal agency.

SEC. 7. Section 25299.58 of the Health and Safety Code is amended to read:

25299.58. (a) Except as provided in subdivision (d), if the board makes the determination specified in subdivision (b), the board may only reimburse those costs which are related to the compensation of third parties for bodily injury and property damages and which exceed the level of financial responsibility required to be obtained pursuant to Section 25299.32, but not more than one million dollars (\$1,000,000) for each occurrence.

(b) A claim may be paid if the board makes all of the following findings:

(1) There has been an unauthorized release of petroleum into the environment from an underground storage tank.

(2) The claimant has been ordered to pay a settlement or final judgment for third-party bodily injury or property damage arising from operating an underground storage tank.

(3) (A) Except as provided in subparagraph (B), the claimant has complied with Section 25299.31 and the permit requirements of Chapter 6.7 (commencing with Section 25280).

(B) All claimants who file their claim on or after January 1, 1994, and all claimants who filed their claim prior to that date but are not

eligible for a waiver of the permit requirement pursuant to board regulations in effect on the date of the filing of the claim, and who did not obtain or apply for any permit required by subdivision (a) of Section 25284 by January 1, 1990, shall be subject to subparagraph (A) regardless of the reason or reasons that the permit was not obtained or applied for. However, on and after January 1, 1994, the board may waive the provisions of subparagraph (A) as a condition for payment from the fund if the board finds all of the following:

(i) The claimant was unaware of the permit requirement prior to January 1, 1990, and there was no intent to intentionally avoid the permit requirement or the fees associated with the permit.

(ii) Prior to submittal of the application to the fund, the claimant has complied with Section 25299.31 and has obtained and paid for all permits currently required by this paragraph.

(iii) Prior to submittal of the application to the fund, the claimant has paid all current underground storage tank fees imposed pursuant to Section 25299.41 and all prior fees due on and after January 1, 1991.

(C) (i) A claimant exempted pursuant to subparagraph (B) shall obtain a level of financial responsibility in an amount twice as great as the amount which the claimant is otherwise required to obtain pursuant to subdivision (a) of Section 25299.32.

(ii) The board may waive the requirements of clause (i) if the claimant can demonstrate that the conditions specified in clauses (i) to (iii), inclusive, of subparagraph (B) were satisfied prior to any contamination having been caused. That demonstration may be made through a certification issued by the permitting agency based on site and tank tests at the time of permit application or in any other manner as may be acceptable to the board.

(D) The board shall rank all claims resubmitted pursuant to subparagraph (B) lower than all claims filed before January 1, 1994, within their respective priority classes specified in subdivision (b) of Section 25299.52.

(4) The claimant is required to undertake or contract for corrective action pursuant to Section 25299.37, or, as of January 1, 1988, the claimant has initiated corrective action in accordance with Division 7 (commencing with Section 13000) of the Water Code or Chapter 6.7 (commencing with Section 25280).

(c) A claimant may be reimbursed by the fund for compensation of third parties for only the following:

(1) Medical expenses.

(2) Actual lost wages or business income.

(3) Actual expenses for remedial action to remedy the effects of damage to the property of the third party caused by the unauthorized release of petroleum from an underground storage tank.

(4) The fair market value of the property rendered permanently unsuitable for use by the unauthorized release of petroleum from an underground storage tank.

(d) The board shall pay a claim submitted pursuant to subdivision

(e) of Section 25299.54 for the costs related to the compensation of third parties for bodily injury and property damages which exceed the level of financial responsibility required to be obtained pursuant to paragraph (2) of subdivision (a) of Section 25299.32, but not more than one million dollars (\$1,000,000) for each occurrence.

SEC. 8. This act shall become operative on July 1, 1995, except that Section 4 of this act shall become operative on January 1, 1995.

SEC. 9. Section 2.1 of this bill incorporates amendments to Section 25299.37 of the Health and Safety Code proposed by both this bill and AB 3673. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 25299.37 of the Health and Safety Code, and (3) this bill is enacted after AB 3673, in which case Section 25299.37 of the Health and Safety Code, as amended by AB 3673, shall remain operative only until the operative date of this bill, at which time Section 2.1 of this bill shall become operative, and Section 2 of this bill shall not become operative.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act or because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1192

An act to amend, repeal, and add Sections 40925, 43201, 43800, 44001, 44011, 44012, 44013, 44015, 44037.1, 44062.1, and 44062.2 of, to add Section 39016.5 to, to add and repeal Sections 39027.5, 39047.4, 39051.7, 39053.1, 40927, 43200.5, 43646, 44001.6, 44001.7, 44013.5, 44225, and 44236.1 of, to add and repeal Article 4 (commencing with Section 43705) of Chapter 3 of, and to add and repeal Chapter 8 (commencing with Section 44250) of, Part 5 of Division 26 of, the Health and Safety Code, and to add and repeal Section 1667 of the Vehicle Code, relating to air pollution.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

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

(a) Air pollution is a serious environmental and public health problem in parts of California. Emissions from motor vehicles are a significant cause of that problem.

(b) Ambient air quality standards for ozone may not be attained in some parts of California unless the use of motor vehicles, particularly older high-emission motor vehicles, is reduced.

(c) It is the responsibility of all residents of ozone nonattainment areas in California to limit or mitigate the air pollution impacts of their vehicle ownership and driving decisions, by operating cleaner vehicles or driving fewer miles. It is appropriate to impose additional obligations on vehicle owners who are unable or unwilling to directly meet this obligation, so that necessary emission reductions are not jeopardized by avoidably high emissions from high use vehicles.

(d) Low-income drivers may be forced by economic circumstances to rely on older high-emission motor vehicles. Therefore, programs to help low-income drivers acquire cleaner vehicles are appropriate.

SEC. 2. The Legislature further finds and declares that the purposes of this act are to accomplish all of the following:

(a) Establish a program which can help reduce emissions from vehicles in ozone nonattainment areas to the extent necessary to attain ambient air quality standards.

(b) Provide incentives to drivers in ozone nonattainment areas to purchase and use less polluting vehicles, and to drive less.

(c) Establish a program for reducing vehicle miles traveled that covers all vehicles in all driving circumstances, which does not require employers to police employee driving decisions, and which is not unduly burdensome to low-income persons.

(d) Stimulate market demand for cleaner vehicles, so that manufacturers will be able to sell those vehicles, despite a higher purchase price.

(e) Encourage manufacturers to offer additional pollution control equipment as an extra cost option on motor vehicles sold in nonattainment areas, and to encourage consumers to purchase that equipment.

(f) Stimulate the development of after-market kits to reduce emissions from motor vehicles, and encourage the purchase of those kits by consumers.

(g) Encourage motor vehicle owners to apply enhanced vehicle maintenance practices to achieve improved engine operating efficiencies.

(h) Provide revenues that can be used to assist low-income persons to drive less polluting cars.

SEC. 3. Section 39016.5 is added to the Health and Safety Code, to read:

39016.5. "Bureau" means the Bureau of Automotive Repair in the Department of Consumer Affairs.

SEC. 4. Section 39027.5 is added to the Health and Safety Code, to read:

39027.5. (a) "Emissions retrofit device" means an exhaust device certified pursuant to Section 43630 or approved for use pursuant to Section 27156 of the Vehicle Code which renders a modified vehicle a low-emission motor vehicle, as defined by Section 43800.

(b) This section shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this section, and on the January 1 following that date is repealed.

SEC. 5. Section 39047.4 is added to the Health and Safety Code, to read:

39047.4. (a) "Pollution miles" means the product of the smog index for a vehicle times the miles traveled by that vehicle during a period of time.

(b) This section shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this section, and on the January 1 following that date is repealed.

SEC. 6. Section 39051.7 is added to the Health and Safety Code, to read:

39051.7. (a) "Smog index" means the index number assigned to a motor vehicle by the state board pursuant to Section 44251 to indicate the effect of the use of that vehicle on ozone levels in ozone nonattainment areas.

(b) This section shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this section, and on the January 1 following that date is repealed.

SEC. 7. Section 39053.1 is added to the Health and Safety Code, to read:

39053.1. (a) "Target pollution miles" means the target number of pollution miles per year established by a district pursuant to Section 40927. Target pollution miles for any relevant period shall be apportioned among successive owners of a vehicle in proportion to their period of ownership.

(b) This section shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this section, and on the January 1 following that date is repealed.

SEC. 8. Section 40925 of the Health and Safety Code is amended to read:

40925. (a) Every district shall review and revise its attainment plan at least once every three years, beginning in 1994, to correct for deficiencies in meeting the interim measures of progress incorporated into the plan pursuant to Section 40914, and to incorporate new data or projections into the plan.

(b) A district may modify the emission reduction strategy or alternative measure of progress for subsequent years based on this assessment if the district demonstrates to the state board, and the state board finds, that the modified strategy is at least as effective in improving air quality as the strategy which is being replaced. In making that demonstration and finding, the district and the state board shall take into account the effects in the district of district and state programs to reduce emissions from motor vehicles, including,

in a district conducting the pilot program established pursuant to subdivision (b) of Section 43705, the smog index program and programs to impose disincentives on motor vehicle owners for excess pollution miles and to subsidize the retrofit or replacement of high-emission motor vehicles. A district conducting the pilot program may require employers and indirect sources to conduct surveys periodically to obtain data on driving decisions to support that demonstration.

(c) Each district which cannot demonstrate attainment by December 31, 2000, shall prepare and submit a comprehensive update of its plan to the state board not later than December 31, 1997. The revised plan shall include an interim air quality improvement goal or an equivalent emission reduction strategy, subject to review and approval by the state board, to be achieved in the subsequent five-year period.

(d) A district that elects to conduct the pilot program established pursuant to subdivision (b) of Section 43705 shall not receive federal emission reduction credits for the pilot program unless the Environmental Protection Agency finds that the pilot program may be, dependent on the pilot program's results, a full or partial fulfillment of a federally mandated transportation control measure.

(e) A district that elects to participate in the pilot program established pursuant to subdivision (b) of Section 43705 shall only do so upon a majority vote of the district governing board.

(f) This section shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this subdivision, and on the January 1 following that date is repealed.

SEC. 9. Section 40925 is added to the Health and Safety Code, to read:

40925. (a) Every district shall review and revise its attainment plan at least once every three years, beginning in 1994, to correct for deficiencies in meeting the interim measures of progress incorporated into the plan pursuant to Section 40914, and to incorporate new data or projections into the plan.

(b) A district may modify the emission reduction strategy or alternative measure of progress for subsequent years based on this assessment if the district demonstrates to the state board, and the state board finds, that the modified strategy is at least as effective in improving air quality as the strategy which is being replaced.

(c) Each district which cannot demonstrate attainment by December 31, 2000, shall prepare and submit a comprehensive update of its plan to the state board not later than December 31, 1997. The revised plan shall include an interim air quality improvement goal or an equivalent emission reduction strategy, subject to review and approval by the state board, to be achieved in the subsequent five-year period.

(d) This section shall become operative five years from the date determined pursuant to Section 32 of the act adding this section.

SEC. 10. Section 40927 is added to the Health and Safety Code,

to read:

40927. (a) Not later than December 31, 1995, or 180 days from the operative date of this section, whichever is later, and at the first triennial review and revision of any plan for an ozone nonattainment area, the San Diego County Air Pollution Control District and the Ventura County Air Pollution Control District, in consultation with the regional transportation planning agency in whose jurisdiction the district is located, and after public notice and comment, shall do all of the following:

(1) Estimate for the district and for the calendar year following the operative date of this section, the total emissions of ozone precursor chemicals from motor vehicles in the district, vehicle miles traveled, and average pollution miles per vehicle.

(2) In consultation with the regional planning agency for the area, determine the target pollution miles for each motor vehicle in the district for each of the next four calendar years. For the first of those four calendar years, the target pollution miles per vehicle for a 12-month period shall be set at a level so that 90 percent of the vehicles have target pollution miles below the threshold.

(3) Reduce the total target pollution miles for all motor vehicles combined in the district by 5 percent per year until the district attains the state ambient air quality standard for ozone, or until the conclusion of the pilot program established pursuant to subdivision (b) of Section 43705.

(b) The district shall update and project the target pollution miles for each motor vehicle for an additional three years at each subsequent triennial review of a plan. The determinations shall be published and shall be provided to the bureau.

(c) This section shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this section, and on the January 1 following that date is repealed.

SEC. 11. Section 43200.5 is added to the Health and Safety Code, to read:

43200.5. (a) The sale and registration in this state of any new motor vehicle is prohibited unless a decal in the form specified by the state board pursuant to subdivision (b) of Section 44254 has been securely affixed by the manufacturer to a window of the motor vehicle, and affixed in accordance with Section 43200 and any regulations adopted pursuant to Section 43200, which discloses the smog index for the vehicle.

(b) This section does not apply to any authorized emergency vehicle, as defined in Section 165 of the Vehicle Code, or to any employer-provided carpool or vanpool vehicle.

(c) This section shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this section, and on the January 1 following that date is repealed.

SEC. 12. Section 43201 of the Health and Safety Code is amended to read:

43201. (a) Any dealer or person holding a retail seller's permit

who sells a new motor vehicle without the decal required by Section 43200 or 43200.5 shall be subject to a civil penalty of not to exceed one thousand dollars (\$1,000).

(b) Any penalty recovered pursuant to this section shall be deposited in the General Fund.

(c) This section shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this subdivision, and on the January 1 following that date is repealed.

SEC. 13. Section 43201 is added to the Health and Safety Code, to read:

43201. (a) Any dealer or person holding a retail seller's permit who sells a new motor vehicle without the decal required by Section 43200 shall be subject to a civil penalty of not to exceed one thousand dollars (\$1,000).

(b) Any penalty recovered pursuant to this section shall be deposited into the General Fund.

(c) This section shall become operative five years from the date determined pursuant to Section 32 of the act adding this section.

SEC. 14. Section 43646 is added to the Health and Safety Code, to read:

43646. (a) The bureau, in consultation with the state board, may develop, not later than 180 days from the operative date of this section, a list of engine maintenance practices that are designed to improve a motor vehicle's engine operating efficiency. The bureau shall conduct any evaluations that it determines to be necessary to identify the extent to which various maintenance practices could reduce vehicle emissions, and the minimum periodic application of each maintenance practice that is required to achieve the desired improvement in engine operating efficiency. The bureau may contract with private automotive testing services to carry out the evaluations.

(b) The bureau shall make the list available to the public, and shall specify therein the extent to which each maintenance practice can be expected to reduce vehicle emissions, and how the application of each practice could result in a reduction of the vehicle's smog index.

(c) A motor vehicle owner who subjects his or her vehicle to enhanced maintenance practices, as established by the bureau, may submit the vehicle to an in-use emissions evaluation at a smog check station to determine if excessive in-use emissions have been reduced. If the vehicle is certified as having reduced its emissions relative to its last in-use emissions evaluation, the Department of Motor Vehicles shall adjust the smog index for the vehicle. Vehicles receiving adjustments pursuant to this subdivision shall submit to annual in-use emissions evaluations to maintain their adjusted smog index. A failure to submit an annual in-use emissions evaluation to the Department of Motor Vehicles shall result in the vehicle's smog index being adjusted to its original level.

(d) This section shall become inoperative pursuant to Section 33 of the act adding this section or, in any case, five years from the date

determined pursuant to Section 32 of the act adding this section, and on the January 1 following the date upon which this section becomes inoperative, is repealed.

SEC. 15. Article 4 (commencing with Section 43705) is added to Chapter 3 of Part 5 of Division 26 of the Health and Safety Code, to read:

Article 4. Smog Index Decals

43705. (a) There is hereby established a five-year pilot statewide smog index system for light duty vehicles.

(b) Subject to any conditions imposed by any other provision of law, there is hereby established a five-year pilot study in the San Diego County Air Pollution Control District and the Ventura County Air Pollution Control District for testing a pollution-miles-per-vehicle proposal to reduce air pollution by identifying high-pollution high-mileage vehicles and requiring annual smog checks for those vehicles.

43706. (a) The state board shall petition the Federal Trade Commission, pursuant to Part 455 of Title 16 of the Code of Federal Regulations, for a limited exemption from the Federal Trade Commission's Buyer's Guide, to allow this state to incorporate into the Buyer's Guide utilized by motor vehicle dealers in this state, a smog index chart pursuant to subdivision (b) of Section 44254.

(b) Ninety days following approval by the Federal Trade Commission of a petition pursuant to subdivision (a), it shall be unlawful for any motor vehicle dealer licensed by the Department of Motor Vehicles to display or offer for sale any used vehicle unless there is affixed to the vehicle the Federal Trade Commission's Buyer's Guide as required by Part 455 of Title 16 of the Code of Federal Regulations which includes a smog index chart pursuant to subdivision (b) of Section 44254. Ninety days following the final disapproval by the Federal Trade Commission of a petition pursuant to subdivision (a), it shall be unlawful for any motor vehicle dealer licensed by the Department of Motor Vehicles to display or offer for sale any used vehicle unless there is attached, by a perforated attachment, to the Federal Trade Commission's Buyer's Guide as required by Part 455 of Title 16 of the Code of Federal Regulations, a smog index chart pursuant to subdivision (b) of Section 44254.

(c) Subdivisions (a) and (b) shall not apply to any vehicle sold by either (1) a dismantler after being reported for dismantling pursuant to Section 11520 of the Vehicle Code or (2) a salvage pool after obtaining a salvage certificate pursuant to Section 11515 of the Vehicle Code. Subdivisions (a) and (b) shall also not apply to any vehicle sold to a dealer or sold for the purpose of being legally wrecked or dismantled.

43707. This article shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this article, and on the January 1 following that date is repealed.

SEC. 16. Section 43800 of the Health and Safety Code is amended to read:

43800. As used in this article, "low-emission motor vehicle" means a motor vehicle which has been certified by the state board to meet all applicable emission standards and which meets at least one of the following additional requirements:

(a) Is capable of operating on methanol, as determined by the state board, and will have an adverse impact on ambient ozone air quality not greater than a vehicle which meets the requirements of subdivision (c).

(b) Is capable of operating on any available fuel other than gasoline or diesel and, in the determination of the state board, will have an adverse impact on ambient ozone air quality not greater than a vehicle operating on methanol.

(c) Operates exclusively on gasoline and is certified to meet a hydrocarbon exhaust emission standard which is at least twice as stringent as otherwise applicable to gasoline vehicles of the same year and class.

(d) Is capable, in the case of a heavy-duty diesel vehicle, of meeting standards for either oxides of nitrogen or particulate matter that are twice as stringent as otherwise applicable.

(e) Has been modified from its configuration, as originally certified by the state board, by the use of an emissions retrofit device approved for use on the vehicle, and which reduces the combined emissions of ozone precursor chemicals from the vehicle by at least 30 percent.

(f) This section shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this subdivision, and on the January 1 following that date is repealed.

SEC. 16.5. Section 43800 is added to the Health and Safety Code, to read:

43800. As used in this article, "low-emission motor vehicle" means a motor vehicle which has been certified by the state board to meet all applicable emission standards and which meets at least one of the following additional requirements:

(a) Is capable of operating on methanol, as determined by the state board, and will have an adverse impact on ambient ozone air quality not greater than a vehicle which meets the requirements of subdivision (c).

(b) Is capable of operating on any available fuel other than gasoline or diesel and, in the determination of the state board, will have an adverse impact on ambient ozone air quality not greater than a vehicle operating on methanol.

(c) Operates exclusively on gasoline and is certified to meet a hydrocarbon exhaust emission standard which is at least twice as stringent as otherwise applicable to gasoline vehicles of the same year and class.

(d) Is capable, in the case of a heavy-duty diesel vehicle, of meeting standards for either oxides of nitrogen or particulate matter

that are twice as stringent as otherwise applicable.

(e) This section shall become operative five years from the date determined pursuant to Section 32 of the act adding this section.

SEC. 17. Section 44001 of the Health and Safety Code is amended to read:

44001. (a) The Legislature hereby finds and declares that California has been required, by the amendments enacted to the Clean Air Act in 1990, and by regulations adopted by the Environmental Protection Agency, to enhance California's existing vehicle inspection and maintenance program to meet new, more stringent emission reduction targets. Therefore, the Legislature declares that the 1994 amendments to this chapter are adopted to implement further improvements in the existing inspection and maintenance program so that California will meet or exceed the new emission reduction targets.

(b) The Legislature further finds and declares all of the following:

(1) California is recognized as a leader in establishing performance standards for its air quality programs and those standards have been adopted by many other states and countries.

(2) Studies show that a minority of motor vehicles produce a disproportionate amount of the pollution caused by vehicle emissions. Those vehicles are referred to as gross polluters.

(3) The concept of periodic testing alone does not act as a sufficient deterrent to tampering, or as a sufficient incentive for vigilant vehicle maintenance by a significant percentage of motorists. Gross polluters continue to be driven on the roadways of California.

(4) New technology, known as remote sensing, offers great promise as a cost-effective means to detect vehicles emitting excess emissions as the vehicles are being driven. This type of detection offers many valuable applications, especially its use between scheduled tests, as an inexpensive, random, and pervasive means of identifying vehicles which are gross polluters and targeting those vehicles for repair or other methods of emission reduction.

(5) California continues to seek strict adherence to federal and state performance standards and to results-based evaluations that meet the state's unique circumstances, and which consist of all of the following:

(A) Acceptance of the shared obligation and personal responsibility required to successfully inspect and maintain millions of motor vehicles. Specifically, that obligation begins with this chapter, and extends through those regulators charged with its implementation and enforcement. Through the enactment of the 1994 amendments to this chapter, the Legislature hereby recognizes and seeks to encourage, through a number of innovative and significant steps, the critical role that each California motorist must play in maintaining his or her vehicle's emission control systems in proper working order, in such a way as to continuously meet mandated emission control standards and ensure for California the

clean air essential to the health of its citizens, its communities, and its economy.

(B) A focus on the detection, diagnosis, and repair of broken, tampered, or malfunctioning vehicle emission control systems.

(C) Flexibility to incorporate future new scientific findings and technological advances.

(D) Consideration of convenience and costs to those who are required to participate, including motorists, smog check stations, and technicians.

(E) An enforcement program which is vigorous and effective and includes monitoring of the performance of the smog check test or repair stations and technicians, as well as the monitoring of vehicle emissions as vehicles are being driven.

(c) The Legislature further finds and declares that California is, as of the effective date of this section, implementing a number of motor vehicle emission reduction strategies far beyond the effort undertaken by any other state, including all of the following:

(1) California certification standards exceed those of the other 49 states, increasing the cost of a new car to a California consumer by one hundred fifty dollars (\$150) or more.

(2) State board regulations mandate increasing availability for sale of low-emission, ultra-low emission, and zero-emission vehicles, including, by 1998, 2 percent; by 2001, 5 percent; and, by 2003, 10 percent zero-emission vehicles.

(3) Effective in 1996, state board regulations mandate the reformulation of gasoline for reduced emissions, at an estimated increased cost to the consumer of 12 to 17 cents per gallon due to refinery modifications and higher production costs.

(4) Cleaner diesel fuel regulations, more stringent than federal standards, took effect in California in October 1993, increasing diesel fuel costs by 4 to 6 cents per gallon.

(5) California law provides for vehicle registration surcharges of up to four dollars (\$4) per vehicle in nonattainment areas for air quality related projects.

(6) California law taxes cleaner fuels at one-half the rate of gasoline and diesel fuel.

(7) California law provides tax credits for the purchase of low-emission vehicles.

(8) California requires smog checks and repairs whenever a vehicle changes ownership, some 3 million vehicles annually, in addition to the regular biennial tests.

(9) Low-value vehicles are discouraged from entering California due to the imposition of a three hundred dollar (\$300) smog impact fee on vehicles that are not manufactured to California certification standards.

(10) California imposes sales taxes on motor vehicle fuels and dedicates most of those revenues to mass transit. This increases the cost of fuels by seven cents (\$.07) per gallon.

(11) Transportation sales taxes in most urban counties also

generate substantial funding for transit and other congestion-reduction measures, costing the average urban California resident fifty dollars (\$50) to one hundred dollars (\$100) annually, which would be the equivalent of another 8 to 16 cents per gallon of fuel.

(12) California provides information on vehicle pollution levels to vehicle operators and purchasers, and, in an area subject to the pilot program established pursuant to subdivision (b) of Section 43705, requires annual rather than biennial smog checks for high-emission vehicles that are used extensively.

(d) This section shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this subdivision, and on the January 1 following that date is repealed.

SEC. 17.5. Section 44001 is added to the Health and Safety Code, to read:

44001. (a) The Legislature hereby finds and declares that California has been required, by the amendments enacted to the Clean Air Act in 1990, and by regulations adopted by the Environmental Protection Agency, to enhance California's existing vehicle inspection and maintenance program to meet new, more stringent emission reduction targets. Therefore, the Legislature declares that the 1994 amendments to this chapter are adopted to implement further improvements in the existing inspection and maintenance program so that California will meet or exceed the new emission reduction targets.

(b) The Legislature further finds and declares all of the following:

(1) California is recognized as a leader in establishing performance standards for its air quality programs and those standards have been adopted by many other states and countries.

(2) Studies show that a minority of motor vehicles produce a disproportionate amount of the pollution caused by vehicle emissions. Those vehicles are referred to as gross polluters.

(3) The concept of periodic testing alone does not act as a sufficient deterrent to tampering, or as a sufficient incentive for vigilant vehicle maintenance by a significant percentage of motorists. Gross polluters continue to be driven on the roadways of California.

(4) New technology, known as remote sensing, offers great promise as a cost-effective means to detect vehicles emitting excess emissions as the vehicles are being driven. This type of detection offers many valuable applications, especially its use between scheduled tests, as an inexpensive, random, and pervasive means of identifying vehicles which are gross polluters and targeting those vehicles for repair or other methods of emission reduction.

(5) California continues to seek strict adherence to federal and state performance standards and to results-based evaluations that meet the state's unique circumstances, and which consist of all of the following:

(A) Acceptance of the shared obligation and personal

responsibility required to successfully inspect and maintain millions of motor vehicles. Specifically, that obligation begins with this chapter, and extends through those regulators charged with its implementation and enforcement. Through the enactment of the 1994 amendments to this chapter, the Legislature hereby recognizes and seeks to encourage, through a number of innovative and significant steps, the critical role that each California motorist must play in maintaining his or her vehicle's emission control systems in proper working order, in such a way as to continuously meet mandated emission control standards and ensure for California the clean air essential to the health of its citizens, its communities, and its economy.

(B) A focus on the detection, diagnosis, and repair of broken, tampered, or malfunctioning vehicle emission control systems.

(C) Flexibility to incorporate future new scientific findings and technological advances.

(D) Consideration of convenience and costs to those who are required to participate, including motorists, smog check stations, and technicians.

(E) An enforcement program which is vigorous and effective and includes monitoring of the performance of the smog check test or repair stations and technicians, as well as the monitoring of vehicle emissions as vehicles are being driven.

(c) The Legislature further finds and declares that California is, as of the effective date of this section, implementing a number of motor vehicle emission reduction strategies far beyond the effort undertaken by any other state, including all of the following:

(1) California certification standards exceed those of the other 49 states, increasing the cost of a new car to a California consumer by one hundred fifty dollars (\$150) or more.

(2) State board regulations mandate increasing availability for sale of low-emission, ultra-low emission, and zero-emission vehicles, including, by 1998, 2 percent; by 2001, 5 percent; and, by 2003, 10 percent zero-emission vehicles.

(3) Effective in 1996, state board regulations mandate the reformulation of gasoline for reduced emissions, at an estimated increased cost to the consumer of 12 to 17 cents per gallon due to refinery modifications and higher production costs.

(4) Cleaner diesel fuel regulations, more stringent than federal standards, took effect in California in October 1993, increasing diesel fuel costs by 4 to 6 cents per gallon.

(5) California law provides for vehicle registration surcharges of up to four dollars (\$4) per vehicle in nonattainment areas for air quality related projects.

(6) California law taxes cleaner fuels at one-half the rate of gasoline and diesel fuel.

(7) California law provides tax credits for the purchase of low-emission vehicles.

(8) California requires smog checks and repairs whenever a

vehicle changes ownership, some 3 million vehicles annually, in addition to the regular biennial tests.

(9) Low-value vehicles are discouraged from entering California due to the imposition of a three hundred dollar (\$300) smog impact fee on vehicles that are not manufactured to California certification standards.

(10) California imposes sales taxes on motor vehicle fuels and dedicates most of those revenues to mass transit. This increases the cost of fuels by seven cents (\$.07) per gallon.

(11) Transportation sales taxes in most urban counties also generate substantial funding for transit and other congestion-reduction measures, costing the average urban California resident fifty dollars (\$50) to one hundred dollars (\$100) annually, which would be the equivalent of another 8 to 16 cents per gallon of fuel.

(d) This section shall become operative five years from the date determined pursuant to Section 32 of the act adding this section.

SEC. 18. Section 44001.6 is added to the Health and Safety Code, to read:

44001.6. (a) The bureau shall develop a program for the visual confirmation of motor vehicle odometer operation at smog check stations when loaded mode testing is performed, and for recording any failed tests in the data base established pursuant to Section 44037.1. This program shall require odometer operation to be confirmed only for vehicles registered in San Diego or Ventura County and that are constructed in such a manner as to allow visual confirmation during smog testing. No other odometer inspection shall be required. Smog check stations that follow the program specified by the bureau shall not be liable for any fines, penalties, or license sanctions for any failure to detect odometer tampering or alteration.

(b) This section shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this section, and on the January 1 following that date is repealed.

SEC. 19. Section 44001.7 is added to the Health and Safety Code, to read:

44001.7. (a) The bureau shall notify smog check stations in the San Diego County Air Pollution Control District and the Ventura County Air Pollution Control District of the target pollution miles for each motor vehicle in the district in which the smog check station is located, and shall provide information to allow each smog check station to determine whether each motor vehicle presented for smog check at the smog check station has exceeded the applicable target pollution miles.

(b) This section shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this section, and on the January 1 following that date is repealed.

SEC. 20. Section 44011 of the Health and Safety Code is amended to read:

44011. (a) Except for the motor vehicles specified in subdivision (c), any motor vehicle powered by an internal combustion engine which is registered within an area designated for program coverage within the San Diego County Air Pollution Control District or the Ventura County Air Pollution Control District, which has been operated in excess of the applicable target pollution miles for that vehicle, shall be required annually to obtain a certificate of compliance or noncompliance.

(b) Except for the motor vehicles specified in subdivision (c), all other motor vehicles powered by internal combustion engines which are registered within an area designated for program coverage shall be required biennially to obtain a certificate of compliance or noncompliance.

(c) The following motor vehicles are not required to obtain a certificate of compliance or noncompliance:

(1) Every motorcycle, and every diesel-powered vehicle, until the department, pursuant to Section 44012, implements test procedures applicable to motorcycles or to diesel-powered vehicles, or both.

(2) Any motor vehicle which has been issued a certificate of compliance or noncompliance or an emission cost waiver upon a change of ownership or initial registration in this state during the preceding six months, or which has been issued a certificate of exemption pursuant to Section 4000.6 of the Vehicle Code.

(3) Any motor vehicle manufactured prior to the 1966 model-year.

(4) Any other motor vehicle which the department determines would present prohibitive inspection or repair problems.

(5) Any vehicle registered to the owner of a fleet licensed pursuant to Section 44020 if the vehicle is garaged exclusively outside the area included in program coverage, and is not primarily operated inside the area included in program coverage.

(d) Vehicles that are designated for program coverage in enhanced areas shall be required to obtain inspections from appropriate smog check stations operating in enhanced areas.

(e) This section shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this subdivision, and on the January 1 following that date is repealed.

SEC. 20.5. Section 44011 is added to the Health and Safety Code, to read:

44011. (a) All motor vehicles powered by internal combustion engines which are registered within an area designated for program coverage shall be required biennially to obtain a certificate of compliance or noncompliance, except for all of the following:

(1) Every motorcycle, and every diesel-powered vehicle, until the department, pursuant to Section 44012, implements test procedures applicable to motorcycles or to diesel-powered vehicles, or both.

(2) Any motor vehicle which has been issued a certificate of compliance or noncompliance or an emission cost waiver upon a change of ownership or initial registration in this state during the

preceding six months, or which has been issued a certificate of exemption pursuant to Section 4000.6 of the Vehicle Code.

(3) Any motor vehicle manufactured prior to the 1966 model-year.

(4) Any other motor vehicle which the department determines would present prohibitive inspection or repair problems.

(5) Any vehicle registered to the owner of a fleet licensed pursuant to Section 44020 if the vehicle is garaged exclusively outside the area included in program coverage, and is not primarily operated inside the area included in program coverage.

(b) Vehicles designated for program coverage in enhanced areas shall be required to obtain inspections from appropriate smog check stations operating in enhanced areas.

(c) This section shall become operative five years from the date determined pursuant to Section 32 of the act adding this section.

SEC. 21. Section 44012 of the Health and Safety Code is amended to read:

44012. (a) The test at the smog check stations shall be performed in accordance with procedures prescribed by the department, pursuant to Section 44013, shall require, at a minimum, loaded mode dynamometer testing in enhanced program areas, and two-speed testing in all other program areas, and shall ensure all of the following:

(1) Emission control systems required by state and federal law are reducing excess emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of Section 44013.

(2) Motor vehicles are preconditioned to ensure representative and stabilized operation of the vehicle's emission control system.

(3) For other than diesel-powered vehicles, the vehicle's exhaust emissions of hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle mode or loaded mode are tested in accordance with procedures prescribed by the department. In determining how loaded mode and evaporative emissions testing shall be conducted, the department shall ensure that the emission reduction targets for the enhanced program are met.

(4) For other than diesel-powered vehicles, the vehicle's fuel evaporative system and crankcase ventilation system are tested to reduce any nonexhaust sources of volatile organic compound emissions, in accordance with procedures prescribed by the department.

(5) For diesel-powered vehicles, if the department determines that the inclusion of those vehicles is technologically and economically feasible, a visual inspection is made of emission control devices and the vehicle's exhaust emissions in an idle mode or loaded mode are tested in accordance with procedures prescribed by the department. The test may include testing of emissions of any or all of the pollutants specified in paragraph (3) and, upon the adoption of applicable standards, measurement of emissions of smoke or particulates, or both.

(6) A visual or functional check is made of emission control devices specified by the department, including the catalytic converter in those instances in which the department determines it to be necessary to meet the findings of Section 44001. The visual or functional check shall be performed in accordance with procedures prescribed by the department.

(7) A determination is made as to whether the motor vehicle complies with the emission standards for that vehicle's class and model-year as prescribed by the department.

(8) A determination is made, in the San Diego County Air Pollution Control District and Ventura County Air Pollution Control District regions based on procedures specified by the bureau pursuant to Section 44001.6, that the odometer of the vehicle is functioning.

(9) A determination is made, in the San Diego County Air Pollution Control District and Ventura County Air Pollution Control District regions, that a vehicle registered and regularly operated in an ozone nonattainment area has or has not been operated for more than the applicable target pollution miles.

(b) The test procedures may authorize smog check stations to refuse the testing of a vehicle that would be unsafe to test, or that cannot physically be inspected, as specified by the department by regulation. The refusal to test a vehicle for those reasons shall not excuse or exempt the vehicle from compliance with all applicable requirements of this chapter.

(c) This section shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this subdivision, and on the January 1 following that date is repealed.

SEC. 21.5. Section 44012 is added to the Health and Safety Code, to read:

44012. (a) The test at the smog check stations shall be performed in accordance with procedures prescribed by the department, pursuant to Section 44013, shall require, at a minimum, loaded mode dynamometer testing in enhanced areas, and two-speed testing in all other program areas, and shall ensure all of the following:

(1) Emission control systems required by state and federal law are reducing excess emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of Section 44013.

(2) Motor vehicles are preconditioned to ensure representative and stabilized operation of the vehicle's emission control system.

(3) For other than diesel-powered vehicles, the vehicle's exhaust emissions of hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle mode or loaded mode are tested in accordance with procedures prescribed by the department. In determining how loaded mode and evaporative emissions testing shall be conducted, the department shall ensure that the emission reduction targets for the enhanced program are met.

(4) For other than diesel-powered vehicles, the vehicle's fuel evaporative system and crankcase ventilation system are tested to

reduce any nonexhaust sources of volatile organic compound emissions, in accordance with procedures prescribed by the department.

(5) For diesel-powered vehicles, if the department determines that the inclusion of those vehicles is technologically and economically feasible, a visual inspection is made of emission control devices and the vehicle's exhaust emissions in an idle mode or loaded mode are tested in accordance with procedures prescribed by the department. The test may include testing of emissions of any or all of the pollutants specified in paragraph (3) and, upon the adoption of applicable standards, measurement of emissions of smoke or particulates, or both.

(6) A visual or functional check is made of emission control devices specified by the department, including the catalytic converter in those instances in which the department determines it to be necessary to meet the findings of Section 44001. The visual or functional check shall be performed in accordance with procedures prescribed by the department.

(7) A determination as to whether the motor vehicle complies with the emission standards for that vehicle's class and model-year as prescribed by the department.

(8) The test procedures may authorize smog check stations to refuse the testing of a vehicle that would be unsafe to test, or that cannot physically be inspected, as specified by the department by regulation. The refusal to test a vehicle for those reasons shall not excuse or exempt the vehicle from compliance with all applicable requirements of this chapter.

(b) This section shall become operative five years from the date determined pursuant to Section 32 of the act adding this section.

SEC. 22. Section 44013 of the Health and Safety Code is amended to read:

44013. (a) (1) The department, in cooperation with the state board, shall prescribe maximum emission standards to be applied in inspecting motor vehicles under this chapter.

(2) In prescribing the standards, the department shall undertake studies and experiments which are necessary and feasible, evaluate available data, and confer with automotive engineers.

(3) The standards shall be set at a level reasonably achievable for each class and model of motor vehicle when operating in a reasonably sound mechanical condition, allowing for the effects of installed motor vehicle pollution control devices and the motor vehicle's age and total mileage.

(4) The standards shall be designed so that motor vehicles failing the test specified in Section 44012 will be operated, as soon as possible, with a substantial reduction in emissions, and shall be revised from time to time as experience justifies.

(b) The department, in cooperation with the state board, shall research and prescribe test procedures to be applied in inspecting motor vehicles under this chapter, which procedures shall be simple,

cost-effective, and consistent with Section 44012. The department may revise the test procedures from time to time as experience justifies. To the extent that any test procedure revision requires new equipment, or a change in equipment, at licensed smog check stations, the department shall provide a reasonable period of time for the acquisition and installation of that new or changed equipment.

(c) Notwithstanding any other provision of this chapter, the maximum emission standards and test procedures prescribed in subdivisions (a) and (b) for a motor vehicle class and model-year shall not be more stringent than the emission standards and test procedures under which that motor vehicle's class and model-year was certified. Emission standards and test procedures prescribed by the department shall ensure that not more than 5 percent of the vehicles or engines, which would otherwise meet the requirements of this part, will fail the inspection and maintenance test for that class of vehicle or engine.

(d) Maximum emission standards established under this section shall not be adjusted downward based on the installation of an exhaust device.

(e) This section shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this subdivision, and on the January 1 following that date is repealed.

SEC. 22.5. Section 44013 is added to the Health and Safety Code, to read:

44013. (a) (1) The department, in cooperation with the state board, shall prescribe maximum emission standards to be applied in inspecting motor vehicles under this chapter.

(2) In prescribing the standards, the department shall undertake studies and experiments which are necessary and feasible, evaluate available data, and confer with automotive engineers.

(3) The standards shall be set at a level reasonably achievable for each class and model of motor vehicle when operating in a reasonably sound mechanical condition, allowing for the effects of installed motor vehicle pollution control devices and the motor vehicle's age and total mileage.

(4) The standards shall be designed so that motor vehicles failing the test specified in Section 44012 will be operated, as soon as possible, with a substantial reduction in emissions, and shall be revised from time to time as experience justifies.

(b) The department, in cooperation with the state board, shall research and prescribe test procedures to be applied in inspecting motor vehicles under this chapter, which procedures shall be simple, cost-effective, and consistent with Section 44012. The department may revise the test procedures from time to time as experience justifies. To the extent that any test procedure revision requires new equipment, or a change in equipment, at licensed smog check stations, the department shall provide a reasonable period of time for the acquisition and installation of that new or changed equipment.

(c) Notwithstanding any other provision of this chapter, the

maximum emission standards and test procedures prescribed in subdivisions (a) and (b) for a motor vehicle class and model-year shall not be more stringent than the emission standards and test procedures under which that motor vehicle's class and model-year was certified. Emission standards and test procedures prescribed by the department shall ensure that not more than 5 percent of the vehicles or engines, which would otherwise meet the requirements of this part, will fail the inspection and maintenance test for that class of vehicle or engine.

(d) This section shall become operative five years from the date determined pursuant to Section 32 of the act adding this section.

SEC. 23. Section 44013.5 is added to the Health and Safety Code, to read:

44013.5. (a) If the department, in consultation with the state board, determines that substantial demand for emission retrofit devices exists, the department shall develop a program for the certification of emissions retrofit device installations by licensed installers. The department may require installers of emissions retrofit devices to be qualified pursuant to this chapter. The department may assess biennial license fees upon those installers in an amount not to exceed the reasonable cost of administering the emissions retrofit device certification program.

(b) The certification shall be performed at a referee or test-only station and shall be based on a visual inspection of the emissions retrofit device and its installation, and verification of the proper operation of any new or modified components that are a part of the emissions retrofit device, and not on the results of an emissions test.

(c) The department shall develop a program for the identification of retrofitted vehicles at smog check stations and for providing information required for the inspection of those systems to smog check stations.

(d) No emissions retrofit device shall be required to be installed on a motor vehicle registered in the San Diego County Air Pollution Control District or the Ventura County Air Pollution Control District unless more than one manufacturer is producing the device.

(e) This section shall become inoperative pursuant to Section 33 of the act adding this section or, in any case, five years from the date determined pursuant to Section 32 of the act adding this section, and on the January 1 following the date upon which this section becomes inoperative, is repealed.

SEC. 24. Section 44015 of the Health and Safety Code is amended to read:

44015. (a) A licensed smog check station shall not issue a certificate of compliance, except as authorized by this chapter, to any vehicle which meets the following criteria:

- (1) A vehicle that has been tampered with.
- (2) A vehicle that, prior to repairs, has been identified by the smog check station as a gross polluter.
- (3) A vehicle that has been identified through roadside auditing

as a gross polluter pursuant to Sections 44081 and 44081.6.

(4) A vehicle described in subdivision (c).

(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

(c) A certificate of compliance shall be issued by a test-only facility authorized to perform referee functions for a vehicle which has been properly tested but does not meet the applicable emission standards when it is determined that no adjustment or repair can be made that will reduce emissions from the inspected motor vehicle without exceeding the applicable cost limit established under Section 44017 and that every defect specified by paragraph (2) of subdivision (a) of Section 43204, and by paragraphs (2) and (3) of subdivision (a) of Section 43205, has been corrected. A certificate issued pursuant to this subdivision shall be deemed an emission cost waiver. No emission cost waiver shall be issued until there has been an actual expenditure by the vehicle owner of an amount at least equal to the applicable repair cost limit specified in Section 44017. No emission cost waiver shall be issued under any of the following circumstances:

(1) If a vehicle was issued an emission cost waiver in the previous biennial inspection of that vehicle.

(2) If a vehicle is designated as a gross polluter pursuant to this chapter, except as otherwise provided in this subdivision or Section 44017.

(3) Upon initial registration of all of the following: a direct import vehicle, a vehicle previously registered outside this state, a dismantled vehicle pursuant to Section 11519 of the Vehicle Code, a vehicle that has had an engine change, an alternate fuel vehicle, and a specially constructed vehicle.

(4) To a motor vehicle registered in the San Diego County Air Pollution Control District or the Ventura County Air Pollution Control District that has been operated in excess of the applicable target pollution miles for that vehicle.

(d) A certificate of compliance or noncompliance shall be valid for 90 days.

(e) A test may be made at any time within 90 days prior to the date otherwise required.

(f) (1) The certificate of compliance or the certificate of noncompliance shall indicate the odometer reading for the vehicle, or an alternative and higher mileage figure certified by the owner to be accurate pursuant to paragraph (2).

(2) The vehicle owner or operator shall sign a statement appearing on the vehicle inspection report certifying the true mileage of the vehicle to the best of the owner's or operator's knowledge.

(3) If a motor vehicle registered in the San Diego County Air Pollution Control District or the Ventura County Air Pollution Control District, other than an authorized emergency vehicle, as

defined in Section 165 of the Vehicle Code, or an employer-provided carpool or vanpool vehicle, meets the requirements of Section 44012, but has been operated for more than the applicable target pollution miles since its last smog check or fails the visual odometer check specified in Section 44001.6 and paragraph (8) of subdivision (a) of Section 44012, the smog check station shall issue a qualified certificate of compliance or a certificate of noncompliance indicating that the vehicle shall be presented for a smog check at a test-only station or a test and repair station located within the appropriate district after one year rather than in two years.

(4) On and after February 1, 1995, or on and after the date determined pursuant to Section 32 of the act adding this paragraph, whichever is later, the smog check stations in the San Diego County Air Pollution Control District and the Ventura County Air Pollution Control District shall report electronically to the Department of Motor Vehicles centralized data base established pursuant to Section 44037.1 the odometer reading for the tested motor vehicle, whether or not the vehicle has met the requirements of Section 44012, and whether the vehicle has been operated for more than the applicable target pollution miles.

(5) If the determination is made that the vehicle has been operated in excess of the applicable target pollution miles, the vehicle inspection report shall contain a message informing the owner that the mileage limit set by the appropriate district has been exceeded and annual smog inspections are now required.

(g) This section shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this subdivision, and on the January 1 following that date is repealed.

SEC. 24.5. Section 44015 is added to the Health and Safety Code, to read:

44015. (a) A licensed smog check station shall not issue a certificate of compliance, except as authorized by this chapter, to any vehicle which meets the following criteria:

(1) A vehicle that has been tampered with.

(2) A vehicle that, prior to repairs, has been identified by the smog check station as a gross polluter.

(3) A vehicle that has been identified through roadside auditing as a gross polluter pursuant to Sections 44081 and 44081.6.

(4) A vehicle described in subdivision (c).

(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

(c) A certificate of compliance shall be issued by a test-only facility authorized to perform referee functions for a vehicle which has been properly tested but does not meet the applicable emission standards when it is determined that no adjustment or repair can be made that will reduce emissions from the inspected motor vehicle without exceeding the applicable cost limit established under Section 44017 and that every defect specified by paragraph (2) of

subdivision (a) of Section 43204, and by paragraphs (2) and (3) of subdivision (a) of Section 43205, has been corrected. A certificate issued pursuant to this subdivision shall be deemed an emission cost waiver. No emission cost waiver shall be issued until there has been an actual expenditure by the vehicle owner of an amount at least equal to the applicable repair cost limit specified in Section 44017. No emission cost waiver shall be issued under any of the following circumstances:

(1) If a vehicle was issued an emission cost waiver in the previous biennial inspection of that vehicle.

(2) If a vehicle is designated as a gross polluter pursuant to this chapter, except as otherwise provided in this subdivision or Section 44017.

(3) Upon initial registration of all of the following: a direct import vehicle, a vehicle previously registered outside this state, a dismantled vehicle pursuant to Section 11519 of the Vehicle Code, a vehicle that has had an engine change, an alternate fuel vehicle, and a specially constructed vehicle.

(d) A certificate of compliance or noncompliance shall be valid for 90 days.

(e) A test may be made at any time within 90 days prior to the date otherwise required.

(f) This section shall become operative five years from the date determined pursuant to Section 32 of the act adding this section.

SEC. 25. Section 44037.1 of the Health and Safety Code is amended to read:

44037.1. (a) On or before January 1, 1995, the department shall design and establish the equipment necessary to operate a centralized computer data base and computer network which is readily accessible by all licensed smog check technicians on a real time basis.

(b) The centralized computer data base and network shall be designed with all of the following capabilities:

(1) To provide smog check technicians with immediate access to vehicle-specific information regarding the location of all emission control equipment, pattern failure data, and other vehicle-specific technical information relevant to the efficient identification, diagnosis, and repair of emission problems.

(2) To provide smog check technicians and the department with information as to the date and result of prior smog check tests performed on each vehicle in order to discourage vehicle owners from shopping for certificates of compliance and to permit the department to identify smog check stations for further investigation as potential violators of this chapter.

(3) To provide the department with data on the failure rates and repair effectiveness for vehicles of each make and model-year on a statewide basis, and by smog check station and technician, to facilitate identification of smog check stations and technicians as potential violators of this chapter.

(4) Upon a determination that a smog check station or technician has engaged in a pattern of violating this chapter, or that a vehicle failed one or more emissions tests before obtaining a certificate of compliance, to provide the information necessary to identify and contact vehicle owners who obtained certificates from the station or technician, or may have obtained certificates of compliance in violation of this chapter, for purposes of requiring the retesting of their vehicles.

(5) To be compatible with the eventual transition to a fully computerized smog certification program that will not require the use of printed certificates as evidence of compliance.

(6) To be compatible with bar code scanning of vehicles as provided in Section 44041.

(7) To permit ongoing entry of information from each smog check station into the centralized data base to enlarge and improve the data base on a continuous basis.

(8) To be compatible with the department's recordkeeping and compilation requirements established by Section 44037.

(9) To meet the needs of a remote-sensing program to identify gross polluters, as specified by the department.

(10) To be compatible with a pilot program of annual smog checks for vehicles that exceed target pollution miles.

(11) To permit entry of data on odometer readings during smog checks.

(12) To meet any other needs specified by the department to enhance the benefits of the program through the storage of vehicle-specific information, such as that pertaining to scrap programs and to the referee station program.

(c) After January 1, 1995, each smog check station shall transmit vehicle data emission test results to the department's centralized data base. Each smog check station shall also transmit vehicle data and emission measurements made before and after repair. The department shall establish, by regulation, the form, manner, and frequency of the data transmittals.

(d) The department may enter into a contract for the design, establishment, or both, of the equipment required by subdivision (a). Any contract entered into pursuant to this subdivision shall not be subject to any restrictions that are applicable to contracts in the Government Code or in the Public Contract Code. The department shall report to the Legislature any action that is taken in accordance with this subdivision.

(e) This section shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this subdivision, and on the January 1 following that date is repealed.

SEC. 25.5. Section 44037.1 is added to the Health and Safety Code, to read:

44037.1. (a) On or before January 1, 1995, the department shall design and establish the equipment necessary to operate a centralized computer data base and computer network which is

readily accessible by all licensed smog check technicians on a real time basis.

(b) The centralized computer data base and network shall be designed with all of the following capabilities:

(1) To provide smog check technicians with immediate access to vehicle-specific information regarding the location of all emission control equipment, pattern failure data, and other vehicle-specific technical information relevant to the efficient identification, diagnosis, and repair of emission problems.

(2) To provide smog check technicians and the department with information as to the date and result of prior smog check tests performed on each vehicle in order to discourage vehicle owners from shopping for certificates of compliance and to permit the department to identify smog check stations for further investigation as potential violators of this chapter.

(3) To provide the department with data on the failure rates and repair effectiveness for vehicles of each make and model-year on a statewide basis, and by smog check station and technician, to facilitate identification of smog check stations and technicians as potential violators of this chapter.

(4) Upon a determination that a smog check station or technician has engaged in a pattern of violating this chapter, or that a vehicle failed one or more emissions tests before obtaining a certificate of compliance, to provide the information necessary to identify and contact vehicle owners who obtained certificates from the station or technician, or may have obtained certificates of compliance in violation of this chapter, for purposes of requiring the retesting of their vehicles.

(5) To be compatible with the eventual transition to a fully computerized smog certification program that will not require the use of printed certificates as evidence of compliance.

(6) To be compatible with bar code scanning of vehicles as provided in Section 44041.

(7) To permit ongoing entry of information from each smog check station into the centralized data base to enlarge and improve the data base on a continuous basis.

(8) To be compatible with the department's recordkeeping and compilation requirements established by Section 44037.

(9) To meet the needs of a remote-sensing program to identify gross polluters, as specified by the department.

(10) To meet any other needs specified by the department to enhance the benefits of the program through the storage of vehicle-specific information, such as that pertaining to scrap programs and to the referee station program.

(c) After January 1, 1995, each smog check station shall transmit vehicle data emission test results to the department's centralized data base. Each smog check station shall also transmit vehicle data and emission measurements made before and after repair. The department shall establish, by regulation, the form, manner, and

frequency of the data transmittals.

(d) This section shall become operative five years from the date determined pursuant to Section 32 of the act adding this section.

SEC. 26. Section 44062.1 of the Health and Safety Code is amended to read:

44062.1. (a) The department shall develop and implement a repair subsidy program not later than January 1, 1996.

(b) The department shall develop and implement a vehicle retrofit subsidy program not later than one year from the operative date specified in Section 32 of the act adding this subdivision.

(c) This section shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this subdivision, and on the January 1 following that date is repealed.

SEC. 27. Section 44062.1 is added to the Health and Safety Code, to read:

44062.1. (a) The department shall develop and implement a repair subsidy program not later than January 1, 1996.

(b) This section shall become operative five years from the date determined pursuant to Section 32 of the act adding this section.

SEC. 28. Section 44062.2 of the Health and Safety Code is amended to read:

44062.2. (a) The state board shall adopt, by regulation, procedures to establish an emissions credit exchange program whereby persons may contribute to the Vehicle Inspection, Repair, and Retrofit Fund, and receive equitable emission reduction credits for those contributions.

(b) Districts may establish procedures to generate marketable emission reduction credits from contributions toward the repair subsidy and vehicle retrofit subsidy program specified in Section 44062.1. Emission reduction credits generated pursuant to this subdivision may be used to meet or offset transportation control measure requirements, average vehicle ridership reductions, or other mobile source emission requirements, as determined by the district.

(c) In federal nonattainment areas, the credits established pursuant to subdivision (a) or (b) shall be allowed only for emission reductions that are in excess of the reasonable further progress goals established by Section 182 of the amendments enacted in 1990 to the Clean Air Act (P.L. 101-549), or in excess of alternative progress goals established in a state implementation plan pursuant to Section 182 of the Clean Air Act.

(d) This section shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this subdivision, and on the January 1 following that date is repealed.

SEC. 28.5. Section 44062.2 is added to the Health and Safety Code, to read:

44062.2. (a) The state board shall adopt, by regulation, procedures to establish an emissions credit exchange program whereby persons may contribute to the Vehicle Inspection and

Repair Fund, and receive equitable emission reduction credits for those contributions.

(b) Districts may establish procedures to generate marketable emission reduction credits from contributions toward the repair subsidy program specified in Section 44062.1. Emission reduction credits generated pursuant to this subdivision may be used to meet or offset transportation control measure requirements, average vehicle ridership reductions, or other mobile source emission requirements, as determined by the district.

(c) The credits established pursuant to subdivision (a) or (b) shall not be allowed until the emission reduction goals established by the amendments enacted in 1990 to the Clean Air Act (P.L. 101-549) have been achieved.

(d) This section shall become operative five years from the date determined pursuant to Section 32 of the act adding this section.

SEC. 29. Section 44225.1 is added to the Health and Safety Code, to read:

44225.1. (a) The San Diego County Air Pollution Control District and the Ventura County Air Pollution Control District may, upon a majority vote of the governing board of the district, increase the fee established under Section 44225 by one dollar (\$1) for the purpose of implementing the pilot program established pursuant to subdivision (b) of Section 43705 of the Legislature.

(b) This section shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this subdivision, and on the January 1 following that date is repealed.

SEC. 30. Section 44236.1 is added to the Health and Safety Code, to read:

44236.1. (a) The San Diego County Air Pollution Control District and the Ventura County Air Pollution Control District may use fees established under Section 44225.1 to enter into an agreement with any appropriate state agency for the purposes of implementing the pilot program established pursuant to subdivision (b) of Section 43705.

(b) This section shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this subdivision, and on the January 1 following that date is repealed.

SEC. 31. Chapter 8 (commencing with Section 44250) is added to Part 5 of Division 26 of the Health and Safety Code, to read:

CHAPTER 8. SMOG INDEX NUMBERS

44250. The Legislature hereby finds and declares as follows:

(a) Existing programs to ensure that new motor vehicles sold in California emit less pollution may not be adequate to allow attainment of ambient air quality standards. Continued use of older high-emission motor vehicles, inadequate vehicle maintenance practices, and increases in vehicle miles traveled may overwhelm the gains from more stringent standards for new motor vehicles, and

defeat state and local efforts to improve air quality.

(b) Substantial additional reductions in vehicle emissions can be achieved by retrofitting existing motor vehicles, enhancing vehicle maintenance practices, and installing additional pollution control equipment on new motor vehicles operated in nonattainment areas. Existing state programs are an impediment to the use of retrofits and additional equipment to reduce vehicle emissions and should be streamlined.

(c) Information on vehicle emissions should be provided to the driving public to encourage the manufacture and purchase of clean burning vehicles, to encourage retrofits of motor vehicles to reduce emissions, to encourage the application of enhanced motor vehicle maintenance practices on a routine basis, and to encourage reductions in vehicle miles traveled.

44251. (a) The state board shall specify smog index numbers for new light-duty passenger vehicles and light-duty trucks with a gross vehicle weight up to 6,000 pounds to be sold in California. That smog index shall be based on certification data quantifying tailpipe and evaporative emissions of ozone precursor chemicals for classes of vehicles.

(b) Smog index number 1.0 shall be assigned to a hypothetical light-duty passenger vehicle, a hypothetical light-duty truck with a gross vehicle weight of 3,750 pounds or less, and a hypothetical light-duty truck with a gross vehicle weight of greater than 3,750 pounds up to 6,000 pounds, emitting the maximum amount of pollution allowed for that class of vehicle certified for sale in this state as of the January 1 immediately preceding the operative date of this section. The state board shall determine the existing class or classes of vehicles to which the smog index shall be applied.

(c) Not later than 180 days from the operative date of this section, the state board, in consultation with the bureau, shall specify smog index numbers for existing light-duty passenger vehicles and light-duty trucks with a gross vehicle weight of up to 6,000 pounds registered in the San Diego County Air Pollution Control District and the Ventura County Air Pollution Control District, and all pre-1966 light-duty passenger vehicles and light-duty trucks with a gross vehicle weight of up to 6,000 pounds in use in California. Smog index numbers shall be based on the tailpipe and evaporative emissions levels to which the vehicle was certified for sale. No smog index shall be assigned to a pre-1966 vehicle for which certification was not required prior to its initial sale. Smog index assignments for motor vehicles in use shall be adjusted as provided in Section 44255.

44252. The state board, in consultation with the bureau, shall establish smog index numbers for classes or categories of vehicles that may be modified by the use of an emissions retrofit device.

44253. If the Environmental Protection Agency adopts a system that provides for the assignment of one or more index numbers to vehicles in a manner, and for purposes, similar to the smog index provided for in this chapter, the state board shall adopt the index

numbers assigned to vehicles by the Environmental Protection Agency as the smog index, but shall also specify a smog index consistent with the federal index system for any vehicle subject to this chapter for which the Environmental Protection Agency has not specified an index number.

44254. (a) The state board shall publish the smog index numbers in a form that is convenient for use by the Department of Motor Vehicles, the bureau, vehicle owners, manufacturers, dealers, and consumers shopping for a new or used motor vehicle of a particular type.

(b) The state board, in consultation with the Environmental Protection Agency, shall adopt regulations specifying a form of decal to be affixed by manufacturers to new motor vehicles pursuant to Section 43200.5 to inform purchasers of the smog index for the vehicle, a smog index chart listing vehicle model years and the corresponding smog index for that model year to be affixed by motor vehicles dealers to used motor vehicles pursuant to subdivision (c) of Section 43705, and information to inform purchasers of the significance of the smog index and smog index chart.

(c) The state board, in consultation with the Department of Motor Vehicles, shall specify a form of notice to be provided by the Department of Motor Vehicles to each owner of a motor vehicle registered in this state, informing the owner of the smog index for the vehicle and the significance of the smog index.

44255. (a) Not later than 180 days from the operative date of this section, in consultation with the state board, the Department of Motor Vehicles shall assign the appropriate smog index as determined under Section 44251 to each motor vehicle registered in the San Diego County Air Pollution Control District and the Ventura County Air Pollution Control District. Subdivisions (b) to (e), inclusive, shall apply only to vehicles registered in those districts.

(b) Upon receipt from a motor vehicle owner of a retrofit certification obtained pursuant to Section 44013.5, the bureau shall determine the revised smog index for that vehicle. The bureau shall notify the Department of Motor Vehicles bureau of that revised smog index, and the bureau shall update its records to reflect that change.

(c) Upon receipt from a smog check station of an in-use emissions evaluation pursuant to subdivision (c) of Section 43646, the bureau shall adjust the smog index assigned to that vehicle by a percentage that is approximately equal to the percentage exceedance stated in the evaluation, and shall notify the Department of Motor Vehicles of the revised smog index for the vehicle, and the bureau shall update its records to reflect the revised smog index.

(d) The bureau shall maintain records of assigned smog index numbers for each motor vehicle.

(e) Registration renewal information sent by the Department of Motor Vehicles to the owner of a motor vehicle, which is issued a restricted one year certificate of compliance or certificate of

noncompliance pursuant to subdivision (c) of Section 44015, shall specify that a smog check is required before the registration can be renewed.

44256. (a) The San Diego County Air Pollution Control District and the Ventura County Air Pollution Control District may receive donations or contributions to implement the pilot program established pursuant to subdivision (b) of Section 43705.

(b) Each district, after consultation with the state board, shall determine the emission reductions that will be achieved by expansion or enhancement of that program.

(c) Any stationary source providing the additional funding shall receive bankable and tradeable emission reduction credits, with an appropriate lifetime, for a portion of the incremental emission reduction from the program, with the proportion of the reduction credited to the stationary source to be determined by agreement between the stationary source and the district before the stationary source provides the supplemental funds.

(d) Any emission reductions not credited to the stationary source may be used to fund a community offset bank or to make progress toward attainment, at the discretion of the district.

44257. This chapter shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this chapter, and on the January 1 following that date is repealed.

SEC. 31.1. Section 1667 is added to the Vehicle Code, to read:

1667. (a) As part of its motor vehicle registration and registration renewal process, other than upon the initial registration of a new motor vehicle, the department shall inform motor vehicle owners of the vehicle smog indexing program. That notice shall be in the form developed by the State Air Resources Board in consultation with the department pursuant to subdivision (c) of Section 44254 of the Health and Safety Code.

(b) This section shall become inoperative five years from the date determined pursuant to Section 32 of the act adding this section, and on the January 1 following that date is repealed.

SEC. 31.2. (a) No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

(b) No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution to the extent that the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

(c) Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant

to the California Constitution.

SEC. 32. (a) This act, except Section 29, shall not become operative until both of the following occur:

(1) The system required by subdivision (b) of Section 44060 of the Health and Safety Code for the electronic filing of certificates of compliance or noncompliance is determined to be operational by the Department of Consumer Affairs and that fact is reported by the department to the Secretary of State.

(2) The San Diego County Air Pollution Control District and the Ventura County Air Pollution Control District have sufficient funds available to implement the pilot program established pursuant to subdivision (b) of Section 43705 of the Health and Safety Code, as determined by each of those districts and reported by each district to the Secretary of State.

(b) On the date that all of the reports have been received by the Secretary of State pursuant to subdivision (a), subject to the exceptions stated in Section 33 of this act, this act shall be operative.

SEC. 33. Sections 14 and 23 of this act shall become inoperative if the Environmental Protection Agency finds that the economic incentive program contained in those sections is not an acceptable transportation control measure that will contribute to compliance with federal requirements for the use of transportation control measures in certain ozone nonattainment areas.

CHAPTER 1193

An act to add Title 6 (commencing with Section 3427) to Part 1 of Division 4 of the Civil Code, relating to liability.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Title 6 (commencing with Section 3427) is added to Part 1 of Division 4 of the Civil Code, to read:

TITLE 6. INTERFERENCE WITH ACCESS TO HEALTH CARE

3427. As used in this title:

(a) "Aggrieved" means and refers to any of the following persons or entities:

(1) A person physically present at a health care facility when a commercial blockade occurs whose access is obstructed or impeded.

(2) A person physically present at a health care facility when a commercial blockade occurs whose health care is disrupted.

(3) A health care facility where a commercial blockade occurs, its

employees, contractors, or volunteers.

(4) The owner of a health care facility where a commercial blockade occurs or of the building or property upon which the health care facility is located.

(b) "Commercial blockade" means acts constituting the tort of commercial blockade, as defined in Section 3427.1.

(c) "Disrupting the normal functioning of a health care facility" means intentionally rendering or attempting to render a health care facility temporarily or permanently unavailable or unusable by a licensed health practitioner, the facility's staff, or patients. "Disrupting the normal functioning of a health care facility" does not include acts of the owner of the facility, an agent acting on behalf of the owner, or officers or employees of a governmental entity acting to protect the public health or safety.

(d) "Health care facility" means a facility that provides health care services directly to patients, including, but not limited to, a hospital, clinic, licensed health practitioner's office, health maintenance organization, diagnostic or treatment center, neuropsychiatric or mental health facility, hospice, or nursing home.

3427.1. It is unlawful, and constitutes the tort of commercial blockade for a person, alone or in concert with others, to intentionally prevent an individual from entering or exiting a health care facility by physically obstructing the individual's passage or by disrupting the normal functioning of a health care facility.

3427.2. A person or health care facility aggrieved by the actions prohibited of this title may seek civil damages from those who committed the prohibited acts and those acting in concert with them.

3427.3. The court having jurisdiction over a civil proceeding under this title shall take all steps reasonably necessary to safeguard the individual privacy and prevent harassment of a health care patient, licensed health practitioner, or employee, client, or customer of a health care facility who is a party or witness in the proceeding, including granting protective orders. Health care patients, licensed health practitioners, and employees, clients, and customers of the health care facility may use pseudonyms to protect their privacy.

3427.4. This title shall not be construed to impair any constitutionally protected activity or any activities protected by the labor laws of this state or the United States of America.

CHAPTER 1194

An act to add Sections 25110.10, 25121.3, and 25163.3 to the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

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

(a) Non-RCRA hazardous waste is sometimes initially collected in small quantities at remote, unstaffed locations, including, but not limited to, field pumping stations, pipelines, power poles and lines, and utility light poles.

(b) Under current law, when hazardous waste is removed from the site of generation, where it may be initially accumulated for up to 90 days, the hazardous waste must be shipped to a permitted hazardous waste treatment, storage, or disposal facility. Current law does not specifically address hazardous waste initially collected at remote locations where it is not feasible or practical to maintain a 90-day generator accumulation area. In particular, current law does not address generators such as utilities, petroleum producers, and others that collect small quantities of hazardous waste at remote locations in the course of routine activities and transport that hazardous waste back to a central consolidation yard owned by the generator for interim accumulation prior to eventually shipping the hazardous waste to a permitted facility.

(c) Under current law, to move a small amount of hazardous waste from a remote location, hazardous waste manifests are required, and the hazardous waste must be transported by a registered transporter. It is the intent of the Legislature by the enactment of this act to provide a more feasible system that would provide an alternative "cradle to grave" tracking mechanism appropriate for the small quantities of hazardous waste initially collected at remote sites.

(d) It is also the intent of the Legislature to eliminate expensive procedural requirements for small quantities of hazardous waste which may encourage generators to leave hazardous waste at remote, unstaffed locations, and to encourage the consolidated accumulation of the hazardous waste in locations where generators can reasonably be expected to manage the hazardous waste in compliance with the safety requirements applicable to generators of hazardous waste pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

(e) Therefore, to promote the safe and secure handling of hazardous waste initially collected at remote locations, the Legislature hereby declares that, under specified conditions, small

quantities of non-RCRA hazardous waste may be transported to, and be managed at, safe and secure consolidation sites operated by the generator, in compliance with the requirements of Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code, and the regulations adopted by the Department of Toxic Substances Control to implement those provisions with regard to generator hazardous waste management activities.

SEC. 2. Section 25110.10 is added to the Health and Safety Code, to read:

25110.10. (a) "Consolidation site" means a site to which hazardous waste initially collected at a remote site, as defined in Section 25121.3, is transported.

(b) Hazardous waste initially collected at a remote site and subsequently transported to a consolidation site, which is operated by the generator of the hazardous waste, shall be deemed to be generated at the consolidation site for purposes of this chapter if the generator notifies the department pursuant to subdivision (d) and all of the following conditions are met:

(1) The hazardous waste is non-RCRA hazardous waste, or the hazardous waste or its management at the consolidation site is otherwise exempt from, or is not otherwise regulated pursuant to, the federal act.

(2) (A) The hazardous waste is not generated through large spill cleanup activities.

(B) As used in this paragraph, "large spill cleanup" means a spill cleanup operation which generates more than a total of 275 gallons or 2,500 pounds, whichever is greater, of hazardous waste.

(3) The hazardous waste is transported to the consolidation site within 10 days from the date that the generator first begins to actively manage the hazardous waste at the remote site, unless the generator has been granted an extension to the 10-day period. An extension of up to 20 days may be granted by the department, if the generator demonstrates to the department's satisfaction that more than 10 days is required to collect and transport the hazardous waste to the consolidation site solely for the purpose of facilitating effective and efficient removal, collection, or transportation of the hazardous waste.

(4) The hazardous waste is not handled at any interim site en route from the remote site to the consolidation site, except that the hazardous waste may be temporarily held at an interim site pursuant to subdivision (b) of Section 25121.3 and subdivision (e) of Section 25163.3.

(5) At the consolidation site, the hazardous waste is managed at all times in accordance with all applicable requirements of this chapter and the regulations adopted by the department pursuant to this chapter. For purposes of Section 25123.3, the 90-day accumulation period shall begin on the day that the hazardous waste arrives at the consolidation site.

(6) Each container of hazardous waste is labeled at the remote

site, in accordance with the regulations adopted by the department pertaining to labeling requirements for generators, and the label remains on the container at all times while the hazardous waste is in the container and in the possession of the generator. Each container shall be labeled with the date that the container reaches the consolidation site. If individual containers are placed into a larger container, the labeling information required pursuant to this paragraph and paragraph (6) of subdivision (b) of Section 25121.3 shall also be placed on the outside of the larger container. If the hazardous waste is transferred to another container, the labeling information required pursuant to this paragraph and paragraph (6) of subdivision (b) of Section 25121.3 shall also be placed on the outside of the new container.

(7) The generator maintains at the consolidation site the information specified in paragraphs (1) to (10), inclusive, of subdivision (g) of Section 25163.3 for each shipment of hazardous waste initially collected at a remote site that is received at the consolidation site. This information shall be maintained for at least three years from the date that hazardous waste is received at the consolidation site. For shipments subject to the requirement to be accompanied by a shipment paper pursuant to subdivision (g) of Section 25163.3, the requirements of this paragraph may be fulfilled by maintaining a copy of the shipping paper at the consolidation site.

(c) For purposes of paragraph (1) of subdivision (d) of Section 25123.3, the "initial accumulation point" for hazardous waste initially collected at a remote site and subsequently transported to a consolidation site, in accordance with subdivision (b), shall be deemed to be the location where the hazardous waste is first accumulated at the consolidation site.

(d) (1) Subdivision (b) of this section and subdivision (b) of Section 25121.3 apply only to a generator who annually notifies the department of the generator's intent to operate under this exemption. Any person who notifies the department of their intent to operate under this exemption shall comply with the requirements of this section and Sections 25121.3 and 25163.3. The notification shall include all of the following information:

(A) A general description of the remote location from which the non-RCRA hazardous waste will be initially collected.

(B) A description of the type of hazardous waste that may be collected.

(C) The location of the consolidation site and the generator ID number for that generator.

(D) Significant differences in the generator's operations from the prior year's notification.

(2) Following the procedures specified in Section 25187, the department may revoke a generator's authority to operate pursuant to the exemption specified in this section and Sections 25121.3 and 25163.3, if the generator has demonstrated a pattern of failure to meet the requirements of this section and Sections 25121.3 and

25163.3 and the department has notified the generator of these violations prior to issuing an order pursuant to Section 25187.

SEC. 3. Section 25121.3 is added to the Health and Safety Code, to read:

25121.3. (a) "Remote site" means a site operated by the generator where hazardous waste is initially collected, at which generator staff, other than security staff, is not routinely located, and which is not contiguous to a staffed site operated by the generator of the hazardous waste or which does not have access to a staffed site without the use of public roads. Generator staff who visit a remote location to perform inspection, monitoring, or maintenance activities on a periodic scheduled or random basis, less frequently than daily, are not considered to be routinely located at the remote location.

(b) Notwithstanding this chapter or the regulations adopted by the department pursuant to this chapter, a generator who notifies the department pursuant to subdivision (d) of Section 25110.10 may hold hazardous waste at the remote site where the hazardous waste is initially collected, or at another remote site operated by the generator, while en route to the consolidation site, if all of the following requirements are met with respect to the hazardous waste:

(1) The hazardous waste is a non-RCRA hazardous waste, or the hazardous waste or its management at the remote site is otherwise exempt from, or is not otherwise regulated pursuant to, the federal act.

(2) The requirements of subdivision (b) of Section 25110.10 are met.

(3) All personnel handling hazardous waste at any remote site complete health and safety training equivalent to the training required under Section 5194 of Title 8 of the California Code of Regulations, prior to being assigned to handle hazardous waste.

(4) A description of the actions which the generator's personnel will take to minimize hazards to human health and safety or to the environment from fires, explosions, or any unplanned release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the remote site where the hazardous waste is being managed shall be included in the contingency plan for the consolidation site. A single generic description of response actions may be used for all similar remote sites associated with a single consolidation site.

(5) As soon as the generator begins to actively manage the hazardous waste at the remote site, the generator places the hazardous waste in a container meeting the requirements of the United States Department of Transportation applicable to containers used to transport hazardous waste, and the containers are managed in accordance with the regulations adopted by the department regarding the management by generators of containers used to hold hazardous waste.

(6) The containers used to hold the hazardous waste at the remote

site are labeled, in accordance with the regulations adopted by the department pertaining to labeling requirements for generators, as soon as the hazardous waste is placed in the container.

(7) The generator makes a reasonable effort to minimize the possibility of unknowing or unauthorized entry into the area where the hazardous waste is held at the remote site. If the remote site is located within one mile of a residential or commercial area, or is otherwise readily accessible to the public, the area where hazardous waste is held at the remote site shall at all times be supervised by employees or agents of the generator or otherwise secured so as to prevent unknowing entry and to minimize the possibility for unauthorized entry.

(c) If the management of hazardous wastes at a remote site does not meet all of the conditions specified in subdivision (b), the hazardous waste shall be subject to all other applicable generator and facility requirements of this chapter and the regulations adopted by the department to implement this chapter.

SEC. 4. Section 25163.3 is added to the Health and Safety Code, to read:

25163.3. A person who initially collects hazardous waste at a remote site and transports that hazardous waste to a consolidation site operated by the generator and who notifies the department pursuant to subdivision (d) of Section 25110.10 shall be exempt from the manifest and transporter registration requirements of Sections 25160 and 25163 with regard to the hazardous waste if all of the following conditions are met:

(a) The hazardous waste is a non-RCRA hazardous waste, or the hazardous waste or its transportation is otherwise exempt from, or is not otherwise regulated pursuant to, the federal act.

(b) The conditions and requirements of Section 25121.3 are met.

(c) The regulations adopted by the department pertaining to personnel training requirements for generators are complied with for all personnel handling the hazardous waste during transportation from the remote site to the consolidation site.

(d) The hazardous waste is transported by employees of the generator or by trained contractors under the control of the generator, in vehicles which are under the control of the generator, or by registered hazardous waste transporters. The generator shall assume liability for a spill of hazardous waste being transported under this section by the generator, or a contractor in a vehicle under the control of the generator or contractor. Nothing in this subdivision bars any agreement to insure, hold harmless, or indemnify a party to the agreement for any liability under this section or otherwise bars any cause of action a generator would otherwise have against any other party.

(e) The hazardous waste is not held at any interim location, other than another remote site operated by the same generator, for more than eight hours, unless that holding is required by other provisions of law.

(f) Not more than 275 gallons or 2,500 pounds, whichever is greater, of hazardous waste is transported in any shipment, except that a generator who is a public utility or municipal utility district may transport up to 500 gallons of liquid hazardous waste in a shipment.

(g) A shipping paper containing all of the following information accompanies the hazardous waste while in transport, except as provided in subdivision (h).

(1) A list of the hazardous wastes being transported.

(2) The type and number of containers being used to transport each type of hazardous waste.

(3) The quantity, by weight or volume, of each type of hazardous waste being transported.

(4) The physical state, such as solid, powder, liquid, semi-liquid, or gas, of each type of hazardous waste being transported.

(5) The location of the remote site where the hazardous waste is initially collected.

(6) The location of any interim site where the hazardous waste is held en route to the consolidation site.

(7) The name, address, and telephone number of the generator, and, if different, the address and telephone number of the consolidation site to which the hazardous waste is being transported.

(8) The name and telephone number of an emergency response contact, for use in the event of a spill or other release.

(9) The name of the individual or individuals who transport the hazardous waste from the remote site to the consolidation site.

(10) The date that the generator first begins to actively manage the hazardous waste at the remote site, the date that the shipment leaves the remote site where the hazardous waste is initially collected, and the date that the shipment arrives at the consolidation site.

(h) A shipping paper is not required if the total quantity of the shipment does not exceed 10 pounds of hazardous waste, except that a shipping paper is required to transport any quantity of extremely or acutely hazardous waste.

(i) All shipments conform with all applicable requirements of the United States Department of Transportation for hazardous materials shipments.

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

CHAPTER 1195

An act to add Chapter 2 (commencing with Section 15301) to Part 6.6 of Division 3 of Title 2 of the Government Code, relating to homeless shelters.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Chapter 2 (commencing with Section 15301) is added to Part 6.6 of Division 3 of Title 2 of the Government Code, to read:

CHAPTER 2. EMERGENCY SHELTER PROGRAM

15301. The Chico armory in Butte County; the Calexico and El Centro armories in Imperial County; the Culver City, Inglewood, Long Beach on 7th Street, Pomona, and Van Nuys armories and the West Los Angeles armory on Federal Avenue in Los Angeles County; the San Rafael armory in Marin County; the Merced armory in Merced County; the Fullerton and Santa Ana armories in Orange County; the Roseville armory in Placer County; the Corona, Indio, and Riverside armories in Riverside County; the El Cajon, Escondido, and Vista armories in San Diego County; the San Mateo armory in San Mateo County; the Santa Barbara and Santa Maria armories in Santa Barbara County; the Gilroy and Sunnyvale armories and the San Jose armory on Hedding Street in Santa Clara County; the Santa Cruz and Watsonville armories in Santa Cruz County; the Redding armory in Shasta County; the Petaluma and Santa Rosa armories in Sonoma County; and the Oxnard armory in Ventura County shall be made available to these counties or any city in these counties for the purpose of providing temporary shelter for homeless persons during the period from December 1 through March 15 each year, as a temporary measure until March 15, 1997, to allow adequate time for government entities in these counties to develop other suitable homeless shelter arrangements. If severe weather conditions exist between November 1 through March 31, the Military Department may extend the use of the armories to include November 1 to December 1 and March 15 to March 31.

15301.1. State armories shall not be made available during any period that any organization of the state militia or of the Armed Forces of the United States is conducting drills or other military training or activity at the armory or during any period that the armories have been designated by the Governor or the Adjutant General for use appropriate to a condition of emergency, including, but not limited to, use by the Red Cross during an earthquake, fire, or other disaster.

15301.3. Any county or city authorized in Section 15301 electing to use a state armory or armories for the purpose of this chapter, in consultation with the Community Advisory Committee appointed pursuant to Section 438 of the Military and Veterans Code or, if no committee has been appointed, in consultation with the Adjutant General, shall obtain a license from the Military Department with the following requirements:

(a) The county or city obtaining a license shall be solely responsible for measures and costs required to comply with state and local health and safety codes during the license periods.

(b) The county or city obtaining a license shall be responsible for all legal liabilities during the license periods and the state shall be held harmless in each case.

(c) The county or city obtaining a license shall be responsible for all costs of providing shelter in the state armory or armories to homeless persons during the license periods, including, but not limited to, all costs for minor emergency repairs such as plumbing and electrical work, with the exception of costs for utilities, including heating and electricity, and for National Guardsmen for security of military equipment and property, these costs to be borne by the Military Department at a total cost for all authorized armories no greater or less than the amount allowed for this purpose by the Military Department from General Fund moneys in the department's 1993-94 budget.

(d) The county or city obtaining a license shall be solely responsible for alternative housing arrangements, including relocation measures and transportation, for homeless persons housed in state armories during the license periods, upon notification from the Military Department that the armory or armories shall be required for military activities or emergency purposes as announced by the Governor. The Military Department or the Governor shall determine the evacuation deadline.

15301.5. A county or city authorized in Section 15301 and electing to use a state armory or armories for the purposes of this chapter shall provide a report to the Department of Economic Opportunity on January 1, 1996, and on January 1, 1997, describing progress toward a long-range, permanent shelter plan for homeless persons to take effect on March 15, 1997, at the end of the period of temporary usage of a state armory or state armories as emergency shelter for homeless persons.

15301.7. Prior to March 15, 1997, an evaluation of the effectiveness of the temporary armory shelter arrangement and the progress of participating counties and cities toward long-range future shelter plans for homeless persons shall be prepared jointly by the Military Department, the Department of Economic Opportunity, the Department of Housing and Community Development, and a representative of the participating counties and cities selected by participating groups. The evaluation report shall be sent to the Governor, the Senate Committee on Governmental

Organization, and the Assembly Committee on Local Government, prior to March 15, 1997.

CHAPTER 1196

An act to add Sections 9250.13 and 38225.5 to the Vehicle Code, relating to vehicles.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 9250.13 is added to the Vehicle Code, to read:

9250.13. (a) In addition to any other fees specified in this code and the Revenue and Taxation Code, a fee of one dollar (\$1) shall be paid at the time of registration or renewal of registration of every vehicle subject to registration under this code, except those vehicles that are expressly exempted under this code from the payment of registration fees.

(b) The money realized pursuant to this section shall be available, upon appropriation by the Legislature, for expenditure to offset the costs of increasing the uniformed field strength of the Department of the California Highway Patrol beyond its 1994 staffing level and those costs associated with maintaining this new level of uniformed field strength and carrying out those duties specified in subdivision (a) of Section 830.2 of the Penal Code.

SEC. 2. Section 38225.5 is added to the Vehicle Code, to read:

38225.5. In addition to the service fees specified in Section 38225, a fee of one dollar (\$1) shall be paid at the time of issuance or renewal of identification of off-highway vehicles subject to identification, except as expressly exempted under this division. The department shall deposit the fee received under this section in the Motor Vehicle Account in the State Transportation Fund. The money deposited in the account pursuant to this section shall be available, upon appropriation by the Legislature, for expenditure to offset the costs of increasing the uniformed field strength of the Department of the California Highway Patrol beyond its 1994 staffing level and those costs associated with maintaining this new level of uniformed field strength and carrying out those duties specified in subdivision (a) of Section 830.2 of the Penal Code.

CHAPTER 1197

An act to amend Sections 9250.8 and 9250.9 of, and to add Section 38225.4 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 9250.8 of the Vehicle Code is amended to read:

9250.8. In addition to any other fees specified in this code and the Revenue and Taxation Code, a fee of one dollar (\$1) shall be paid at the time of registration or renewal of registration of every vehicle subject to registration under this code, except those vehicles that are expressly exempted under this code from the payment of registration fees.

SEC. 2. Section 9250.9 of the Vehicle Code is amended to read:

9250.9. All fees received by the department pursuant to Section 9250.8 shall be deposited in the Motor Vehicle Account in the State Transportation Fund. The money deposited in the account pursuant to this section shall be available, upon appropriation by the Legislature, for expenditure to accomplish the following:

(a) To ensure sufficient support for those peace officer members employed on December 31, 1994, and to support an additional 130 peace officer members of the California Highway Patrol.

(b) To offset the costs of maintaining the uniformed field strength of the Department of the California Highway Patrol.

SEC. 3. Section 38225.4 is added to the Vehicle Code, to read:

38225.4. In addition to the service fees specified in subdivision (a) of Section 38225, as amended by Section 6 of Chapter 964 of the Statutes of 1992, a fee of one dollar (\$1) shall be paid at the time of issuance or renewal of identification of off-highway motor vehicles subject to identification, except as expressly exempted under this division. The department shall deposit the fee received under this section in the Motor Vehicle Account in the State Transportation Fund. The money deposited in the account pursuant to this section shall be available, upon appropriation by the Legislature, for expenditure to offset the costs of maintaining the uniformed field strength of the Department of the California Highway Patrol.

CHAPTER 1198

An act to amend Sections 44806 , 48900, and 48915 of, to add Sections 33032.5 and 48900.3 to, and to add Article 4.5 (commencing with Section 45) to Chapter 1 of Part 1 of, the Education Code, relating to schools.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. (a) This act shall be known and may be cited as the California Schools Hate Violence Reduction Act of 1995.

(b) The Legislature hereby finds and declares that there is an urgent need to prevent and respond to acts of hate violence and bias-related incidents that are occurring at an increasing rate within the public school system in kindergarten and grades 1 to 12, inclusive.

SEC. 2. Article 4.5 (commencing with Section 45) is added to Chapter 1 of Part 1 of the Education Code, to read:

Article 4.5. Equal Opportunity: Antiharassment of Pupils

45. (a) All pupils have the right to participate fully in the educational process, free from discrimination and harassment.

(b) California's public schools have an affirmative obligation to combat racism, sexism, and other forms of bias, and a responsibility to provide equal educational opportunity.

(c) Harassment on school grounds directed at an individual on the basis of personal characteristics or status creates a hostile environment and jeopardizes equal educational opportunity as guaranteed by the California Constitution and the United States Constitution.

(d) There is an urgent need to prevent and respond to acts of hate violence and bias-related incidents that are occurring at an increasing rate in California's public schools.

(e) There is an urgent need to teach and inform pupils in the public schools about their rights, as guaranteed by the federal and state constitutions, in order to increase pupils' awareness and understanding of their rights and the rights of others, with the intention of promoting tolerance and sensitivity in public schools and in society as a means of responding to potential harassment and hate violence.

(f) It is the intent of the Legislature that each public school undertake educational activities to counter discriminatory incidents on school grounds and, within constitutional bounds, to minimize and eliminate a hostile environment on school grounds that impairs the access of pupils to equal educational opportunity.

SEC. 3. Section 33032.5 is added to the Education Code, to read:

33032.5. (a) At the request of the Superintendent of Public Instruction, the State Board of Education shall do all of the following as long as the board's actions do not result in a state mandate or an increase in costs to a state or local program:

(1) Adopt policies directed toward creating a school environment in kindergarten and grades 1 to 12, inclusive, that is free from discriminatory attitudes and practices and acts of hate violence.

(2) Revise, as needed, and in accordance with the State Board of Education's adopted Schedule for Curriculum Framework Development and Adoption of Instructional Materials developed pursuant to Section 60200, the state curriculum frameworks and guidelines and the moral and civic education curricula to include human relations education, with the aim of fostering an appreciation of people of different ethnicities.

(3) Establish guidelines for use in teacher and administrator in-service training programs to promote an appreciation of diversity and to discourage the development of discriminatory attitudes and practices that prevent pupils from achieving their full potential.

(4) Establish guidelines for use in teacher and administrator in-service training programs designed to enable teachers and administrators to prevent and respond to acts of hate violence occurring on their school campuses.

(5) Establish guidelines designed to raise the awareness and sensitivity of teachers, administrators, and school employees to potentially prejudicial and discriminatory behavior and to encourage the participation of these groups in these programs.

(6) Develop guidelines relating to the development of nondiscriminatory instructional and counseling methods.

(7) Revise any appropriate guidelines previously adopted by the board to include procedures for preventing and responding to acts of hate violence.

(b) The State Department of Education, in accordance with policies established by the State Board of Education for purposes of this subdivision, shall do all of the following:

(1) Prepare guidelines for the design and implementation of local programs and instructional curricula that promote understanding, awareness, and appreciation of the contributions of people with diverse backgrounds and of harmonious relations in a diverse society. The guidelines shall include methods of evaluating the programs and curricula and suggested procedures to ensure coordination of the programs and curricula with appropriate local public and private agencies.

(2) Provide grants, from funds appropriated for that purpose, to school districts and county offices of education to develop programs and curricula consistent with the guidelines developed in paragraph (1).

(3) To the extent possible, provide advice and direct services, consistent with the guidelines developed in paragraph (1), to school districts and county offices of education that implement the

programs and curricula developed in paragraph (2).

(c) The State Board of Education shall carry out this section only if private funds, in an amount sufficient to pay for related State Department of Education staff activities on behalf of the board, are made available.

(d) Nothing in this section shall be construed to require the governing board of a school district to offer any ethnic studies or human relations courses in the district.

(e) As used in this section, "hate violence" means any act punishable under Section 422.6, 422.7, or 422.75 of the Penal Code.

SEC. 4. Section 44806 of the Education Code is amended to read:

44806. Each teacher shall endeavor to impress upon the minds of the pupils the principles of morality, truth, justice, patriotism, and a true comprehension of the rights, duties, and dignity of American citizenship, and the meaning of equality and human dignity, including the promotion of harmonious relations, kindness toward domestic pets and the humane treatment of living creatures, to teach them to avoid idleness, profanity, and falsehood, and to instruct them in manners and morals and the principles of a free government.

Each teacher is also encouraged to create and foster an environment that encourages pupils to realize their full potential and that is free from discriminatory attitudes, practices, events, or activities, in order to prevent acts of hate violence, as defined in subdivision (e) of Section 33032.5.

SEC. 5. Section 48900 of the Education Code is amended to read:

48900. A pupil shall not be suspended from school or recommended for expulsion unless the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has:

(a) Caused, attempted to cause, or threatened to cause physical injury to another person.

(b) Possessed, sold, or otherwise furnished any firearm, knife, explosive, or other dangerous object unless, in the case of possession of any object of this type, the pupil had obtained written permission to possess the item from a certificated school employee, which is concurred in by the principal or the designee of the principal.

(c) Unlawfully possessed, used, sold, or otherwise furnished, or been under the influence of, any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind.

(d) Unlawfully offered, arranged, or negotiated to sell any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind, and then either sold, delivered, or otherwise furnished to any person another liquid, substance, or material and represented the liquid, substance, or material as a controlled substance, alcoholic beverage, or intoxicant.

(e) Committed or attempted to commit robbery or extortion.

(f) Caused or attempted to cause damage to school property or private property.

(g) Stolen or attempted to steal school property or private property.

(h) Possessed or used tobacco, or any products containing tobacco or nicotine products, including, but not limited to, cigarettes, cigars, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets, and betel. However, this section does not prohibit use or possession by a pupil of his or her own prescription products.

(i) Committed an obscene act or engaged in habitual profanity or vulgarity.

(j) Had unlawful possession of, or unlawfully offered, arranged, or negotiated to sell any drug paraphernalia, as defined in Section 11014.5 of the Health and Safety Code.

(k) Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties.

(l) Knowingly received stolen school property or private property.

No pupil shall be suspended or expelled for any of the acts enumerated unless that act is related to school activity or school attendance occurring within a school under the jurisdiction of the superintendent or principal or occurring within any other school district. A pupil may be suspended or expelled for acts that are enumerated in this section and related to school activity or attendance that occur at any time, including, but not limited to, any of the following:

- (1) While on school grounds.
- (2) While going to or coming from school.
- (3) During the lunch period whether on or off the campus.
- (4) During, or while going to or coming from, a school sponsored activity.

It is the intent of the Legislature that alternatives to suspensions or expulsion be imposed against any pupil who is truant, tardy, or otherwise absent from school activities.

SEC. 6. Section 48900.3 is added to the Education Code, to read: 48900.3. In addition to the reasons specified in Sections 48900 and 48900.2, a pupil in any of grades 4 to 12, inclusive, may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has caused, attempted to cause, threatened to cause, or participated in an act of, hate violence, as defined in subdivision (e) of Section 33032.5.

SEC. 7. Section 48915 of the Education Code is amended to read: 48915. (a) The principal or the superintendent of schools shall recommend a pupil's expulsion for any of the following acts, unless the principal or superintendent finds, and so reports in writing to the governing board, that expulsion is inappropriate, due to the

particular circumstance, which shall be set out in the report of the incident:

(1) Causing serious physical injury to another person, except in self-defense.

(2) Possession of any knife, explosive, or other dangerous object of no reasonable use to the pupil at school or at a school activity off school grounds.

(3) Unlawful sale of any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, except for the first offense for the sale of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis.

(4) Robbery or extortion.

(b) The principal or the superintendent of schools shall immediately suspend, pursuant to Section 48911, any pupil found to be in possession of a firearm at school or at a school activity off school grounds and shall recommend expulsion of that pupil to the governing board. The governing board shall expel that pupil or refer that pupil to a program of study that is appropriately prepared to accommodate students who exhibit discipline problems and is not provided at a comprehensive middle, junior, or senior high school or housed at the schoolsite attended by the pupil at the time the expulsion was recommended to the school board, whenever the principal or superintendent of schools and the governing board confirm the following:

(1) The pupil was in knowing possession of the firearm.

(2) An employee of the school district verifies the pupil's possession of the firearm.

(c) Upon recommendation by the principal, superintendent of schools, or by a hearing officer or administrative panel appointed pursuant to subdivision (d) of Section 48918, the governing board may order a pupil expelled upon finding that the pupil violated subdivision (a), (b), (c), (d), or (e) of Section 48900, except that a pupil found in possession of a firearm shall be expelled or referred to another school as specified in subdivision (b).

(d) Upon recommendation by the principal, superintendent of schools, or by a hearing officer or administrative panel appointed pursuant to subdivision (d) of Section 48918, the governing board may order a pupil expelled upon finding that the pupil violated subdivision (f), (g), (h), (i), (j), (k), or (l) of Section 48900, or Section 48900.2 or 48900.3, and either of the following:

(1) That other means of correction are not feasible or have repeatedly failed to bring about proper conduct.

(2) That due to the nature of the violation, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.

(e) Any pupil who is authorized to be in possession of a firearm by a teacher, schoolsite administrator, or principal is exempted from the requirements of this section.

CHAPTER 1199

An act to amend Sections 25373 and 37361 of the Government Code, relating to land use.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 25373 of the Government Code is amended to read:

25373. (a) The board of supervisors may acquire property for the preservation or development of a historical landmark. The board of supervisors may also acquire property for development for recreational purposes and for development of facilities in connection therewith.

(b) The board may, by ordinance, provide special conditions or regulations for the protection, enhancement, perpetuation, or use of places, sites, buildings, structures, works of art and other objects having a special character or special historical or aesthetic interest or value. These special conditions and regulations may include appropriate and reasonable control of the appearance of neighboring private property within public view.

(c) Until January 1, 1995, subdivision (b) shall not apply to noncommercial property owned by a religiously affiliated association or corporation not organized for private profit, whether incorporated as a religious or public benefit corporation, unless the owner of the property does not object to its application. Nothing in this subdivision shall be construed to infringe on the authority of the board of supervisors to enforce special conditions and regulations on any property designated prior to January 1, 1994.

(d) Subdivision (b) shall not apply to noncommercial property owned by any association or corporation that is religiously affiliated and not organized for private profit, whether the corporation is organized as a religious corporation, or as a public benefit corporation, provided that both of the following occur:

(1) The association or corporation objects to the application of the subdivision to its property.

(2) The association or corporation determines in a public forum that it will suffer substantial hardship, which is likely to deprive the association or corporation of economic return on its property, the reasonable use of its property, or the appropriate use of its property in the furtherance of its religious mission, if the application is approved.

(e) Nothing in this subdivision shall be construed to infringe on the authority of any legislative body to enforce special conditions and regulations on any property designated prior to January 1, 1994, or to authorize any legislative body to override the determination made

pursuant to paragraph (2) of subdivision (d).

SEC. 2. Section 37361 of the Government Code is amended to read:

37361. (a) The legislative body may acquire property for the preservation or development of a historical landmark. The legislative body may also acquire property for development for recreational purposes and for development of facilities in connection therewith.

(b) The legislative body may provide for places, buildings, structures, works of art, and other objects, having a special character or special historical or aesthetic interest or value, special conditions or regulations for their protection, enhancement, perpetuation or use, which may include appropriate and reasonable control of the use or appearance of neighboring private property within public view, or both.

(c) Until January 1, 1995, subdivision (b) shall not apply to noncommercial property owned by a religiously affiliated association or corporation not organized for private profit, whether incorporated as a religious or public benefit corporation, unless the owner of the property does not object to its application. This subdivision does apply to a charter city. Nothing in this subdivision shall be construed to infringe on the authority of the legislative body to enforce special conditions and regulations on any property designated prior to January 1, 1994. Subdivision (b) shall not apply to noncommercial property owned by any association or corporation that is religiously affiliated and not organized for private profit, whether the corporation is organized as a religious corporation, or as a public benefit corporation, provided that both of the following occur:

(1) The association or corporation objects to the application of the subdivision to its property.

(2) The association or corporation determines in a public forum that it will suffer substantial hardship, which is likely to deprive the association or corporation of economic return on its property, the reasonable use of its property, or the appropriate use of its property in the furtherance of its religious mission, if the application is approved.

(e) Nothing in this subdivision shall be construed to infringe on the authority of any legislative body to enforce special conditions and regulations on any property designated prior to January 1, 1994, or to authorize any legislative body to override the determination made pursuant to paragraph (2) of subdivision (d). This subdivision and subdivision (d) shall apply to a charter city.

SEC. 3. Sections 1 and 2 of this act address a matter of statewide interest and concern, because this act exempts from locally imposed restrictions property owned by religious organizations that is used or held for religious purposes, and because these restrictions are neither authorized for nor compelled by concerns related to the public health or safety. Therefore, Sections 1 and 2 of this act ensure the protection of religious freedom guaranteed by Section 4 of Article I

of the California Constitution, and by the First Amendment to the United States Constitution.

CHAPTER 1200

An act to amend Sections 17900, 17902, 17910.5, 17913, and 17914 of, and to add Sections 16602.5 and 17901.5 to, the Business and Professions Code, to amend Section 3307 of the Commercial Code, to amend Sections 161, 190, 1109, 1113, 1201, 15046, 15611, 15632, 15678.2, 25013, and 25019 of, to add Sections 161.7, 167.3, 167.7, 167.8, 171.03, 171.07, 171.3, 174.5, and 190.7 to, and to add Title 2.5 (commencing with Section 17000) to, the Corporations Code, to amend Section 1220 of the Financial Code, to amend Sections 8670.3 and 12185 of, and to add Section 12164.7 to, the Government Code, to amend Sections 25118 and 25281 of the Health and Safety Code, to amend Sections 387 and 653s of the Penal Code, to amend Section 40170 of the Public Resources Code, to amend Sections 19, 64, 480, 480.1, 480.2, 6005, 6829, 7310, 8606, 11204, 17007, 17220, 18402, 18535, 18621.5, 18637, 18638, 18648, 19002, 19009, 19132, 19254, 23036, 23038, 25141, 30010, 38106, 40004, 41003, 43006, 45006, 46020, and 55002 of, to add Sections 28.5, 17087.6, 18633.5, and 23305.5 to, to add Chapter 1.6 (commencing with Section 23091) to Part 11 of Division 2 of, and to repeal Section 28 of, the Revenue and Taxation Code, and to amend Sections 125.4, 135, 135.1, 610, 1116, 1735, 2071, 2107, 2109, 2110, 2110.3, 2110.5, 2110.7, and 13005 of the Unemployment Insurance Code, and to amend Section 675 of the Vehicle Code, relating to limited liability companies, and making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 16602.5 is added to the Business and Professions Code, to read:

16602.5. Any member may, upon or in anticipation of a dissolution of a limited liability company or a sale of his or her or its interest in a limited liability company, agree that he or she or it will not carry on a similar business within a specified county or counties, city or cities, or a part thereof, where the limited liability company business has been transacted, so long as any other member of the limited liability company, or any person deriving title to the business or its goodwill from any such other member of the limited liability company, carries on a like business therein.

SEC. 2. Section 17900 of the Business and Professions Code is amended to read:

17900. (a) As used in this chapter, "fictitious business name"

means:

(1) In the case of an individual, a name that does not include the surname of the individual or a name that suggests the existence of additional owners.

(2) In the case of a partnership or other association of persons, other than a limited partnership which has filed a certificate of limited partnership with the Secretary of State pursuant to Section 15621 of the Corporations Code or a foreign limited partnership which has filed an application for registration with the Secretary of State pursuant to Section 15692 of the Corporations Code, a name that does not include the surname of each general partner or a name that suggests the existence of additional owners.

(3) In the case of a corporation, any name other than the corporate name stated in its articles of incorporation.

(4) In the case of a limited partnership which has filed a certificate of limited partnership with the Secretary of State pursuant to Section 15621 of the Corporations Code and in the case of a foreign limited partnership which has filed an application for registration with the Secretary of State pursuant to Section 15692 of the Corporations Code, any name other than the name of the limited partnership as on file with the Secretary of State.

(5) In the case of a limited liability company, any name other than the name stated in its articles of organization and in the case of a foreign limited liability company which has filed an application for registration with the Secretary of State pursuant to Section 17451 of the Corporations Code, any name other than the name of the limited liability company as on file with the Secretary of State.

(b) A name that suggests the existence of additional owners within the meaning of subdivision (a) is one which includes such words as "Company," "& Company," "& Son," "& Sons," "& Associates," "Brothers," and the like, but not words that merely describe the business being conducted.

SEC. 3. Section 17901.5 is added to the Business and Professions Code, to read:

17901.5. As used in this chapter, "manager" means a manager of a limited liability company.

SEC. 4. Section 17902 of the Business and Professions Code is amended to read:

17902. As used in this chapter, "person" includes individuals, limited liability companies, partnerships and other associations, and corporations.

SEC. 5. Section 17910.5 of the Business and Professions Code is amended to read:

17910.5. (a) No person shall adopt any fictitious business name which includes "Corporation," "Corp.," "Incorporated," or "Inc." unless such person is a corporation organized pursuant to the laws of this state or some other jurisdiction.

(b) No person shall adopt any fictitious business name that includes "Limited Liability Company" (whether using the complete

words or the abbreviations "Ltd." and "Co." or either of them) or "LLC" or "LC" unless such person is a limited liability company organized pursuant to the laws of this state or some other jurisdiction.

(c) A county clerk shall not accept a fictitious business name statement which would be in violation of this section.

SEC. 6. Section 17913 of the Business and Professions Code is amended to read:

17913. (a) The fictitious business name statement shall contain all of the information required by this subdivision and shall be substantially in the following form:

FICTITIOUS BUSINESS NAME STATEMENT

The following person (persons) is (are) doing business as

* _____

at ** _____ :

*** _____

This business is conducted by **** _____

The registrant commenced to transact business under the fictitious business name or names listed above on

***** _____

Signed _____

Statement filed with the County Clerk of _____ County on

NOTICE—THIS FICTITIOUS NAME STATEMENT EXPIRES FIVE YEARS FROM THE DATE IT WAS FILED IN THE OFFICE OF THE COUNTY CLERK. A NEW FICTITIOUS BUSINESS NAME STATEMENT MUST BE FILED BEFORE THAT TIME. THE FILING OF THIS STATEMENT DOES NOT OF ITSELF AUTHORIZE THE USE IN THIS STATE OF A FICTITIOUS BUSINESS NAME IN VIOLATION OF THE RIGHTS OF ANOTHER UNDER FEDERAL, STATE, OR COMMON LAW (SEE SECTION 14400 ET SEQ., BUSINESS AND PROFESSIONS CODE).

(b) The statement shall contain the following information set forth in the manner indicated in the form provided by subdivision (a):

(1) Where the asterisk (*) appears in the form, insert the fictitious business name or names. Only those businesses operated at the same address may be listed on one statement.

(2) Where the two asterisks (**) appear in the form: If the

registrant has a place of business in this state, insert the street address of his or her principal place of business in this state. If the registrant has no place of business in this state, insert the street address of his or her principal place of business outside this state.

(3) Where the three asterisks (***) appear in the form: If the registrant is an individual, insert his or her full name and residence address. If the registrant is a partnership or other association of persons, insert the full name and residence address of each general partner. If the registrant is a limited liability company, insert the name of the limited liability company as set out in its articles of organization and the state of organization. If the registrant is a business trust, insert the full name and address of each trustee. If the registrant is a corporation, insert the name of the corporation as set out in its articles of incorporation and the state of incorporation.

(4) Where the four asterisks (****) appear in the form, insert whichever of the following best describes the nature of the business: (i) "an individual," (ii) "a general partnership," (iii) "a limited partnership," (iv) "a limited liability company," (v) "an unincorporated association other than a partnership," (vi) "a corporation," (vii) "a business trust," (viii) "copartners," (ix) "husband and wife," (x) "joint venture," or (xi) "other—please specify."

(5) Where the five asterisks (*****) appear in the form, insert the date on which the registrant first commenced to transact business under the fictitious business name or names listed, if already transacting business under that name or names. If the registrant has not yet commenced to transact business under the fictitious business name or names listed, insert the statement, "Not applicable."

SEC. 7. Section 17914 of the Business and Professions Code is amended to read:

17914. If the registrant is an individual, the statement shall be signed by the individual; if a partnership or other association of persons, by a general partner; if a limited liability company, by a manager or officer; if a business trust, by a trustee; if a corporation, by an officer.

SEC. 8. Section 3307 of the Commercial Code is amended to read: 3307. (a) In this section:

(1) "Fiduciary" means an agent, trustee, partner, corporate officer or director, limited liability company manager, or other representative owing a fiduciary duty with respect to an instrument.

(2) "Represented person" means the principal, beneficiary, partnership, corporation, limited liability company, or other person to whom the duty stated in paragraph (1) is owed.

(b) If (i) an instrument is taken from a fiduciary for payment or collection or for value, (ii) the taker has knowledge of the fiduciary status of the fiduciary, and (iii) the represented person makes a claim to the instrument or its proceeds on the basis that the transaction of the fiduciary is a breach of fiduciary duty, the following rules apply:

(1) Notice of breach of fiduciary duty by the fiduciary is notice of

the claim of the represented person.

(2) In the case of an instrument payable to the represented person or the fiduciary as such, the taker has notice of the breach of fiduciary duty if the instrument is (A) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, (B) taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or (C) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

(3) If an instrument is issued by the represented person or the fiduciary as such, and made payable to the fiduciary personally, the taker does not have notice of the breach of fiduciary duty unless the taker knows of the breach of fiduciary duty.

(4) If an instrument is issued by the represented person or the fiduciary as such, to the taker as payee, the taker has notice of the breach of fiduciary duty if the instrument is (A) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, (B) taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or (C) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

SEC. 9. Section 161 of the Corporations Code is amended to read:

161. "Constituent corporation" means a corporation which is merged with or into one or more other corporations or one or more other business entities and includes a surviving corporation.

SEC. 10. Section 161.7 is added to the Corporations Code, to read:

161.7. "Constituent other business entity" means an other business entity that is merged with or into one or more corporations and includes the surviving other business entity.

SEC. 11. Section 167.3 is added to the Corporations Code, to read:

167.3. "Domestic limited liability company" means a limited liability company as defined in subdivision (t) of Section 17000.

SEC. 12. Section 167.7 is added to the Corporations Code, to read:

167.7. "Domestic other business entity" means an other business entity organized under the laws of this state.

SEC. 13. Section 167.8 is added to the Corporations Code, to read:

167.8. "Disappearing other business entity" means a constituent other business entity that is not the surviving other business entity.

SEC. 14. Section 171.03 is added to the Corporations Code, to read:

171.03. "Foreign limited liability company" means a foreign limited liability company as defined in subdivision (q) of Section 17001.

SEC. 15. Section 171.07 is added to the Corporations Code, to read:

171.07. "Foreign other business entity" means an other business entity organized under the laws of any state, other than this state, or of the District of Columbia or under the laws of a foreign country.

SEC. 16. Section 171.3 is added to the Corporations Code, to read:

171.3. "Limited liability company" means a limited liability company as defined in subdivision (t) of Section 17001.

SEC. 17. Section 174.5 is added to the Corporations Code, to read:

174.5. "Other business entity" means a limited liability company or a limited partnership.

SEC. 18. Section 190 of the Corporations Code is amended to read:

190. "Surviving corporation" means a corporation into which one or more other corporations or one or more other business entities are merged.

SEC. 19. Section 190.7 is added to the Corporations Code, to read:

190.7. "Surviving other business entity" means an other business entity into which one or more other business entities or one or more corporations are merged.

SEC. 20. Section 1109 of the Corporations Code is amended to read:

1109. Whenever a domestic or foreign corporation or domestic or foreign other business entity having any real property in this state merges or consolidates with another corporation or with an other business entity pursuant to the laws of this state or of the state or place in which any constituent corporation or constituent other business entity was incorporated or organized, and the laws of the state or place of incorporation or organization (including this state) of any disappearing corporation or disappearing other business entity provide substantially that the making and filing of the agreement of merger or consolidation or certificate of ownership or certificate of merger vests in the surviving or consolidated corporation or surviving other business entity all the real property of any disappearing corporation or disappearing other business entity, the filing for record in the office of the county recorder of any county in this state in which any of the real property of such disappearing corporation or disappearing other business entity is located of either (a) a certificate prescribed by the Secretary of State, or (b) a copy of the agreement of merger or consolidation or certificate of ownership or certificate of merger, certified by the Secretary of State or an authorized public official of the state or place pursuant to the laws of which the merger or consolidation is effected, shall evidence record ownership in the surviving or consolidated corporation or surviving other business entity, of all interest of such disappearing corporation or disappearing other business entity in and to the real property located in that county.

SEC. 21. Section 1113 of the Corporations Code is amended to read:

1113. (a) Any one or more domestic corporations may merge with one or more domestic other business entities or one or more foreign other business entities. One or more foreign corporations may be parties to the merger. Any corporation or corporations and any one or more other business entities may merge with or into a corporation, which may be any one of the corporations, or they may

merge with or into an other business entity, which may be any one of the other business entities. Notwithstanding the provisions of this section, the merger of any number of corporations with any number of other business entities may be effected only if:

(1) In a merger in which a domestic other business entity is a party to the merger the domestic other business entity is authorized by the laws under which it is organized to effect the merger.

(2) In a merger in which a foreign corporation is a party to the merger the foreign corporation is authorized by the laws under which it is organized to effect that merger.

(3) In a merger in which a foreign other business entity is the surviving other business entity the laws of the jurisdiction under which the foreign other business entity is organized authorize the merger.

(4) In a merger in which a foreign other business entity is a disappearing other business entity it is not prohibited by the laws under which it is organized from effecting that merger.

(b) Each corporation and each other business entity which desires to merge shall approve an agreement of merger. The board of each corporation which desires to merge shall approve the agreement of merger. The agreement of merger shall be approved on behalf of each constituent other business entity by those persons required to approve the merger by the laws under which it is organized. The constituent corporations and constituent other business entities shall be parties to the agreement of merger and other persons, including a parent party corporation (Section 1200), may be parties to the agreement of merger. The agreement of merger shall state:

(1) The terms and conditions of the merger.

(2) The name and place of incorporation or organization of each constituent corporation and constituent other business entity and the identity of the constituent corporation or constituent other business entity that is the surviving corporation or surviving other business entity.

(3) The amendments, if any, subject to Sections 900 and 907, to the articles of the surviving corporation, if applicable, to be effected by the merger. If any amendment changes the name of the surviving corporation, if applicable, the new name may be the same as or similar to the name of a disappearing domestic or foreign corporation, subject to subdivision (b) of Section 201.

(4) The manner of converting the shares of each of the constituent corporations into shares, interests or other securities of the surviving corporation or surviving other business entity and, if any shares of any of the constituent corporations are not to be converted solely into shares, interests or other securities of the surviving corporation or surviving other business entity, the cash, property, rights, interests or securities of any corporation or other business entity which the holders of those shares are to receive in exchange for the shares, which cash, property, rights, interests, or securities of any corporation or other business entity may be in

addition to or in lieu of shares, interests or other securities of the surviving corporation or surviving other business entity, or that the shares are canceled without consideration.

(5) Any other details or provisions as are required by the laws under which any constituent other business entity is organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.2 or, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17751.

(6) Any other details or provisions as are desired, including, without limitation, a provision for the payment of cash in lieu of fractional shares or for any other arrangement with respect thereto consistent with the provisions of Section 407.

(c) Each share of the same class or series of any constituent corporation (other than the cancellation of shares held by a constituent corporation or its parent or a wholly owned subsidiary of either in another constituent corporation) shall, unless all shareholders of the class or series consent and except as provided in Section 407, be treated equally with respect to any distribution of cash, property, rights, interests or securities. Notwithstanding paragraph (4) of subdivision (b), the nonredeemable common shares of a constituent corporation may be converted only into nonredeemable common shares of a surviving corporation or a parent party (Section 1200) if (1) a constituent corporation or a constituent other business entity or its parent owns, directly or indirectly, prior to the merger shares of another constituent corporation representing more than 50 percent of the voting power of the other constituent corporation or membership interests or limited partnership interests of another constituent other business entity representing more than 50 percent of the membership interests or limited partnership interests of the other constituent other business entity entitled to vote with respect to the merger or (2) a constituent corporation or constituent other business entity is a general partner of a constituent limited partnership, unless all of the shareholders of the class consent and except as provided in Section 407.

(d) Notwithstanding its prior approval, an agreement of merger may be amended prior to the filing of the agreement of merger or the certificate of merger, as is applicable, if the amendment is approved by the board of any constituent corporation and, if the amendment changes any of the principal terms of the agreement, by the outstanding shares (Section 152), if required by Chapter 12 (commencing with Section 1200), in the same manner as the original agreement of merger. If the agreement of merger so amended is approved by the board and the outstanding shares, if required, of each of the constituent corporations and is approved by each of the constituent other business entities, the agreement of merger so amended shall then constitute the agreement of merger.

(e) The board of a constituent corporation may, in its discretion, abandon a merger, subject to the contractual rights, if any, of third

parties, including other constituent corporations and constituent other business entities without further approval by the outstanding shares (Section 152), at any time before the merger is effective.

(f) Each constituent corporation shall sign the agreement of merger by its chairperson of the board, president or a vice president and secretary or an assistant secretary acting on behalf of their respective corporations.

(g) (1) If the surviving entity is a corporation, after approval of a merger by the constituent corporations through approval by the board and any approval of the outstanding shares (Section 152) required by Chapter 12 (commencing with Section 1200) and the constituent other business entities, the surviving corporation shall file a copy of the agreement of merger with an officers' certificate of each constituent corporation attached stating the total number of outstanding shares of each class entitled to vote on the merger, that the principal terms of the agreement in the form attached were approved by that corporation by a vote of a number of shares of each class which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, or that the merger agreement was entitled to be and was approved by the board alone under the provisions of Section 1201. In lieu of an officers' certificate for any constituent other business entities, a certificate of merger, on a form prescribed by the Secretary of State, shall be filed. The certificate of merger shall be executed and acknowledged by each constituent other business entity by those persons required to execute the certificate of merger by the laws under which the other business entity is organized and, if applicable, on behalf of each constituent corporation by the chairperson of the board, president or a vice president and secretary or an assistant secretary of the respective corporation. The certificate of merger shall set forth, if a vote of the members or limited partners of a constituent other business entity was required, a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and that the principal terms of the agreement of merger were approved by a vote of the number of interests of each class which equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class, and any other information required to be set forth under the laws under which the constituent other business entities are organized, including, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.4 and, if a domestic limited liability company is a party to the merger, subdivision (a) of Section 17552. If equity securities of a parent party (Section 1200) of a constituent corporation are to be issued in the merger, the officers' certificate of that constituent corporation shall state either that no vote of the shareholders of the parent was required or that the required vote was obtained. The merger and any amendment of the articles of the surviving corporation, if applicable, contained in the agreement of merger shall thereupon be effective, subject to subdivision (c) of

Section 110 and subject to the provisions of subdivision (j), and the several parties thereto shall be one corporation. The agreement of merger shall not be filed, however, until there has been filed by or on behalf of each corporation taxed under the Bank and Corporation Tax Law (Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code), the existence of which is terminated by the merger, the certificate of satisfaction of the Franchise Tax Board that all taxes imposed by that law have been paid or secured. The Secretary of State may certify a copy of the agreement of merger separate from the officers' certificates and certificates of merger attached thereto.

(2) If the surviving entity is an other business entity, after approval of a merger by the constituent corporations through approval by the board and any approval of the outstanding shares (Section 152) required by Chapter 12 (commencing with Section 1200) and the constituent other business entities, the constituent corporations and constituent other business entities shall file a certificate of merger in the office of, and on a form prescribed by, the Secretary of State. The certificate of merger shall be executed and acknowledged by each constituent corporation by the chairperson of the board, president or a vice president and secretary or an assistant secretary of the respective corporation and by each domestic constituent limited liability company by all of the managers of the limited liability company (unless a lesser number is specified in the articles of organization or the operating agreement of the constituent limited liability company) and by each domestic constituent limited partnership by all general partners (unless a lesser number is provided in the certificate of limited partnership of the domestic constituent limited partnership) and by each foreign constituent limited liability company by one or more managers and by each foreign constituent limited partnership by one or more general partners. The certificate of merger shall set forth all of the following:

(A) The names and the Secretary of State's file numbers, if any, of each of the constituent corporations and constituent other business entities, separately identifying the disappearing corporations and disappearing other business entities and the surviving other business entity.

(B) If the approval of the outstanding shares of a constituent corporation was required by Chapter 12 (commencing with Section 1200), a statement setting forth the total number of outstanding shares of each class entitled to vote on the merger and that the principal terms of the agreement of merger were approved by a vote of the number of shares of each class entitled to vote and the percentage vote required of each class.

(C) The future effective date or time, not more than 90 days subsequent to the date of filing of the merger, if the merger is not to be effective upon the filing of the certificate of merger with the office of the Secretary of State.

(D) Any other information required to be stated in the certificate of merger by the laws under which each constituent other business entity is organized, including, if a domestic limited liability company is a party to a merger, subdivision (a) of Section 17552 and, if a domestic limited partnership is a party to the merger, subdivision (a) of Section 15678.4.

Unless a future effective date or time is provided in a certificate of merger, in which event the merger shall be effective at that future effective date or time, a merger shall be effective upon the filing of the certificate of merger in the office of the Secretary of State and the several parties thereto shall be one entity. The certificate of merger shall not be filed, however, until there has been filed by or on behalf of each corporation taxed under the Bank and Corporation Tax Law (Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code), the existence of which is terminated by the merger, the certificate of satisfaction of the Franchise Tax Board that all taxes imposed by the Bank and Corporation Tax Law have been paid or secured. The surviving other business entity shall keep a copy of the agreement of merger at the office referred to in Section 17057 if a domestic limited liability company, at the business address specified in paragraph (5) of subdivision (a) of Section 17552 if a foreign limited liability company, at the office referred to in subdivision (a) of Section 15614 if a domestic limited partnership or at the business address specified in paragraph (5) of subdivision (a) of Section 15678.4 if a foreign limited partnership. Upon request of a holder of shares of a constituent corporation or a holder of interests of a constituent other business entity, a person with authority to do so on behalf of the surviving other business entity shall promptly deliver to the holder of shares of a constituent corporation or a holder of interests of a constituent other business entity, a copy of the agreement of merger. A waiver by a shareholder, partner, or member of the rights provided in the foregoing sentence shall be unenforceable.

(h) (1) A copy of an agreement of merger certified on or after the effective date by an official having custody thereof has the same force in evidence as the original and, except as against the state, is conclusive evidence of the performance of all conditions precedent to the merger, the existence on the effective date of the surviving corporation or surviving other business entity and the performance of the conditions necessary to the adoption of any amendment to the articles, if applicable, contained in the agreement of merger.

(2) For all purposes for a merger in which the surviving entity is a domestic other business entity a copy of the certificate of merger duly certified by the Secretary of State is conclusive evidence of the merger of the constituent corporations, either by themselves or together with constituent other business entities, into the surviving other business entity.

(i) (1) Upon a merger of corporations and other business entities pursuant to this section the separate existence of the disappearing

corporations and disappearing other business entities cease and the surviving corporation or surviving other business entity shall succeed, without other transfer, to all the rights and property of each of the disappearing corporations and disappearing other business entities and shall be subject to all the debts and liabilities of each in the same manner as if the surviving corporation or surviving other business entity had itself incurred them.

(2) All rights of creditors and all liens upon the property of each of the constituent corporations and constituent other business entities shall be preserved unimpaired, provided that those liens upon property of a disappearing corporation or disappearing other business entity shall be limited to the property affected thereby immediately prior to the time the merger is effective.

(3) Any action or proceeding pending by or against any disappearing corporation or disappearing other business entity may be prosecuted to judgment, which shall bind the surviving corporation or surviving other business entity, or the surviving corporation or surviving other business entity may be proceeded against or substituted in its place.

(4) If a limited partnership is a party to the merger, nothing in this section is intended to affect the liability a general partner of a disappearing limited partnership may have in connection with the debts and liabilities of the disappearing limited partnership existing prior to the time the merger is effective.

(j) (1) The merger of any number of domestic corporations with any number of foreign corporations or foreign other business entities in a merger in which one or more other business entities is a party shall comply with subdivision (a) and this subdivision.

(2) If the surviving corporation or surviving other business entity is a domestic corporation or domestic other business entity, the merger proceedings with respect to that corporation or other business entity and any domestic disappearing corporation shall conform to the provisions of this section, but if the surviving corporation or surviving other business entity is a foreign corporation or foreign other business entity, then, subject to the requirements of paragraph (4) of subdivision (c), and of Section 407 and Chapters 12 (commencing with Section 1200) and 13 (commencing with Section 1300) with respect to any domestic constituent corporations, Chapter 13 (commencing with Section 17600) of Title 2.5 with respect to any domestic constituent limited liability companies, and Article 7.6 (commencing with Section 15679.1) of Chapter 3 of Title 2 with respect to any domestic constituent limited partnerships, the merger proceedings may be in accordance with the laws of the state or place of incorporation of the surviving corporation or the laws of the state or place of organization of the surviving other business entity.

(3) If the surviving corporation or surviving other business entity is a domestic corporation or domestic other business entity, the certificate of merger, if the surviving entity is an other business

entity, or the agreement of merger with attachments, if the surviving entity is a corporation, shall be filed as provided in subdivision (g) and thereupon, subject to subdivision (c) of Section 110 or paragraph (2) of subdivision (g), as is applicable, the merger shall be effective as to each domestic constituent corporation and domestic constituent other business entity.

(4) If the surviving corporation or surviving other business entity is a foreign corporation or foreign other business entity, the merger shall become effective in accordance with the law of the jurisdiction in which the surviving corporation or surviving other business entity is organized, but, except as provided in paragraph (5), the merger shall be effective as to any domestic disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state of a copy of the agreement of merger with an officers' certificate of the surviving foreign corporation and of each constituent domestic corporation and a certificate of merger of each constituent other business entity attached, which officers' certificates and certificates of merger shall conform to the requirements of paragraph (1) of subdivision (g). If one or more domestic other business entities is a disappearing other business entity in a merger pursuant to this subdivision in which a foreign other business entity is the surviving entity, a certificate of merger as required by subdivision (a) of Section 15678.4 or subdivision (a) of Section 17552, as is applicable, shall also be filed at the same time as the filing of the agreement of merger.

(5) If the date of the filing in this state pursuant to this subdivision is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of the domestic corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation or corporations as of the date of filing in this state.

(6) In a merger described in paragraphs (3) or (4), each foreign disappearing corporation that is qualified for the transaction of intrastate business shall automatically by the filing pursuant to this subdivision surrender its right to transact intrastate business as of the date of filing in this state regardless of the time of effectiveness as to a domestic disappearing corporation. With respect to each foreign disappearing other business entity previously registered for the transaction of intrastate business in this state, the filing of the agreement of merger or certificate of merger, as is applicable, pursuant to this subdivision automatically has the effect of a cancellation of registration for that foreign other business entity without the necessity of the filing of a certificate of cancellation.

(7) A certificate of satisfaction of the Franchise Tax Board for each domestic disappearing corporation shall be filed when required by subdivision (g) or when required by Section 23334 of the Revenue and Taxation Code.

SEC. 22. Section 1201 of the Corporations Code is amended to read:

1201. (a) The principal terms of a reorganization shall be approved by the outstanding shares (Section 152) of each class of each corporation the approval of whose board is required under Section 1200, except as provided in subdivision (b) and except that (unless otherwise provided in the articles) no approval of any class of outstanding preferred shares of the surviving or acquiring corporation or parent party shall be required if the rights, preferences, privileges and restrictions granted to or imposed upon such class of shares remain unchanged (subject to the provisions of subdivision (c)). For the purpose of this subdivision, two classes of common shares differing only as to voting rights shall be considered as a single class of shares.

(b) No approval of the outstanding shares (Section 152) is required by subdivision (a) in the case of any corporation if such corporation, or its shareholders immediately before the reorganization, or both, shall own (immediately after the reorganization) equity securities, other than any warrant or right to subscribe to or purchase such equity securities, of the surviving or acquiring corporation or a parent party (subdivision (d) of Section 1200) possessing more than five-sixths of the voting power of the surviving or acquiring corporation or parent party. In making the determination of ownership by the shareholders of a corporation, immediately after the reorganization, of equity securities pursuant to the preceding sentence, equity securities which they owned immediately before the reorganization as shareholders of another party to the transaction shall be disregarded. For the purpose of this section only, the voting power of a corporation shall be calculated by assuming the conversion of all equity securities convertible (immediately or at some future time) into shares entitled to vote but not assuming the exercise of any warrant or right to subscribe to or purchase such shares.

(c) Notwithstanding the provisions of subdivision (b), a reorganization shall be approved by the outstanding shares (Section 152) of the surviving corporation in a merger reorganization if any amendment is made to its articles which would otherwise require such approval.

(d) Notwithstanding the provisions of subdivision (b), a reorganization shall be approved by the outstanding shares (Section 152) of any class of a corporation which is a party to a merger or sale-of-assets reorganization if holders of shares of that class receive shares of the surviving or acquiring corporation or parent party having different rights, preferences, privileges or restrictions than those surrendered. Shares in a foreign corporation received in exchange for shares in a domestic corporation have different rights, preferences, privileges and restrictions within the meaning of the preceding sentence.

(e) Notwithstanding the provisions of subdivisions (a) and (b), a reorganization shall be approved by the affirmative vote of at least two-thirds of each class of the outstanding shares of any close

corporation if the reorganization would result in their receiving shares of a corporation which is not a close corporation; provided, however, that the articles may provide for a lesser vote, but not less than a majority of the outstanding shares of each class.

(f) Notwithstanding the provisions of subdivisions (a) and (b), a reorganization shall be approved by the outstanding shares (Section 152) of any class of a corporation which is a party to a merger reorganization if holders of shares of that class receive interests of a surviving other business entity in the merger.

(g) Any approval required by this section may be given before or after the approval by the board. Notwithstanding approval required by this section, the board may abandon the proposed reorganization without further action by the shareholders, subject to the contractual rights, if any, of third parties.

SEC. 23. Section 15046 of the Corporations Code is amended to read:

15046. The following entities may be merged pursuant to this article:

(a) Any one or more general partnerships into one general partnership, provided the merger is specifically permitted by the partnership agreements and the procedure is detailed in that agreement. That action shall only be effective upon the vote of at least a majority in interest in profits from current operations of all general partners.

(b) One or more general partnerships with one or more limited partnerships into one limited partnership, provided the merger is specifically permitted by the general partnership agreements. That action shall only be effective upon the vote of at least a majority in interest in profits from current operations of all general partners.

(c) One or more general partnerships with one or more limited partnerships into one general partnership, provided the merger is specifically permitted by the general partnership agreements. That action shall only be effective upon the vote of at least a majority in interest in profits from current operations of all general partners.

(d) Any one or more general partnerships into one limited liability company, provided the merger is specifically permitted by the partnership agreements and the procedure is detailed in those agreements. That action shall only be effective upon the vote of at least a majority in interest in profits from current operations of all general partners.

(e) One or more general partnerships with one or more limited liability companies into one limited liability company, provided the merger is specifically permitted by the general partnership agreements. That action shall only be effective upon the vote of at least a majority in interest in profits from current operations of all general partners.

(f) One or more general partnerships with one or more limited liability companies into one general partnership, provided the merger is specifically permitted by the general partnership

agreements. That action shall only be effective upon the vote of at least a majority in interest in profits from current operations of all general partners.

SEC. 24. Section 15611 of the Corporations Code is amended to read:

15611. As used in this chapter, unless the context otherwise requires:

(a) "Acknowledged" means that an instrument is either of the following:

(1) Formally acknowledged as provided in Article 3 (commencing with Section 1180) of Chapter 4 of Title 4 of Part 4 of Division 2 of the Civil Code.

(2) Executed to include substantially the following wording preceding the signature: It is hereby declared that I am the person who executed this instrument, which execution is my act and deed.

Any certificate of acknowledgment taken without this state before a notary public or a judge or clerk of a court of record having an official seal need not be further authenticated.

(b) "Capital account" of a partner, unless otherwise provided in the partnership agreement, means the amount of the capital interest of that partner in the partnership consisting of that partner's original contribution, as (1) increased by any additional contributions and by that partner's share of the partnership's profits and (2) decreased by any distribution to that partner and by that partner's share of the partnership's losses.

(c) "Certificate of limited partnership" or "certificate" means the certificate referred to in Section 15621, including all amendments thereto.

(d) "Constituent corporation" means a corporation which is merged with or into one or more limited partnerships or other business entities and includes a surviving corporation.

(e) "Constituent limited partnership" means a limited partnership which is merged with or into one or more other limited partnerships or other business entities and includes a surviving limited partnership.

(f) "Constituent other business entity" means an other business entity that is merged with or into one or more limited partnerships and includes a surviving other business entity.

(g) "Contribution" means any money, property or services rendered, or a promissory note or other binding obligation to contribute money or property, or to render services as permitted in this chapter, which a partner contributes to a limited partnership as capital in that partner's capacity as a partner pursuant to an agreement between the partners, including an agreement as to value.

(h) "Disappearing limited partnership" means a constituent limited partnership which is not the surviving limited partnership.

(i) "Disappearing other business entity" means a constituent other business entity that is not the surviving other business entity.

(j) "Distribution" means the transfer of money or property by a partnership to its partners without consideration.

(k) "Domestic corporation" means a corporation formed under the laws of this state.

(l) "Foreign limited partnership" means a partnership formed under the laws of any state other than this state or under the laws of a foreign country and having as partners one or more general partners and one or more limited partners (or their equivalents under any name).

(m) "Foreign other business entity" means an other business entity formed under the laws of any state other than this state or under the laws of a foreign country.

(n) "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement or a person who has been admitted as a general partner pursuant to Section 15641.

(o) "Interests of all partners" means the aggregate interests of all partners in the current profits derived from business operations of the partnership.

(p) "Interests of limited partners" means the aggregate interests of all limited partners in their respective capacities as limited partners in the current profits derived from business operations of the partnership.

(q) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement, or an assignee of a limited partnership interest who has become a limited partner pursuant to Section 15674, or, to the extent provided in subdivision (b) of Section 15662, a former general partner who has ceased to be a general partner.

(r) "Limited partnership" or "domestic limited partnership" means a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.

(s) "Mail" means first-class mail, postage prepaid, unless registered mail is specified. Registered mail includes certified mail.

(t) "Majority in interest of all partners" means more than 50 percent of the interests of all partners.

(u) "Majority in interest of the limited partners" means more than 50 percent of the interests of limited partners.

(v) "Other business entity" means a corporation, general partnership, limited liability company, business trust, real estate investment trust, or an unincorporated association (other than a nonprofit association), but excluding a limited partnership.

(w) "Parent" of a specified limited partnership means each general partner of the limited partnership, each person possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of a general partner of the limited partnership, and a person owning, directly or indirectly, limited partnership interests possessing more than 50 percent of the

aggregate voting power of the specified limited partnership.

(x) "Partner" means a limited or general partner. "Partner of record" means a partner named as a partner on the list maintained in accordance with subdivision (a) of Section 15615.

(y) "Partnership agreement" means any valid oral or written agreement of the partners as to the affairs of a limited partnership and the conduct of its business, including all amendments thereto. In the event the partnership agreement consists of an oral agreement and a dispute arises concerning what the terms and conditions of the agreement are, the burden of proof shall be on the general partner or partners.

(z) "Person" means an individual, partnership, limited partnership (domestic or foreign), trust, estate, association, corporation, limited liability company, or other entity.

(aa) "Proxy" means a written authorization signed by a partner or the partner's attorney in fact giving another person the power to vote with respect to the interest of that partner. "Signed," for the purpose of this section, means the placing of the partner's name on the proxy (whether by manual signature, typewriting, telegraphic transmission, or otherwise) by the partner or partner's attorney in fact.

(ab) "Return of capital" means any distribution to a partner to the extent that the partner's capital account, immediately after the distribution, is less than the amount of that partner's contributions to the partnership as reduced by prior distributions which were a return of capital.

(ac) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(ad) "Surviving limited partnership" means a limited partnership into which one or more other limited partnerships or other business entities are merged.

(ae) "Surviving other business entity" means an other business entity into which one or more limited partnerships are merged.

(af) "Time a notice is given or sent," unless otherwise expressly provided, means the time a written notice to a partner or the limited partnership is deposited in the United States mails; or the time any other written notice is personally delivered to the recipient or is delivered to a common carrier for transmission, or actually transmitted by the person giving the notice by electronic means, to the recipient; or the time any oral notice is communicated, in person or by telephone or wireless, to the recipient or to a person at the office of the recipient who the person giving the notice has reason to believe will promptly communicate it to the recipient.

(ag) (1) "Transact intrastate business" means entering into repeated and successive transactions of business in this state, other than interstate or foreign commerce.

(2) A foreign limited partnership shall not be considered to be transacting intrastate business merely because of its status as any one

or more of the following:

(A) A shareholder of a foreign corporation transacting intrastate business.

(B) A shareholder of a domestic corporation.

(C) A limited partner of a foreign limited partnership transacting intrastate business.

(D) A limited partner of a domestic limited partnership.

(E) A member or manager of a foreign limited liability company transacting intrastate business.

(F) A member or manager of a domestic limited liability company.

(3) Without excluding other activities that may not constitute transacting intrastate business, a foreign limited partnership shall not be considered to be transacting intrastate business within the meaning of paragraph (1) solely by reason of carrying on in this state any one or more of the following activities:

(A) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims and disputes.

(B) Holding meetings of its partners or carrying on other activities concerning its internal affairs.

(C) Maintaining bank accounts.

(D) Maintaining offices or agencies for the transfer, exchange, and registration of its securities or depositaries with relation to its securities.

(E) Effecting sales through independent contractors.

(F) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where the orders require acceptance without this state before becoming binding contracts.

(G) Creating or acquiring evidences of debt or mortgages, liens, or security interests on real or personal property.

(H) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.

(I) Conducting an isolated transaction completed within a period of 180 days and not in the course of a number of repeated transactions of like nature.

(4) A person shall not be deemed to be transacting intrastate business in this state merely because of the person's status as a limited partner of a domestic limited partnership or a foreign limited partnership registered to transact intrastate business in this state.

SEC. 25. Section 15632 of the Corporations Code is amended to read:

15632. (a) A limited partner is not liable for any obligation of a limited partnership unless named as a general partner in the certificate or, in addition to the exercise of the rights and powers of a limited partner, the limited partner participates in the control of the business. If a limited partner participates in the control of the business without being named as a general partner, that partner may be held liable as a general partner only to persons who transact

business with the limited partnership with actual knowledge of that partner's participation in control and with a reasonable belief, based upon the limited partner's conduct, that the partner is a general partner at the time of the transaction. Nothing in this chapter shall be construed to affect the liability of a limited partner to third parties for the limited partner's participation in tortious conduct.

(b) A limited partner does not participate in the control of the business within the meaning of subdivision (a) solely by doing, attempting to do, or having the right or power to do, one or more of the following:

(1) Being (A) an independent contractor for or an agent or employee of, or transacting business with, the limited partnership or a general partner of the limited partnership, (B) an officer, director, or shareholder of a corporate general partner of the limited partnership, (C) a member, manager, or officer of a limited liability company that is a general partner of the limited partnership, (D) a limited partner of a partnership that is a general partner of the limited partnership, (E) a trustee, administrator, executor, custodian, or other fiduciary or beneficiary of an estate or trust that is a general partner, or (F) a trustee, officer, advisor, shareholder, or beneficiary of a business trust that is a general partner.

(2) Consulting with and advising a general partner with respect to the business of the limited partnership.

(3) Acting as surety for the limited partnership or for a general partner, guaranteeing one or more specific debts of the limited partnership, or providing collateral for the limited partnership or general partner, or borrowing money from the limited partnership or a general partner, or lending money to the limited partnership or a general partner.

(4) Approving or disapproving an amendment to the partnership agreement.

(5) Voting on, proposing, or calling a meeting of the partners for one or more of the matters described in subdivision (f) of Section 15636.

(6) Winding up the partnership pursuant to Section 15683.

(7) Executing and filing a certificate pursuant to Section 15625 or a certificate of dissolution pursuant to paragraph (3) of subdivision (a) of Section 15624 or a certificate of cancellation of certificate of limited partnership pursuant to paragraph (4) of subdivision (a) of Section 15624.

(8) Serving on an audit committee or committee performing the functions of an audit committee.

(9) Serving on a committee of the limited partnership or the limited partners for the purpose of approving actions of the general partner.

(10) Calling, requesting, attending, or participating at any meeting of the partners or the limited partners.

(11) Taking any action required or permitted by law to bring, pursue, settle, or terminate a derivative action on behalf of the

limited partnership.

(12) Serving on the board of directors or a committee of, consulting with or advising, being or acting as an officer, director, stockholder, partner, member, manager, agent, or employee of, or being or acting as a fiduciary for, any person in which the limited partnership has an interest.

(13) Exercising any right or power permitted to limited partners under this chapter and not specifically enumerated in this subdivision.

(c) The enumeration in subdivision (b) does not mean that any other conduct or the possession or exercise of any other power by a limited partner constitutes participation by the limited partner in the control of the business of the limited partnership.

SEC. 26. Section 15678.2 of the Corporations Code is amended to read:

15678.2. (a) Each limited partnership and other business entity which desires to merge shall approve an agreement of merger. The agreement of merger shall be approved by all general partners of each constituent limited partnership and the principal terms of the merger shall be approved by a majority in interest of each class of limited partners of each constituent limited partnership, unless a greater approval is required by the partnership agreement of the constituent limited partnership. Notwithstanding the previous sentence, if the limited partners of any constituent limited partnership become personally liable for any obligations of a constituent limited partnership or constituent other business entity as a result of the merger, the principal terms of the agreement of merger shall be approved by all of the limited partners of the constituent limited partnership, unless the agreement of merger provides that all limited partners will have the dissenters' rights provided in Article 7.6 (commencing with Section 15679.1). The agreement of merger shall be approved on behalf of each constituent other business entity by those persons required to approve the merger by the laws under which it is organized. Other persons, including a parent of a constituent limited partnership, may be parties to the agreement of merger. The agreement of merger shall state:

(1) The terms and conditions of the merger.

(2) The name and place of organization of the surviving limited partnership or surviving other business entity, and of each disappearing limited partnership and disappearing other business entity, and the agreement of merger may change the name of the surviving limited partnership, which new name may be the same as or similar to the name of a disappearing domestic or foreign limited partnership, subject to Section 15612.

(3) The manner of converting the partnership interests of each of the constituent limited partnerships into interests, shares, or other securities of the surviving limited partnership or surviving other business entity, and if partnership interests of any of the constituent

limited partnerships are not to be converted solely into interests, shares, or other securities of the surviving limited partnership or surviving other business entity, the cash, property, rights, interests, or securities which the holders of the partnership interests are to receive in exchange for the partnership interests, which cash, property, rights, interests, or securities may be in addition to or in lieu of interests, shares, or other securities of the surviving limited partnership or surviving other business entity, or that the partnership interests are canceled without consideration.

(4) Any other details or provisions as are required by the laws under which any constituent other business entity is organized, including, if a domestic corporation is a party to the merger, subdivision (b) of Section 1113.

(5) Any other details or provisions that are desired, including, without limitation, a provision for the treatment of fractional partnership interests.

(b) Each limited partnership interest of the same class of any constituent limited partnership (other than a limited partnership interest in another constituent limited partnership that is being canceled and that is held by a constituent limited partnership or its parent or a limited partnership of which the constituent limited partnership is a parent) shall, unless all limited partners of the class consent, be treated equally with respect to any distribution of cash, property, rights, interests, or securities. Notwithstanding this subdivision (b), except in a merger of a limited partnership with a limited partnership in which it controls at least 90 percent of the limited partnership interests entitled to vote with respect to the merger, the nonredeemable limited partnership interests of a constituent limited partnership may be converted only into nonredeemable interests or securities of the surviving limited partnership or other business entity or a parent if a constituent limited partnership or a constituent other business entity or its parent owns, directly or indirectly, prior to the merger, limited partnership interests of another constituent limited partnership or interests or securities of a constituent other business entity representing more than 50 percent of the interests or securities entitled to vote with respect to the merger of the other constituent limited partnership or constituent other business entity or more than 50 percent of the voting power, as defined in Section 194.5, of a constituent other business entity which is a domestic corporation, unless all of the limited partners of the class consent. This subdivision shall apply only to constituent limited partnerships with over 35 limited partners.

(c) Notwithstanding its prior approval, an agreement of merger may be amended prior to the filing of the certificate of merger or the agreement of merger, as provided in Section 15678.4, if the amendment is approved by the general partners of each constituent limited partnership in the same manner as required for approval of the original agreement of merger and, if the amendment changes

any of the principal terms of the agreement of merger, the amendment is approved by the limited partners of each constituent limited partnership in the same manner and to the same extent as required for the approval of the original agreement of merger, and by each of the constituent other business entities.

(d) The general partners of a constituent limited partnership may, in their discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other constituent limited partnerships and constituent other business entities, without further approval by the limited partnership interests, at any time before the merger is effective.

(e) An agreement of merger approved in accordance with subdivision (a) may (1) effect any amendment to the partnership agreement of any constituent limited partnership or (2) effect the adoption of a new partnership agreement for a constituent limited partnership if it is the surviving limited partnership in the merger. Any amendment to a partnership agreement or adoption of a new partnership agreement made pursuant to the foregoing sentence shall be effective at the effective time or date of the merger. Notwithstanding the above provisions of this subdivision, if a greater number of limited partners is required to approve an amendment to the partnership agreement of a constituent limited partnership than is required to approve the agreement of merger pursuant to subdivision (a), and the number of limited partners that approve the agreement of merger is less than the number of limited partners required to approve an amendment to the partnership agreement of the constituent limited partnership, any amendment to the partnership agreement or adoption of a new partnership agreement of that constituent limited partnership made pursuant to the first sentence of this subdivision shall be effective only if the agreement of merger provides that all of the limited partners shall have the dissenter's rights provided in Article 7.6 (commencing with Section 15679.1).

(f) The surviving limited partnership or surviving other business entity shall keep the agreement of merger at the office referred to in subdivision (a) of Section 15614 or at the business address specified in paragraph (5) of subdivision (a) of Section 15678.4, as applicable, and, upon the request of a limited partner of a constituent limited partnership or a holder of shares, interests, or other securities of a constituent other business entity, the general partners of the surviving limited partnership or the authorized person of the surviving other business entity shall promptly deliver to the limited partner or the holder of shares, interests, or other securities, at the expense of the surviving limited partnership or surviving other business entity, a copy of the agreement of merger. A waiver by a partner or holder of shares, interests, or other securities of the rights provided in this subdivision shall be unenforceable.

SEC. 27. Title 2.5 (commencing with Section 17000) is added to the Corporations Code, to read:

TITLE 2.5. LIMITED LIABILITY COMPANIES

CHAPTER 1. GENERAL PROVISIONS

17000. This title shall be known and may be cited as the Beverly-Killea Limited Liability Company Act.

17001. Unless the context otherwise indicates, the following definitions govern the construction of this title:

(a) "Acknowledged" means that an instrument is either of the following:

(1) Formally acknowledged as provided in Article 3 (commencing with Section 1180) of Chapter 4 of Title 4 of Part 4 of Division 2 of the Civil Code.

(2) Executed to include substantially the following wording preceding the signature: It is hereby declared that I am the person who executed this instrument, which execution is my act and deed.

Any certificate of acknowledgment taken without this state before a notary public or a judge or clerk of a court of record having an official seal need not be further authenticated.

(b) "Articles of organization" means articles of organization filed under Section 17050, including all amendments thereto or restatements thereof, or, in the case of a foreign limited liability company, all documents that serve a like function under the laws of the jurisdiction in which the foreign limited liability company is organized.

(c) "Bankrupt" or "bankruptcy" means, with respect to any person, being the subject of an order for relief under Title 11 of the United States Code, or any successor statute or other statute in any foreign jurisdiction having like import or effect.

(d) "Capital account" means, unless otherwise provided in the operating agreement, the amount of the capital interest of a member in the limited liability company consisting of that member's original contribution, as (1) increased by any additional contributions and by that member's share of the limited liability company's profits and (2) decreased by any distribution to that member and by that member's share of the limited liability company's losses.

(e) "Constituent limited liability company" means a limited liability company that is merged with or into one or more other limited liability companies or other business entities and includes a surviving limited liability company.

(f) "Constituent other business entity" means any other business entity that is merged with or into one or more limited liability companies and includes a surviving other business entity.

(g) "Contribution" means any money, property, or services rendered, or a promissory note or other binding obligation to contribute money or property, or to render services as permitted in this title, which a member contributes to a limited liability company as capital in that member's capacity as a member pursuant to an agreement between the members, including an agreement as to

value.

(h) "Disappearing limited liability company" means a constituent limited liability company that is not the surviving limited liability company.

(i) "Disappearing other business entity" means a constituent other business entity that is not the surviving other business entity.

(j) "Distribution" means the transfer of money or property by a limited liability company to its members without consideration.

(k) "Domestic" means organized under the laws of this state when used in relation to any limited liability company, other business entity or person (other than a natural person).

(l) "Domestic corporation" means a corporation as defined in Section 162.

(m) "Domestic limited partnership" means a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.

(n) "Economic interest" means a person's right to share in the income, gains, losses, deductions, credit, or similar items of, and to receive distributions from, the limited liability company, but does not include any other rights of a member including, without limitation, the right to vote or to participate in management, or, except as provided in Section 17106, any right to information concerning the business and affairs of the limited liability company.

(o) [RESERVED].

(p) "Foreign corporation" means a corporation formed under the laws of any state other than this state or under the laws of the United States or of a foreign country.

(q) "Foreign limited liability company" means either (1) an entity formed under the limited liability company laws of any state other than this state, or (2) an entity organized under the laws of any foreign country that is (A) an unincorporated association, (B) organized under a statute pursuant to which an association may be formed that affords each of its members limited liability with respect to the liabilities of the entity, and (C) not an entity that is required to be registered or qualified pursuant to the provisions of Title 1 (commencing with Section 100) or Title 2 (commencing with Section 15001); but the term "foreign limited liability company" does not include a foreign association, as defined in Section 170.

(r) "Foreign limited partnership" means a partnership formed under the laws of any state other than this state or under the laws of a foreign country and having as partners one or more general partners and one or more limited partners or their equivalents under any name.

(s) "Foreign other business entity" means any other business entity formed under the laws of any state other than this state or under the laws of the United States or of a foreign country.

(t) "Limited liability company" or "domestic limited liability company" means an entity having two or more members that is organized under this title, or in the case of a limited liability company

that is dissolving pursuant to Section 17350, a limited liability company having only one member.

(u) "Mail" unless otherwise provided in the operating agreement, means first-class mail, postage prepaid, unless registered mail is specified. Registered mail includes certified mail.

(v) "Majority in interest of the members," unless otherwise provided in the operating agreement, means more than 50 percent of the interests of members in current profits of the limited liability company.

(w) "Manager" means a person elected by the members of a limited liability company to manage the limited liability company if the articles of organization contain the statement referred to in subdivision (b) of Section 17151 or, if the articles of organization do not contain that statement, "manager" means each of the members of the limited liability company.

(x) "Member" means a person who:

(1) Has been admitted to a limited liability company as a member in accordance with the articles of organization or operating agreement, or an assignee of an interest in a limited liability company who has become a member pursuant to Section 17303.

(2) Has not resigned, withdrawn, or been expelled as a member or, if other than an individual, been dissolved.

(y) "Member of record" means a member named as a member on the list maintained in accordance with paragraph (1) of subdivision (a) of Section 17058.

(z) "Membership interest" means a member's rights in the limited liability company, collectively, including the member's economic interest, any right to vote or participate in management, and any right to information concerning the business and affairs of the limited liability company provided by this title.

(aa) "Officer" means any person elected or appointed pursuant to Section 17154.

(ab) "Operating agreement" means any agreement, written or oral, between all of the members as to the affairs of a limited liability company and the conduct of its business in any manner not inconsistent with law or the articles of organization, including all amendments thereto, or, in the case of a foreign limited liability company, all documents that serve a like function under the laws of the jurisdiction in which the foreign limited liability company is organized. The term "operating agreement" may include, without more, an agreement between all the members to organize a limited liability company pursuant to the provisions of this title.

(ac) "Other business entity" means a corporation, limited partnership, general partnership, business trust, real estate investment trust, or an unincorporated association (other than a nonprofit association), but excluding a domestic limited liability company and a foreign limited liability company.

(ad) "Parent," when used in relation to a specified limited liability company, means a person who owns, directly or indirectly,

membership interests possessing more than 50 percent of the voting power of the specified limited liability company. When used in relation to a specified corporation or limited partnership, the term "parent" shall have the meanings set forth in Section 1200 and subdivision (v) of Section 15611, respectively.

(ae) "Person" means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company, or other entity, whether domestic or foreign.

(af) RESERVED.

(ag) RESERVED.

(ah) RESERVED.

(ai) "Proxy," unless otherwise provided in the operating agreement, means a written authorization signed or an electronic transmission authorized by a member or the member's attorney in fact giving another person the power to exercise the voting rights of that member. "Signed," for the purpose of this section, means the placing of the member's name on the proxy (whether by manual signature, typewriting, telegraphic or electronic transmission, or otherwise) by the member or member's attorney in fact.

A proxy may be transmitted by an oral telephonic transmission if it is submitted with information from which it may be determined that the proxy was authorized by the member, or by the member's attorney in fact.

(aj) "Return of capital," unless otherwise provided in the operating agreement, means any distribution to a member to the extent that the member's capital account, immediately after the distribution, is less than the amount of that member's contributions to the limited liability company as reduced by prior distributions that were a return of capital.

(ak) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(al) "Subsidiary of a specified limited liability company" means a limited liability company or other business entity in which shares, interests, or other securities possessing more than 50 percent of the voting power are owned by the specified limited liability company.

(am) "Surviving limited liability company" means a limited liability company into which one or more other limited liability companies or other business entities are merged.

(an) "Surviving other business entity" means an other business entity into which one or more limited liability companies are merged.

(ao) "Time a notice is given or sent," unless otherwise expressly provided, means the time a written notice is deposited in the United States mails; is personally delivered to the recipient, is delivered to a common carrier for transmission, or is actually transmitted by the person giving the notice by electronic means, to the recipient; or the time any oral notice is communicated, in person or by telephone, to the recipient or to a person at the office of the recipient who the

person giving the notice has reason to believe will promptly communicate it to the recipient.

(ap) "Transact intrastate business" means to enter into repeated and successive transactions of business in this state, other than in interstate or foreign commerce.

(1) Without excluding other activities which may not be considered to be transacting intrastate business, a foreign limited liability company shall not be considered to be transacting intrastate business merely because its subsidiary transacts intrastate business, or merely because of its status as any one or more of the following:

(A) A shareholder of a domestic corporation.

(B) A shareholder of a foreign corporation transacting intrastate business.

(C) A limited partner of a foreign limited partnership transacting intrastate business.

(D) A limited partner of a domestic limited partnership.

(E) A member or manager of a foreign limited liability company transacting intrastate business.

(F) A member or manager of a domestic limited liability company.

(2) Without excluding other activities which may not be considered to be transacting intrastate business, a foreign limited liability company shall not be considered to be transacting intrastate business within the meaning of this subdivision solely by reason of carrying on in this state any one or more of the following activities:

(A) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes.

(B) Holding meetings of its managers or members or carrying on any other activities concerning its internal affairs.

(C) Maintaining bank accounts.

(D) Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited liability company's securities or maintaining trustees or depositaries with respect to those securities.

(E) Effecting sales through independent contractors.

(F) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where those orders require acceptance without this state before becoming binding contracts.

(G) Creating or acquiring evidences of debt or mortgages, liens, or security interests in real or personal property.

(H) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.

(I) Conducting an isolated transaction that is completed within 180 days and not in the course of a number of repeated transactions of a like nature.

(3) A person shall not be deemed to be transacting intrastate business in this state merely because of its status as a member or manager of a domestic limited liability company or a foreign limited

liability company registered to transact intrastate business in this state.

(aq) "Vote" includes authorization by written consent.

(ar) "Voting power" means the power to vote on any matter at the time any determination of voting power is made and does not include the right to vote upon the happening of some condition or event which has not yet occurred.

(as) "Written" or "in writing" includes facsimile and telegraphic communication.

17002. Subject to any limitations contained in the articles of organization and to compliance with any other applicable laws, a limited liability company may engage in any lawful business activity, except the banking, insurance, or trust company business.

17003. Subject to any limitations contained in the articles of organization and to compliance with this title and any other applicable laws, a limited liability company organized under this title shall have all of the powers of a natural person in carrying out its business activities, including, without limitation, the power to:

(a) Transact its business, carry on its operations, qualify to do business, and have and exercise the powers granted by this title in any state, territory, district, possession, or dependency of the United States, and in any foreign country.

(b) Sue, be sued, complain and defend any action, arbitration, or proceeding, whether judicial, administrative, or otherwise, in its own name.

(c) Adopt, use, and at will alter a company seal; but failure to affix a seal does not affect the validity of any instrument.

(d) Make contracts and guarantees, incur liabilities, act as surety, and borrow money.

(e) Sell, lease, exchange, transfer, convey, mortgage, pledge, and otherwise dispose of all or any part of its property and assets.

(f) Purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with any interest in real or personal property, wherever located.

(g) Lend money to and otherwise assist its members and employees.

(h) Issue notes, bonds, and other obligations and secure any of them by mortgage or deed of trust or security interest of any or all of its assets.

(i) Purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of and otherwise use and deal in and with stock or other interests in and obligations of any person, or direct or indirect obligations of the United States or of any government, state, territory, governmental district, or municipality, or of any instrumentality of any of them.

(j) Invest its surplus funds, lend money from time to time in any manner which may be appropriate to enable it to carry on the operations or fulfill the purposes set forth in its articles of

organization, and take and hold real property and personal property as security for the payment of funds so loaned or invested.

(k) Be a promoter, stockholder, partner, member, manager, associate, or agent of any person.

(l) Indemnify or hold harmless any person.

(m) Purchase and maintain insurance.

(n) Issue, purchase, redeem, receive, take, or otherwise acquire, own, hold, sell, lend, exchange, transfer, or otherwise dispose of, pledge, use, and otherwise deal in and with its own bonds, debentures, and other securities.

(o) Pay pensions and establish and carry out pension, profit-sharing, bonus, share purchase, option, savings, thrift, and other retirement, incentive, and benefit plans, trusts, and provisions for all or any of the current or former members, managers, officers, or employees of the limited liability company or any of its subsidiary or affiliated entities, and to indemnify and purchase and maintain insurance on behalf of any fiduciary of such plans, trusts, or provisions.

(p) Make donations, regardless of specific benefit to the limited liability company, to the public welfare or for community, civic, religious, charitable, scientific, literary, educational, or similar purposes.

(q) Make payments or donations or do any other act, not inconsistent with this title or any other applicable law, that furthers the business and affairs of the limited liability company.

(r) Pay compensation, and pay additional compensation, to any or all managers, officers, members, and employees on account of services previously rendered to the limited liability company, whether or not an agreement to pay such compensation was made before such services were rendered.

(s) Insure for its benefit the life of any of its members, managers, officers, or employees, insure the life of any member for the purpose of acquiring at his or her death the interest owned by such member, and continue such insurance after the relationship terminates.

(t) Do every other act not inconsistent with law that is appropriate to promote and attain the purposes set forth in its articles of organization.

17004. (a) A member may lend money to and transact other business with the limited liability company and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a member.

(b) Except as otherwise authorized in, or pursuant to, the operating agreement or other agreement among all the members, no member is entitled to remuneration for acting in the limited liability company business, subject to the entitlement of managers or members winding up the affairs of the limited liability company to reasonable compensation pursuant to subdivision (c) of Section 17352.

17005. (a) Except as provided in subdivisions (b) and (c),

relations among members and between the members and the limited liability company are governed by the articles of organization and operating agreement. To the extent the articles of organization or operating agreement do not otherwise provide, this title governs relations among the members and between the members and the limited liability company.

(b) The effect of the provisions of this title may be varied as among the members or as between the members and the limited liability company by the articles of organization or operating agreement, provided, however, that the provisions of Sections 17059, 17103, 17104, 17152, 17154, and 17155 may only be varied by the articles of organization or a written operating agreement. Notwithstanding the first sentence of this subdivision, neither the articles of organization nor the operating agreement may:

(1) Vary the definitions in Section 17001, except as specifically provided therein.

(2) Eliminate the right of a member pursuant to subdivision (c) of Section 17100 to assert that a provision in the operating agreement governing the termination of that member's interest and the return of that member's contribution was unreasonable under the circumstances existing at the time the agreement was made.

(3) Vary the voting requirements or voting rights set forth in subdivisions (b) and (c) of Section 17103.

(4) Vary a member's rights under Sections 17106 and 17453.

(5) Eliminate the right of a member under an obligation to render services to withdraw from the limited liability company pursuant to subdivision (b) of Section 17252.

(c) The provisions of Chapter 2 (commencing with Section 17050), Chapter 8 (commencing with Section 17350), Chapter 10 (commencing with Section 17450), Chapter 11 (commencing with Section 17500), Chapter 12 (commencing with Section 17550), and Chapter 13 (commencing with Section 17600) may be varied by the articles of organization or by a written operating agreement only to the extent expressly provided in those chapters.

(d) The fiduciary duties of a manager to the limited liability company and to the members of the limited liability company may only be modified in a written operating agreement with the informed consent of the members.

(e) The presence in certain provisions of this title of the words "unless otherwise provided in the articles of organization or operating agreement" or words of similar import does not imply that the effect of other provisions may not be varied as among the members by the articles of organization or operating agreement.

(f) If any provision of the articles of organization conflicts with one or more provisions of a written operating agreement, the articles of organization shall control.

CHAPTER 2. FORMATION

17050. (a) In order to form a limited liability company, one or more persons shall execute and file articles of organization with, and on a form prescribed by, the Secretary of State and, either before or after the filing of articles of organization, the members shall have entered into an operating agreement. The person or persons who execute and file the articles of organization may, but need not, be members of the limited liability company.

(b) A limited liability company shall have two or more members.

(c) The existence of a limited liability company begins upon the filing of the articles of organization. For all purposes, a copy of the articles of organization duly certified by the Secretary of State is conclusive evidence of the formation of a limited liability company and prima facie evidence of its existence.

17051. (a) The articles of organization shall set forth:

(1) The name of the limited liability company.

(2) The latest date on which the limited liability company is to dissolve.

(3) The following statement:

The purpose of the limited liability company is to engage in any lawful act or activity for which a limited liability company may be organized under the Beverly-Killea Limited Liability Company Act.

(4) RESERVED.

(5) The name and address of the initial agent for service of process on the limited liability company meeting the qualifications specified in paragraph (1) of subdivision (d) of Section 17061, unless a corporate agent is designated, in which case only the name of the agent shall be set forth.

(6) If the limited liability company is to be managed by one or more managers and not by all its members, the statement referred to in subdivision (b) of Section 17151, including, if the limited liability company is to be managed by only one manager, a statement to that effect.

(b) It is not necessary to set out in the articles of organization any of the powers of a limited liability company enumerated in this title.

(c) The articles of organization may contain any other provision not inconsistent with law, including, but not limited to:

(1) A provision limiting or restricting the business in which the limited liability company may engage or the powers that the limited liability company may exercise or both.

(2) Provisions governing the admission of members to the limited liability company.

(3) Any events, other than or additional to the events specified in subdivision (d) of Section 17350, that will cause a dissolution of the limited liability company.

(4) A statement of whether there are limitations on the authority of managers or members to bind the limited liability company, and, if so, what they are.

(d) No limitation upon the business, purposes, or powers of the limited liability company contained in or implied by the articles of organization or by the operating agreement shall be asserted as between the limited liability company or any manager or member and any third person, except in a proceeding (1) by a member or the state to enjoin the doing or continuation of unauthorized business by the limited liability company or its managers or officers, or both, in cases where third parties have not acquired rights thereby, (2) to dissolve the limited liability company, or (3) by the limited liability company or by a member suing in a representative suit on its behalf against the officers or managers of the limited liability company for violation of their authority, unless the person asserting the limitation had actual knowledge of the limitation at the time of the act or event complained of.

(e) The Secretary of State may cancel the filing of articles of organization if a check or other remittance accepted in payment of the filing fee is not paid upon presentation. Upon receiving written notification that the item presented for payment has not been honored for payment, the Secretary of State shall give a first written notice of the applicability of this section to the agent for service of process or to the person submitting the instrument. Thereafter, if the amount has not been paid by cashier's check or equivalent, the Secretary of State shall give a second written notice of cancellation and the cancellation shall thereupon be effective. The second notice shall be given 20 days or more after the first notice and 90 days or less after the original filing.

17052. The name of each limited liability company as set forth in its articles of organization:

(a) Shall contain either the words "limited liability company" or the abbreviation "LLC" as the last words in the name of the limited liability company. The words "limited" and "company" may be abbreviated to "Ltd." and "Co.," respectively.

(b) May contain the name of one or more members.

(c) Shall not be a name that the Secretary of State determines is likely to mislead the public and shall not be the same as, or resemble so closely as to tend to deceive, (1) the name of any limited liability company that has filed articles of organization pursuant to Section 17050, (2) the name of any foreign limited liability company registered to do business in this state pursuant to Section 17451, or (3) any name that is under reservation for another domestic limited liability company or foreign limited liability company pursuant to Section 17053, except that a limited liability company may adopt a name that is substantially the same as that of an existing domestic limited liability company or foreign limited liability company that is registered pursuant to Section 17451 upon proof of consent by that domestic limited liability company or foreign limited liability company and a finding by the Secretary of State that under the circumstances the public is not likely to be misled.

(d) Shall not contain the words "bank," "insurance," "trust,"

“trustee,” “incorporated,” “inc.,” “corporation,” or “corp.”

(e) The use by a limited liability company or a foreign limited liability company of a name in violation of this section may be enjoined notwithstanding the filing of its articles of organization or its registration with the Secretary of State.

17053. Any applicant may, upon payment of the fee prescribed in subdivision (a) of Section 17701, obtain from the Secretary of State a certificate of reservation of any name not prohibited by Section 17052, and upon the issuance of the certificate the name stated therein may be reserved for a period of 60 days. The Secretary of State shall not issue certificates reserving the same name for two or more consecutive 60-day periods to the same applicant or for the use or benefit of the same person; nor shall consecutive reservations be made by or for the use or benefit of the same person for names so similar as to fall within the prohibitions of subdivision (c) of Section 17052.

17054. (a) Subject to subdivision (c) of Section 17103, the articles of organization may be amended at any time and in any manner as the members may determine, as long as the articles of organization as amended contain only those provisions as it would be lawful to insert in original articles of organization filed at the time of the filing of the amendment. The articles of organization may be amended regardless of whether any provision contained in the amendment was permissible at the time of the original organization of the limited liability company.

(b) The articles of organization shall be amended by filing a certificate of amendment thereto duly executed by at least one manager, unless a greater number is provided in the articles of organization. The certificate of amendment shall be filed with, and on a form prescribed by, the Secretary of State, and shall set forth all of the following:

(1) The name and the Secretary of State’s file number of the limited liability company.

(2) The text of the amendment to the articles of organization.

(c) A certificate of amendment to the articles of organization shall be filed to effect any of the following:

(1) A change in the name of the limited liability company.

(2) Any change in the statement referred to in subdivision (b) of Section 17151.

(3) Any change in the time as stated in the articles of organization for the dissolution of the limited liability company.

(4) Any change in the events that will cause a dissolution of the limited liability company.

(d) The managers shall cause to be filed a certificate of amendment to the articles of organization within 30 days of the discovery by any of the managers of any false or erroneous material statement contained in the articles of organization or any amendment thereto.

(e) Any manager who executes a certificate of amendment shall

be liable for any statement materially inconsistent with the operating agreement or any material misstatement of fact contained in the certificate of amendment if the manager knew or should have known that the statement was false when made or that the statement became false and an amendment required by subdivision (d) was not filed, and the person suffering the loss relied on the statement or misstatement.

(f) Articles of organization may be restated at any time. Restated articles of organization shall be filed with, and on a form prescribed by, the Secretary of State, shall be specifically designated as restated in the heading, shall set forth the limited liability company's name and the Secretary of State's file number, may set forth the name and address of the agent for service of process required to be maintained by Section 17057, unless a corporate agent is designated, in which case only the name of the agent shall be set forth, shall set forth all the other matters required by Section 17051 to be set forth in the articles of organization, and may set forth any other matters that may be set forth as authorized by Section 17051. If restated articles of organization include the agent for service of process, any previously filed statements pursuant to Section 17060 are superseded as to the agent for service of process until another statement pursuant to Section 17060 is filed subsequent to the filing of the restated articles of organization. If the name of the limited liability company is to be changed by the filing of the restated articles of organization, the old name shall also be set forth in the heading in a manner to indicate the intent to change the name.

17055. (a) If any document filed with the Secretary of State under this title contains any typographical error, error of transcription, or other technical error, or has been defectively executed, the document may be corrected by the filing of a certificate of correction.

(b) A certificate of correction shall be filed with, and on a form prescribed by, the Secretary of State, and shall set forth:

(1) The name and the Secretary of State's file number of the limited liability company.

(2) The title of the document being corrected.

(3) The name of each party to the document being corrected.

(4) The date that the document being corrected was filed.

(5) The provision in the document as previously filed and as corrected and, if execution of the document was defective, the manner in which it was defective.

(c) A certificate of correction shall not make any other change or amendment that would not have complied in all respects with the requirements of this title at the time the document being corrected was filed.

(d) A certificate of correction shall be executed in the same manner in which the document being corrected was required to be executed.

(e) A certificate of correction may not:

(1) Change the effective date of the document being corrected.

(2) Affect any right or liability accrued or incurred before its filing, except that any right or liability accrued or incurred by reason of the error or defect being corrected shall be extinguished by the filing if the person having the right or to whom the liability is owed has not detrimentally relied on the original document.

17056. (a) Unless otherwise specified in any other section of this title, any document required by this title to be executed and filed with the Secretary of State shall be executed:

(1) By the person or persons organizing the limited liability company when the limited liability company has not yet been formed.

(2) By any manager.

(3) If the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(4) In the case of a foreign limited liability company, in the manner required by the laws of the state of its organization.

(b) Any person may execute any document referred to in subdivision (a) by an attorney in fact. Powers of attorney relating to the signing of those documents by an attorney in fact need not be sworn to, verified, or acknowledged, and need not be filed with the Secretary of State.

(c) Any instrument filed with respect to a limited liability company, other than the original articles of organization, may provide that it is to become effective not more than 90 days after its filing date. In case a delayed effective date is specified, the instrument may be prevented from becoming effective by a certificate stating that by appropriate action it has been revoked and is null and void. This certificate shall be executed in the same manner as the original instrument and shall be filed before the specified effective date. In the case of a merger agreement or certificate of merger, a certificate revoking the earlier filing need only be executed on behalf of one of the constituent parties to the merger. If no revocation certificate is filed, the instrument becomes effective on the date specified.

(d) If the Secretary of State determines that an instrument submitted for filing or otherwise submitted does not conform to the law and returns it to the person submitting it, the instrument may be resubmitted accompanied by a written opinion of a member of the State Bar of California submitting the instrument or representing the person submitting it, to the effect that the specific provisions of the instrument objected to by the Secretary of State does conform to law and stating the points and authorities upon which the opinion is based. The Secretary of State shall rely, with respect to any disputed point of law, other than the application of Sections 17052, 17053, 17451, and 17452, upon that written opinion in determining whether the instrument conforms to law. The date of filing in that case shall be the date the instrument is received on resubmission.

17057. Each limited liability company shall continuously

maintain in this state each of the following:

(a) An office at which shall be maintained the records required by Section 17058.

(b) An agent in this state for service of process on the limited liability company.

17058. (a) Each limited liability company shall maintain at the office referred to in subdivision (a) of Section 17057 all of the following:

(1) A current list of the full name and last known business or residence address of each member and of each holder of an economic interest in the limited liability company set forth in alphabetical order, together with the contribution and the share in profits and losses of each member and holder of an economic interest.

(2) If the articles of organization contain the statement described in subdivision (b) of Section 17151, a current list of the full name and business or residence address of each manager.

(3) A copy of the articles of organization and all amendments thereto, together with any powers of attorney pursuant to which the articles of organization or any amendments thereto were executed.

(4) Copies of the limited liability company's federal, state, and local income tax or information returns and reports, if any, for the six most recent taxable years.

(5) A copy of the limited liability company's operating agreement, if in writing, and any amendments thereto, together with any powers of attorney pursuant to which any written operating agreement or any amendments thereto were executed.

(6) Copies of the financial statements of the limited liability company, if any, for the six most recent fiscal years.

(7) The books and records of the limited liability company as they relate to the internal affairs of the limited liability company for at least the current and past four fiscal years.

(b) Upon request of an assessor, a domestic or foreign limited liability company owning, claiming, possessing, or controlling property in this state subject to local assessment shall make available at the limited liability company's principal office in California or at the office required to be kept pursuant to subdivision (a) of Section 17057 or at a place mutually acceptable to the assessor and the limited liability company, a true copy of business records relevant to the amount, cost, and value of all property that it owns, claims, possesses, or controls within the county.

17059. The power to adopt, alter, amend, or repeal the operating agreement of a limited liability company shall be vested in the members. The articles of organization or a written operating agreement may prescribe the manner in which the operating agreement may be altered, amended, or repealed.

17060. (a) Every limited liability company and every foreign limited liability company registered to transact intrastate business in this state shall file within 90 days after the filing of its original articles of organization and annually thereafter during the applicable filing

period in each year, on a form prescribed by the Secretary of State, a statement containing:

(1) The name of the limited liability company and the Secretary of State's file number and, in the case of a foreign limited liability company, the state under the laws of which it is organized.

(2) The name and street address of the agent for service of process required to be maintained pursuant to subdivision (b) of Section 17057. If a corporate agent is designated, only the name of the agent shall be set forth.

(3) The street address of its principal executive office and, in the case of a domestic limited liability company, of the office required to be maintained pursuant to Section 17057.

(4) The name and complete business or residence addresses of any manager or managers and the chief executive officer, if any, appointed or elected in accordance with the articles of organization or operating agreement or, if no manager has been so elected or appointed, the name and business or residence address of each member.

(5) The general type of business that constitutes the principal business activity of the limited liability company (for example, manufacturer of aircraft; wholesale liquor distributor; retail department store).

(b) If there has been no change in the information in the last filed statement of the limited liability company on file in the Secretary of State's office, the limited liability company may, in lieu of filing the statement required by subdivision (a), advise the Secretary of State, on a form prescribed by the Secretary of State, that no changes in the required information have occurred during the applicable filing period.

(c) For the purposes of this section, the applicable filing period for a limited liability company shall be the calendar month during which its original articles of organization were filed or, in the case of a foreign limited liability company, the month during which its application for registration was filed, and the immediately preceding five calendar months. The Secretary of State shall mail a form for compliance with this section to each limited liability company approximately three months prior to the close of the applicable filing period. The form shall state the due date thereof and shall be mailed to the last address of the limited liability company according to the records of the Secretary of State. The failure of the limited liability company to receive the form shall not exempt the limited liability company from complying with this section.

(d) Whenever any of the information required by subdivision (a) changes, other than the name and street address of the agent for service of process, the limited liability company may file a current statement containing all the information required by subdivision (a). When changing its agent for service of process or when the address of the agent changes, the limited liability company shall file a current statement containing all the information required by subdivision (a).

Whenever any statement is filed pursuant to this section changing the name and street address of the agent for service of process, that statement supersedes any previously filed statement pursuant to this section, the statement in the original articles of organization, and the statement in any restated articles of organization that have been filed, or in the case of a foreign limited liability company, in the application for registration. Whenever restated articles of organization are filed, the statement therein, if any, of the name and street address of the agent for service of process supersedes any previously filed statement pursuant to this section.

(e) The Secretary of State may destroy or otherwise dispose of any statement filed pursuant to this section after it has been superseded by the filing of a new statement.

(f) This section shall not be construed to place any person dealing with the limited liability company on notice of, or under any duty to inquire about, the existence or content of a statement filed pursuant to this section.

17061. (a) In addition to Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure, process may be served upon limited liability companies and foreign limited liability companies as provided in this section.

(b) Personal service of a copy of any process against the limited liability company or the foreign limited liability company by delivery (1) to any individual designated by it as agent, or (2) if the designated agent is a corporation, to any person named in the latest certificate of the corporate agent filed pursuant to Section 1505 at the office of the corporate agent, shall constitute valid service on the limited liability company or the foreign limited liability company. No change in the address of the agent for service of process or appointment of a new agent for service of process shall be effective until an amendment to the statement described in Section 17060 is filed. In the case of a foreign limited liability company that has appointed the Secretary of State as agent for service of process by reason of subdivision (e) of Section 17456, process shall be delivered by hand to the Secretary of State, or to any person employed in the capacity of assistant or deputy, and shall include one copy of the process for each defendant to be served, together with a copy of the court order authorizing the service and the fee therefor. The order shall set forth the address to which the process shall be sent by the Secretary of State.

(c) (1) If an agent for service of process has resigned and has not been replaced or if the designated agent cannot with reasonable diligence be found at the address designated for personal delivery of the process, and it is shown by affidavit to the satisfaction of the court that process against a limited liability company or foreign limited liability company cannot be served with reasonable diligence upon the designated agent by hand in the manner provided in Section 415.10, subdivision (a) of Section 415.20, or subdivision (a) of Section 415.30 of the Code of Civil Procedure, the court may make an order

that the service shall be made upon a domestic limited liability company or upon a registered foreign limited liability company by delivering by hand to the Secretary of State, or to any person employed in the Secretary of State's office in the capacity of assistant or deputy, one copy of the process for each defendant to be served, together with a copy of the order authorizing the service. Service in this manner shall be deemed complete on the 10th day after delivery of the process to the Secretary of State.

(2) Upon receipt of the copy of process and the fee therefor, the Secretary of State shall give notice of the service of the process to the limited liability company or foreign limited liability company, at its principal executive office, by forwarding to that office, by registered mail with request for return receipt, the copy of the process.

(3) The Secretary of State shall keep a record of all process served upon the Secretary of State under this title and shall record therein the time of service and the action taken by the Secretary of State. A certificate under the Secretary of State's official seal, certifying to the receipt of process, the giving of notice to the limited liability company or foreign limited liability company, and the forwarding of the process pursuant to this section, shall be competent and prima facie evidence of the service of process.

(d) (1) The articles of organization of a limited liability company and the application for registration of a foreign limited liability company shall designate, as the agent for service of process, an individual residing in this state or a corporation that has complied with Section 1505 and whose capacity to act as an agent has not terminated. If an individual is designated, the statement shall set forth that person's complete business or residence address in this state.

(2) An agent designated for service of process may file with the Secretary of State a signed and acknowledged written statement of resignation as an agent. Upon filing of the statement of resignation, the authority of the agent to act in that capacity shall cease and the Secretary of State shall give written notice of the filing of the statement of resignation by mail to the limited liability company or foreign limited liability company addressed to its principal executive office.

(3) If an individual who has been designated agent for service of process dies or resigns or no longer resides in the state, or if the corporate agent for that purpose resigns, dissolves, withdraws from the state, forfeits its right to transact intrastate business, has its corporate rights, powers, and privileges suspended, or ceases to exist, the limited liability company or foreign limited liability company shall promptly file an initial or amended statement described in Section 17060 designating a new agent.

(e) In addition to any other discovery rights that may exist, in any case pending in a California court in which a party seeks records from a limited liability company formed under this title, whether or not the limited liability company is a party, the court may order the

production in California of the books and records of the limited liability company on those terms and conditions that the court deems appropriate.

(f) A member may, in a written operating agreement or other writing, consent to be subject to the nonexclusive jurisdiction of the courts of a specified jurisdiction, or the exclusive jurisdiction of the courts of this state.

(g) If a member desires to use the arbitration process, that member may, in a written operating agreement or other writing, consent to be nonexclusively subject to arbitration in a specified state, or to be exclusively subject to arbitration in this state.

(h) Along with the consent to the jurisdiction of courts or to be subject to arbitration as provided in subdivisions (f) and (g), a member may consent to be served with legal process in the manner prescribed in a written operating agreement or other writing.

17062. An instrument shall be deemed filed, and the date of filing endorsed thereon, upon receipt by the Secretary of State of any instrument accompanied by the fee prescribed in Chapter 15 (commencing with Section 17700). The date of filing shall be the date the instrument is received by the Secretary of State unless the instrument is withheld from filing for a period of time not to exceed 90 days pursuant to a request by the party submitting it for filing or unless, in the judgment of the Secretary of State, the filing is intended to be coordinated with the filing of some other document that cannot be filed. The Secretary of State shall file a document as of any requested future date not more than 90 days after its receipt, including a Saturday, Sunday, or legal holiday, if that document is received in the Secretary of State's office at least one business day prior to the requested date of filing. Upon receipt and after filing of any document under this title, the Secretary of State may microfilm or reproduce by other techniques any filings or documents and destroy the original filing or document. The microfilm or other reproduction of any document under the provision of this section shall be admissible in any court of law.

CHAPTER 3. MEMBERS

17100. (a) After formation of a limited liability company, a person may become a member:

(1) In the case of a person acquiring a membership interest directly from the limited liability company, at the time provided in and upon compliance with the articles of organization or the operating agreement or, if the articles of organization or operating agreement do not so provide, only upon the vote of all the members and when the person becomes a party to the operating agreement.

(2) In the case of an assignee of a membership interest, upon compliance with subdivision (a) of Section 17303 and at the time provided in and upon compliance with the articles of organization or the operating agreement or, if the articles of organization or

operating agreement do not so provide, when the assignee becomes a party to the operating agreement.

(b) In each case under subdivision (a), the person acquiring the membership interest shall be added as a member to the list required by paragraph (1) of subdivision (a) of Section 17058.

(c) The operating agreement may provide for the termination in whole or in part of the membership interest or economic interest of a member in the limited liability company. If a member's economic interest in the limited liability company is terminated pursuant to the operating agreement, the member may demand and shall be entitled to receive a return of that member's contribution. Any provision in an operating agreement governing the termination of a member's interest and the return of a member's contribution shall be enforceable in accordance with its terms unless the member seeking to invalidate the provision establishes that the provision was unreasonable under the circumstances existing at the time the agreement was made. Upon any termination of a membership interest, the list required by paragraph (1) of subdivision (a) of Section 17058 shall be amended accordingly.

17101. (a) Except as otherwise provided in Section 17254, no member of a limited liability company shall be personally liable under any judgment of a court, or in any other manner, for any debt, obligation, or liability of the limited liability company, whether that liability or obligation arises in contract, tort, or otherwise, solely by reason of being a member of the limited liability company.

(b) A member of a limited liability company shall be personally liable under a judgment of a court or for any debt, obligation, or liability of the limited liability company, whether that liability or obligation arises in contract, tort, or otherwise, under the same or similar circumstances and to the same extent as a shareholder of a corporation may be personally liable for any debt, obligation, or liability of the corporation; except that the failure to hold meetings of members or managers or the failure to observe formalities pertaining to the calling or conduct of meetings shall not be considered a factor tending to establish that the members have personal liability for any debt, obligation, or liability of the limited liability company where the articles of organization or operating agreement do not expressly require the holding of meetings of members or managers.

(c) Nothing in this section shall be construed to affect the liability of a member of a limited liability company to third parties for the member's participation in tortious conduct.

(d) A limited liability company or foreign limited liability company shall carry insurance or provide an undertaking to the same extent and in the same amount as is required by any law, rule, or regulation of this state that would be applicable to the limited liability company or foreign limited liability company were it a corporation organized and existing or duly qualified for the transaction of intrastate business under the General Corporation

Law.

17102. The articles of organization or the operating agreement may provide for the creation of classes of members having those relative rights, powers, and duties as the articles of organization or operating agreement may provide, including rights, powers, and duties senior to other classes of members.

17103. (a) The articles of organization or a written operating agreement may provide to all or certain identified members or a specified class or group of members the right to vote separately or with all or any class or group of members on any matter. Voting by members may be on a per capita, number, financial interest, class, group, or any other basis. If no voting provision is contained in the articles of organization or written operating agreement:

(1) The members of a limited liability company shall vote in proportion to their interests in current profits of the limited liability company or, in the case of a member who has assigned his or her or its entire economic interest in the limited liability company to a person who has not been admitted as a member, in proportion to the interest in current profits that the assigning member would have, had the assignment not been made.

(2) The following matters shall require the unanimous vote of all members:

(A) A decision to continue the business of the limited liability company after dissolution of the limited liability company pursuant to Section 17350.

(B) Approval of the transfer of a membership interest and admission of the assignee as a member of the limited liability company.

(C) Any amendment of the articles of organization or operating agreement.

(3) In all other matters in which a vote is required, a vote of a majority in interest of the members shall be sufficient.

(b) Notwithstanding any provision to the contrary in the articles of organization or operating agreement, in no event shall the articles of organization be amended by a vote of less than a majority in interest of the members.

(c) Notwithstanding any provision to the contrary in the articles of organization or operating agreement, members shall have the right to vote on a dissolution of the limited liability company as provided in subdivision (c) of Section 17350 and on a merger of the limited liability company as provided in Section 17551.

17104. (a) Meetings of members may be held at any place, either within or without this state, selected by the person or persons calling the meeting or as may be stated in or fixed in accordance with the articles of organization or a written operating agreement. If no other place is stated or so fixed, all meetings shall be held at the principal executive office of the limited liability company.

(b) A meeting of the members may be called by any manager or by any member or members representing more than 10 percent of

the interests of members for the purpose of addressing any matters on which the members may vote.

(c) (1) Whenever members are required or permitted to take any action at a meeting, a written notice of the meeting shall be given not less than 10 days nor more than 60 days before the date of the meeting to each member entitled to vote at the meeting. The notice shall state the place, date, and hour of the meeting and the general nature of the business to be transacted. No other business may be transacted at this meeting.

(2) Any report or any notice of a members' meeting shall be given either personally or by mail or other means of written communication, addressed to the member at the address of the member appearing on the books of the limited liability company or given by the member to the limited liability company for the purpose of notice, or, if no address appears or is given, at the place where the principal executive office of the limited liability company is located or by publication at least once in a newspaper of general circulation in the county in which the principal executive office is located. The notice or report shall be deemed to have been given at the time when delivered personally or deposited in the mail or sent by other means of written communication. An affidavit of mailing of any notice or report in accordance with the provisions of this article, executed by a manager, shall be prima facie evidence of the giving of the notice or report.

If any notice or report addressed to the member at the address of the member appearing on the books of the limited liability company is returned to the limited liability company by the United States Postal Service marked to indicate that the United States Postal Service is unable to deliver the notice or report to the member at the address, all future notices or reports shall be deemed to have been duly given without further mailing if they are available for the member at the principal executive office of the limited liability company for a period of one year from the date of the giving of the notice or report to all other members.

(3) Upon written request to a manager by any person entitled to call a meeting of members, the manager shall immediately cause notice to be given to the members entitled to vote that a meeting will be held at a time requested by the person calling the meeting, not less than 10 days nor more than 60 days after the receipt of the request. If the notice is not given within 20 days after receipt of the request, the person entitled to call the meeting may give the notice or, upon the application of that person, the superior court of the county in which the principal executive office of the limited liability company is located, or if the principal executive office is not in this state, the county in which the limited liability company's address in this state is located, shall summarily order the giving of the notice, after notice to the limited liability company affording it an opportunity to be heard. The procedure provided in subdivision (c) of Section 305 shall apply to the application. The court may issue any

order as may be appropriate, including, without limitation, an order designating the time and place of the meeting, the record date for determination of members entitled to vote, and the form of notice.

(d) When a members' meeting is adjourned to another time or place, unless the articles of organization or a written operating agreement otherwise require and, except as provided in this subdivision, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the limited liability company may transact any business that may have been transacted at the original meeting. If the adjournment is for more than 45 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each member of record entitled to vote at the meeting.

(e) The actions taken at any meeting of members, however called and noticed, and wherever held, have the same validity as if taken at a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy, and if, either before or after the meeting, each of the members entitled to vote, not present in person or by proxy, signs a written waiver of notice or consents to the holding of the meeting or approves the minutes of the meeting. All waivers, consents, and approvals shall be filed with the limited liability company records or made a part of the minutes of the meeting. Attendance of a person at a meeting shall constitute a waiver of notice of the meeting, except when the person objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Attendance at a meeting is not a waiver of any right to object to the consideration of matters required by this title to be included in the notice but not so included, if the objection is expressly made at the meeting. Neither the business to be transacted nor the purpose of any meeting of members need be specified in any written waiver of notice, unless otherwise provided in the articles of organization or operating agreement, except as provided in subdivision (g).

(f) Members may participate in a meeting of the limited liability company through the use of conference telephones or similar communications equipment, as long as all members participating in the meeting can hear one another. Participation in a meeting pursuant to this provision constitutes presence in person at that meeting.

(g) Any action approved at a meeting, other than by unanimous approval of those entitled to vote, shall be valid only if the general nature of the proposal so approved was stated in the notice of meeting or in any written waiver of notice.

(h) (1) A majority in interest of the members represented in person or by proxy shall constitute a quorum at a meeting of members.

(2) The members present at a duly called or held meeting at which a quorum is present may continue to transact business until

adjournment, notwithstanding the loss of a quorum, if any action taken after loss of a quorum, other than adjournment, is approved by the requisite percentage of interests of members specified in this title or in the articles of organization or a written operating agreement.

(3) In the absence of a quorum, any meeting of members may be adjourned from time to time by the vote of a majority of the interests represented either in person or by proxy, but no other business may be transacted, except as provided in paragraph (2).

(i) (1) Any action that may be taken at any meeting of the members may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed and delivered to the limited liability company within 60 days of the record date for that action by members having not less than the minimum number of votes that would be necessary to authorize or take that action at a meeting at which all members entitled to vote thereon were present and voted.

(2) Unless the consents of all members entitled to vote have been solicited in writing, (A) notice of any member approval of an amendment to the articles of organization or operating agreement, a dissolution of the limited liability company as provided in Section 17350, or a merger of the limited liability company as provided in Section 17551, without a meeting by less than unanimous written consent shall be given at least 10 days before the consummation of the action authorized by such approval, and (B) prompt notice shall be given of the taking of any other action approved by members without a meeting by less than unanimous written consent, to those members entitled to vote who have not consented in writing.

(3) Any member giving a written consent, or the member's proxyholder, may revoke the consent by a writing received by the limited liability company prior to the time that written consents of members having the minimum number of votes that would be required to authorize the proposed action have been filed with the limited liability company, but may not do so thereafter. This revocation is effective upon its receipt at the office of the limited liability company required to be maintained pursuant to Section 17057.

(j) The use of proxies in connection with this section will be governed in the same manner as in the case of corporations formed under the General Corporation Law.

(k) In order that the limited liability company may determine the members of record entitled to notices of any meeting or to vote, or entitled to receive any distribution or to exercise any rights in respect of any other lawful action, a manager, or members representing more than 10 percent of the interests of members, may fix, in advance, a record date, that is not more than 60 days nor less than 10 days prior to the date of the meeting and not more than 60 days prior to any other action. If no record date is fixed:

(1) The record date for determining members entitled to notice

of or to vote at a meeting of members shall be at the close of business on the business day next preceding the day on which notice is given or, if notice is waived, at the close of business on the business day next preceding the day on which the meeting is held.

(2) The record date for determining members entitled to give consent to limited liability company action in writing without a meeting shall be the day on which the first written consent is given.

(3) The record date for determining members for any other purpose shall be at the close of business on the day on which the managers adopt the resolution relating thereto, or the 60th day prior to the date of the other action, whichever is later.

(4) The determination of members of record entitled to notice of or to vote at a meeting of members shall apply to any adjournment of the meeting unless a manager or the members who called the meeting fix a new record date for the adjourned meeting, but the manager or the members who called the meeting shall fix a new record date if the meeting is adjourned for more than 45 days from the date set for the original meeting.

17105. (a) The operating agreement may provide that the interest of a member or assignee in a limited liability company may be evidenced by a certificate of interest issued by the limited liability company, and may make other provisions not inconsistent with this title with respect to the transfer of interests represented by those certificates or with respect to the form of those certificates.

(b) The operating agreement may provide that the certificate may be signed by a manager or officer of the limited liability company, whose signature may be a facsimile. In case any manager or officer of the limited liability company who has signed or whose facsimile signature has been placed upon a certificate has ceased to be a manager or officer before the certificate is issued, it may be issued by the limited liability company with the same effect as if the person were a manager or officer at the date of issue. If a certificate is worn out or lost, it may be renewed on production of the worn out or lost certificate or on satisfactory proof of its loss together with such indemnity as may be required by the manager or managers or a resolution of members.

17106. (a) Upon the request of a member or a holder of an economic interest, for purposes reasonably related to the interest of that person as a member or a holder of an economic interest, a manager shall promptly deliver to the member or holder of an economic interest, at the expense of the limited liability company, a copy of the information required to be maintained by paragraphs (1), (2), and (4) of subdivision (a) of Section 17058, and any written operating agreement of the limited liability company.

(b) Each member, manager, and holder of an economic interest has the right upon reasonable request, for purposes reasonably related to the interest of that person as a member, manager, or holder of an economic interest, to each of the following:

(1) To inspect and copy during normal business hours any of the

records required to be maintained by Section 17058.

(2) To obtain from a manager promptly after becoming available, a copy of the limited liability company's federal, state, and local income tax or information returns for each year.

(c) In the case of any limited liability company with more than 35 members:

(1) A manager shall cause an annual report to be sent to each of the members not later than 120 days after the close of the fiscal year. That report shall contain a balance sheet as of the end of the fiscal year and an income statement and statement of changes in financial position for the fiscal year.

(2) Members representing at least 5 percent of the voting interests of members, or three or more members, may make a written request to a manager for an income statement of the limited liability company for the initial three-month, six-month, or nine-month period of the current fiscal year ended more than 30 days prior to the date of the request, and a balance sheet of the limited liability company as of the end of that period. The statement shall be delivered or mailed to the members within 30 days thereafter.

(3) The financial statements referred to in this section shall be accompanied by the report thereon, if any, of the independent accountants engaged by the limited liability company or, if there is no report, the certificate of a manager of the limited liability company that the financial statements were prepared without audit from the books and records of the limited liability company.

(d) A manager shall promptly furnish to a member a copy of any amendment to the articles of organization or operating agreement executed by a manager pursuant to a power of attorney from the member.

(e) The limited liability company shall send or cause to be sent to each member or holder of an economic interest within 90 days after the end of each taxable year such information as is necessary to complete federal and state income tax or information returns, and, in the case of a limited liability company with 35 or fewer members, a copy of the limited liability company's federal, state, and local income tax or information returns for the year.

(f) In addition to any other remedies, a court of competent jurisdiction may enforce the duty of making and mailing or delivering the information and financial statements required by this section and, for good cause shown, may extend the time therefor.

(g) In any action under this section, if the court finds the failure of the limited liability company to comply with the requirements of this section is without justification, the court may award an amount sufficient to reimburse the person bringing the action for the reasonable expenses incurred by that person, including attorneys' fees, in connection with the action or proceeding.

(h) Any waiver of the rights provided in this section shall be unenforceable.

(i) Any request, inspection, or copying by a member or holder of

an economic interest may be made by that person or by that person's agent or attorney.

17107. (a) Upon complaint that a limited liability company is failing to comply with the provisions of Section 17106, or to afford to the members rights given to them in the articles of organization or operating agreement, the Attorney General may, in the name of the people of the State of California, send to the office required to be maintained pursuant to Section 17057, notice of the complaint.

(b) If the answer of the limited liability company is not received within 30 days of the date the notice was transmitted, or if the answer is not satisfactory, and if the enforcement of the rights of the aggrieved persons by private civil action, by class action, or otherwise, would be so burdensome or expensive as to be impracticable, the Attorney General may institute, maintain, or intervene in any court of competent jurisdiction or before any administrative agency for relief by way of injunction, the dissolution of entities, the appointment of receivers, or any other temporary, preliminary, provisional, or final remedies as may be appropriate to protect the rights of members or to restore the position of the members for the failure to comply with the requirements of Section 17106 or the articles of organization or the operating agreement. In any action, suit, or proceeding, there may be joined as parties all persons and entities responsible for or affected by the activity.

CHAPTER 4. MANAGEMENT

17150. Unless the articles of organization include the statement referred to in subdivision (b) of Section 17151 vesting management of the limited liability company in a manager or managers, the business and affairs of a limited liability company shall be managed by the members subject to any provisions of the articles of organization or operating agreement restricting or enlarging the management rights and duties of any member or class of members. If management is vested in the members, each of the members shall have the same rights and be subject to all duties and obligations of managers as set forth in this title.

17151. (a) The articles of organization may provide that the business and affairs of the limited liability company shall be managed by or under the authority of one or more managers who may, but need not, be members.

(b) If the limited liability company is to be managed by one or more managers and not by all its members, the articles of organization shall contain a statement to that effect. Neither the names of the managers nor the number of managers need be specified in the articles of organization, but if management is vested in only one manager, the articles of organization shall so state.

(c) The articles of organization or operating agreement may prescribe the number and qualifications of managers who may, but need not, be natural persons.

17152. If management of the limited liability company is vested in one or more managers pursuant to a statement in the articles of organization:

(a) Election of managers to fill initial positions or vacancies shall be by the affirmative vote of a majority in interest of the members.

(b) Any or all managers may be removed, with or without cause, by the vote of a majority in interest of the members at a meeting called expressly for that purpose. Any removal shall be without prejudice to the rights, if any, of the manager under any contract of employment.

(c) Any manager may resign as a manager at any time upon written notice to the limited liability company, without prejudice to the rights, if any, of the limited liability company under any contract to which the manager is a party.

(d) Unless they have earlier resigned or been removed, managers shall hold office until the expiration of the term for which they were elected or, if no term was provided, until their successors have been elected and qualified.

17153. The fiduciary duties a manager owes to the limited liability company and to its members are those of a partner to a partnership and to the partners of the partnership.

17154. (a) A written operating agreement may provide for the appointment of officers, including, without limitation, a chairperson or a president, or both, a secretary, a chief financial officer, and any other officers with such titles, powers, and duties as shall be specified in the articles of organization or operating agreement, or determined by the managers or members. An officer may, but need not, be a member or manager of the limited liability company, and any number of offices may be held by the same person.

(b) Officers, if any, shall be appointed in accordance with the written operating agreement or, if no such provision is made in the operating agreement, any officers shall be appointed by the managers and shall serve at the pleasure of the managers, subject to the rights, if any, of an officer under any contract of employment. Any officer may resign at any time upon written notice to the limited liability company without prejudice to the rights, if any, of the limited liability company under any contract to which the officer is a party.

(c) Subject to the provisions of subdivision (d) of Section 17051, any note, mortgage, evidence of indebtedness, contract, certificate, statement, conveyance, or other instrument in writing, and any assignment or endorsement thereof, executed or entered into between any limited liability company and any other person, when signed by the chairman of the board, the president or any vice president and any secretary, any assistant secretary, the chief financial officer, or any assistant treasurer of the limited liability company, is not invalidated as to the limited liability company by any lack of authority of the signing officers in the absence of actual knowledge on the part of the other person that the signing officers

had no authority to execute the same.

17155. (a) Except for a breach of the duty set forth in Section 17153, the articles of organization or written operating agreement of a limited liability company may provide for indemnification of any person, including, without limitation, any manager, member, officer, employee, or agent of the limited liability company, against judgments, settlements, penalties, fines, or expenses of any kind incurred as a result of acting in that capacity.

(b) A limited liability company shall have power to purchase and maintain insurance on behalf of any manager, member, officer, employee, or agent of the limited liability company against any liability asserted against or incurred by the person in that capacity or arising out of the person's status as a manager, member, officer, employee, or agent of the limited liability company.

17156. Except as otherwise provided in the articles of organization or the operating agreement, if the members have appointed more than one manager, decisions of the managers shall be made by majority vote of the managers if at a meeting, or by unanimous written consent.

17157. (a) Unless the statement referred to in subdivision (b) of Section 17151 is included in the articles of organization, every member is an agent of the limited liability company for the purpose of its business or affairs, and the act of any member, including, but not limited to, the execution in the name of the limited liability company of any instrument, for the apparent purpose of carrying on in the usual way the business or affairs of the limited liability company of which that person is a member, binds the limited liability company, unless the member so acting has, in fact, no authority to act for the limited liability company in the particular matter, and the person with whom the member is dealing has actual knowledge of the fact that the member has no such authority.

(b) If the articles of organization contain the statement referred to in subdivision (b) of Section 17151 that management of the limited liability company is vested in a manager or managers, then:

(1) No member, acting solely in the capacity of a member, is an agent of the limited liability company nor can any member bind, nor execute any instrument on behalf of, the limited liability company.

(2) Every manager is an agent of the limited liability company for the purpose of its business or affairs, and the act of any manager, including, but not limited to, the execution in the name of the limited liability company of any instrument, for apparently carrying on in the usual way the business or affairs of the limited liability company of which the person is the manager, binds the limited liability company, unless the manager so acting has, in fact, no authority to act for the limited liability company in the particular matter, and the person with whom the manager is dealing has actual knowledge of the fact that the manager has no such authority.

(c) No act of a manager or member in contravention of a restriction on authority shall bind the limited liability company to

persons having actual knowledge of the restriction.

(d) Notwithstanding the provisions of subdivision (c) of this section, and subject to the provisions of subdivision (d) of Section 17051, any note, mortgage, evidence of indebtedness, contract, certificate, statement, conveyance, or other instrument in writing, and any assignment or endorsement thereof, executed or entered into between any limited liability company and any other person, when signed by at least two managers (or by one manager in the case of a limited liability company whose articles of organization state that it is managed by only one manager), is not invalidated as to the limited liability company by any lack of authority of the signing managers or manager in the absence of actual knowledge on the part of the other person that the signing managers or manager had no authority to execute the same.

17158. No person who is a manager or officer or both a manager and officer of a limited liability company shall be personally liable under any judgment of a court, or in any other manner, for any debt, obligation, or liability of the limited liability company, whether that liability or obligation arises in contract, tort, or otherwise, solely by reason of being a manager or officer or both a manager and officer of the limited liability company.

CHAPTER 5. FINANCE

17200. (a) The articles of organization or the operating agreement may provide for capital contributions of members. The contribution of a person may be in money, property, or services, or other obligation to contribute money or property or to render services.

(b) Unless the articles of organization or operating agreement provide otherwise, no member shall be required to make any additional contribution to the limited liability company.

17201. (a) (1) Subject to the terms of the articles of organization or the operating agreement, a member is not excused from an obligation to the limited liability company to perform any promise to contribute cash or property or to perform services because of death, disability, dissolution, or any other reason.

(2) If a member does not make the required contribution of property or services, that member is obligated, at the option of the limited liability company, to contribute cash equal to that portion of the fair market value (or agreed value if stated in writing and signed by the limited liability company and the member) of the contribution that has not been made. The foregoing option shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the limited liability company may have against the member under the articles of organization, operating agreement, or applicable law.

(3) An operating agreement may provide that the interest of a member who fails to make any contribution or other payment that

the member is required to make shall be subject to specific remedies for, or specific consequences of, the failure. Any such provision shall be enforceable in accordance with its terms unless the member seeking to invalidate the provision establishes that the provision was unreasonable under the circumstances existing at the time the agreement was made. The specific remedies or consequences may include loss of voting, approval, or other rights, loss of the ability, by a member, to actively participate in the management and operations of the limited liability company, liquidated damages, or a reduction of the defaulting member's economic rights. The reduction of the defaulting member's economic rights may include one or more provisions:

(A) Diluting, reducing, or eliminating the defaulting member's proportionate interest in the limited liability company.

(B) Subordinating the defaulting member's interest in the limited liability company to that of nondefaulting members.

(C) Permitting a forced sale of the membership interest.

(D) Permitting the lending or contribution by other members of the amount necessary to meet the defaulting member's commitment.

(E) Providing for the adjustment of interest rates or other rates of return, preferred, priority, or otherwise, with respect to contributions by or capital accounts of the other members.

(F) Providing for a fixing of the value of the defaulting member's interest in the limited liability company by appraisal or by formula and redemption or sale of the defaulting member's interest in the limited liability company at a percentage of that value.

(b) (1) Unless otherwise provided in the articles of organization or the operating agreement, the obligation of a member to make a contribution or return money or property paid or distributed in violation of this article shall be compromised only by the unanimous vote of the members.

(2) Notwithstanding the compromise of an obligation referred to in paragraph (1), a person whose claim against a limited liability company arises before the receipt of notice of the compromise may enforce the original obligation of a member to make a contribution to the limited liability company or to return a distribution if the person had knowledge of the original obligation prior to the time the claim arose and if the compromise occurred after the time the claim arose. Any other person with a claim against a limited liability company may enforce only the existing obligation of a member to make a contribution to the limited liability company or to return to the limited liability company money or other property paid or distributed.

(c) A person with a claim against a limited liability company may not enforce a conditional obligation of a member unless the conditions have been satisfied or waived. Conditional obligations include, without limitation, a capital contribution payable upon a discretionary call of the limited liability company prior to the time

the call occurs.

(d) Nothing in this section shall be construed to affect the rights of third-party creditors of the limited liability company to seek equitable remedies nor any rights existing under the Uniform Fraudulent Transfer Act (Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil Code).

17202. The profits and losses of a limited liability company shall be allocated among the members, and among classes of members, in the manner provided in the operating agreement. If the operating agreement does not otherwise provide, profits and losses shall be allocated in proportion to the contributions of each member.

CHAPTER 6. DISTRIBUTIONS AND WITHDRAWALS

17250. Distributions of the money or property of a limited liability company shall be made to the members and to any classes of members in the manner provided in the operating agreement. If the operating agreement does not otherwise provide, distributions that are a return of capital shall be made in proportion to the contributions made by each member and distributions that are not a return of capital shall be made in proportion to the allocation of profits.

17251. Except as provided in this article, a member is entitled to receive distributions from a limited liability company before the withdrawal of that member from the limited liability company and before the dissolution and winding up thereof, subject to the limitations contained in Section 17254, to the extent and at the times or upon the happening of the events specified in the operating agreement.

17252. (a) A member may withdraw from a limited liability company at the time or upon the happening of events specified in the articles of organization or operating agreement. A written operating agreement may provide that a member may not withdraw the member's contribution from the limited liability company, or may provide specific remedies in the event of a wrongful withdrawal of a member's contribution, prior to the dissolution and winding up of the limited liability company. If the articles of organization or a written operating agreement do not specify the time or the events upon the happening of which a member may withdraw, a member may withdraw from the limited liability company either:

(1) Upon not less than six months' prior written notice to each member at the addresses set forth in the list required to be kept pursuant to paragraph (1) of subdivision (a) of Section 17058.

(2) If any amendment to the articles of organization or operating agreement that is adopted over the member's written dissent adversely affects the rights or preferences of the dissenting member's membership interest in any of the ways described in subparagraph (A), (B), (C), (D), or (E), in which event the withdrawal shall be deemed to have occurred as of the effective date

of the amendment, if the member gives notice to the limited liability company not more than 60 days after the date of the amendment. In valuing the member's distribution pursuant to subdivision (c), there shall be excluded any depreciation in anticipation of the amendment. An amendment that does any of the following is subject to this paragraph:

(A) Altering or amending that member's right to receive a distribution.

(B) Altering or abolishing that member's right to voluntarily withdraw or retire.

(C) Altering or abolishing that member's right to vote on any matter, except as the rights may be altered or abolished through the acceptance of contributions or the making of contribution agreements.

(D) Altering or abolishing that member's preemptive right to make contributions.

(E) Establishing or changing the conditions for or consequences of expulsion.

No member withdrawing under this paragraph shall be liable for damages for the breach of any agreement not to withdraw.

(b) Notwithstanding the provisions of subdivision (a), any member who is under an obligation to render services to the limited liability company may withdraw as a member at any time upon written notice to the limited liability company, without prejudice to the rights, if any, of the limited liability company or the other members under any contract to which the withdrawing member is a party. Any provision in an operating agreement governing the withdrawal of services by a member shall be enforceable in accordance with its terms unless the member seeking to invalidate the provision establishes that the provision was unreasonable under the circumstances existing at the time the agreement was made.

(c) Upon a permitted withdrawal that does not cause dissolution of the limited liability company, any withdrawing member is entitled to receive any distribution to which that member is entitled under the operating agreement and, if not otherwise provided in the operating agreement, the member is entitled to receive, within a reasonable time after withdrawal, the fair market value of the member's interest in the limited liability company as of the date of withdrawal based upon the member's right to share in distributions from the limited liability company.

(d) Subject to Sections 17254 and 17353, at the time a member becomes entitled to receive a distribution, the member has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution. An operating agreement may provide for the establishment of a record date with respect to sharing of profits and distributions from a limited liability company.

(e) Upon the withdrawal of a member, the list required to be kept pursuant to paragraph (1) of subdivision (a) of Section 17058 shall be

amended accordingly.

17253. (a) A member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from a limited liability company in any form other than money.

(b) No member may be compelled to accept from a limited liability company a distribution of any asset in kind in lieu of a proportionate distribution of money being made to other members.

(c) Except upon a dissolution and winding up of a limited liability company, no member may be compelled to accept a distribution of any asset in kind.

17254. (a) No distribution shall be made if, after giving effect to the distribution:

(1) The limited liability company would not be able to pay its debts as they become due in the usual course of business.

(2) The limited liability company's total assets would be less than the sum of its total liabilities plus, unless the operating agreement provides otherwise, the amount that would be needed, if the limited liability company were to be dissolved at the time of the distribution, to satisfy the preferential rights of other members upon dissolution that are superior to the rights of the member receiving the distribution.

(b) The limited liability company may base a determination that a distribution is not prohibited under subdivision (a) on any of the following:

(1) Financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances.

(2) A fair valuation.

(3) Any other method that is reasonable in the circumstances.

(c) Except as provided in subdivision (e), the effect of a distribution under subdivision (a) is measured as of (1) the date the distribution is authorized if the payment occurs within 120 days after the date of authorization, or (2) the date payment is made if it occurs more than 120 days after the date of authorization.

(d) (1) If terms of the indebtedness provide that payment of principal and interest is to be made only if, and to the extent that, payment of a distribution to members could then be made under this section, indebtedness of a limited liability company, including indebtedness issued as a distribution, is not a liability for purposes of determinations made under subdivision (b).

(2) If the indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is actually made.

(e) A member or assignee of a member is obligated to return a distribution from a limited liability company to the extent that (1) the member or assignee had actual knowledge of facts indicating the impropriety of the distribution, and (2) immediately after giving effect to the distribution, and notwithstanding the compromise of an obligation referred to in subdivision (b) of Section 17201, all liabilities

of the limited liability company, other than liabilities to members or assignees on account of their interest in the limited liability company and liabilities as to which recourse of creditors is limited to specified property of the limited liability company, exceed the fair market value of the limited liability company's assets, provided that the fair market value of any property that is subject to a liability as to which recourse of creditors is so limited shall be included in the limited liability company assets only to the extent that the fair market value of the property exceeds this liability.

(f) A cause of action with respect to an obligation to return a distribution pursuant to subdivision (e) is extinguished unless the action is brought within four years after the distribution is made.

17255. (a) A member or manager who votes for a distribution in violation of the operating agreement or Section 17254 or 17353 is personally liable to the limited liability company for the amount of the distribution that exceeds what could have been distributed without violating Section 17254 or 17353 or the operating agreement if it is established that the member or manager did not act in compliance with Section 17254 or 17353.

(b) Each member or manager held liable under subdivision (a) for an unlawful distribution is entitled to compel contribution:

(1) From each other member or manager who could be held liable under subdivision (a) for the unlawful distribution.

(2) From each member for the amount the member received with knowledge of facts indicating that the distribution was made in violation of Section 17254 or 17353 or the operating agreement.

(c) A proceeding under this section is barred unless it is commenced within four years after the date on which the effect of the distribution is measured under Section 17254 or 17353.

CHAPTER 7. INTEREST IN LIMITED LIABILITY COMPANY: ASSIGNMENT OF INTERESTS

17300. A membership interest and an economic interest in a limited liability company constitute personal property of the member or assignee. A member or assignee has no interest in specific limited liability company property.

17301. (a) Except as provided in the articles of organization or the operating agreement:

(1) A membership interest or an economic interest is assignable in whole or in part, provided, however, that no membership interest may be assigned without the unanimous vote of members required pursuant to Section 17303.

(2) An assignment of an economic interest does not of itself dissolve the limited liability company or, other than as set forth in the articles of organization or operating agreement, entitle the assignee to vote or participate in the management and affairs of the limited liability company or to become or exercise any rights of a member.

(3) An assignment of an economic interest merely entitles the

assignee to receive, to the extent assigned, the distributions and the allocations of income, gains, losses, deductions, credit, or similar items to which the assignor would be entitled.

(4) Upon the assignment of all or part of an economic interest, the assignor shall provide the manager or member of the limited liability company responsible for maintaining its books and records with the name and address of the assignee, together with details of the interest assigned. Upon receipt of that notice, the limited liability company shall amend the list required by paragraph (1) of subdivision (a) of Section 17058 accordingly. Until the assignee of that interest becomes a member, the assignor continues to be a member and to have the power to exercise any rights and powers of a member, including the right to vote which, in the case of a member who has assigned his or her or its entire economic interest in the limited liability company, shall include the right to vote in proportion to the interest in current profits that the assigning member would have, had the assignment not been made.

(b) Except to the extent assumed by agreement, until an assignee of an economic interest in a limited liability company becomes a member, the assignee shall have no liability to the limited liability company under Chapter 5 (commencing with Section 17200) and Chapter 6 (commencing with Section 17250) solely as a result of the assignment. The assignor of a membership interest is not released from liability as a member solely as a result of the assignment.

(c) The pledge of, or granting of, a security interest, lien, or other encumbrance in or against any or all of the membership interest of a member shall not cause the member to cease to be a member or to grant to anyone else the power to exercise any rights or powers of a member.

17302. On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the membership interest of the member with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the membership interest. This section does not deprive any member of the benefit of any exemption laws applicable to the member's membership interest.

17303. (a) Except as otherwise provided in the articles of organization or the operating agreement, an assignee of an interest in a limited liability company may become a member only if the other members unanimously vote in favor of the assignee's admission to the limited liability company as a member.

(b) An assignee who has become a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under the articles of organization, any operating agreement, and this title. An assignee who becomes a member also is liable for the obligations of the assignor to make contributions as provided in Chapter 5 (commencing with Section 17200), and to return any unlawful distributions made to the assignee

under Chapter 6 (commencing with Section 17250) or Chapter 8 (commencing with Section 17350). However, the assignee is not obligated for liabilities unknown to the assignee at the time the assignee became a member and that could not be ascertained from the articles of organization or operating agreement.

(c) Whether or not an assignee of a membership interest becomes a member, the assignor is not released from the assignor's liability to the limited liability company under Chapter 5 (commencing with Section 17200) and Chapter 6 (commencing with Section 17250).

17304. (a) If a member who is an individual dies or is adjudged by a court of competent jurisdiction to be incompetent to manage the member's person or property, the member's executor, administrator, guardian, conservator, or other legal representative may exercise all of the member's rights for the purpose of settling the member's estate or administering the member's property, including any power the member had under the articles of organization or an operating agreement to give an assignee the right to become a member.

(b) If a member is a corporation, trust, or other entity and is dissolved or terminated, the powers of that member may be exercised by its legal representative or successor.

CHAPTER 8. DISSOLUTION

17350. A limited liability company shall be dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

(a) At the time specified in the articles of organization.

(b) Upon the happening of events specified in the articles of organization or a written operating agreement.

(c) By the vote of a majority in interest of the members, or such greater percentage of the voting interests of members as may be specified in the articles of organization or a written operating agreement.

(d) Except as otherwise provided in the articles of organization or a written operating agreement, upon the death, withdrawal, resignation, expulsion, bankruptcy, or dissolution of a member, unless the business of the limited liability company is continued by a vote of all the remaining members within 90 days of the happening of that event.

(e) Entry of a decree of judicial dissolution pursuant to Section 17351.

17351. (a) Pursuant to an action filed by any manager or by any member or members, a court of competent jurisdiction may decree the dissolution of a limited liability company whenever any of the following occurs:

(1) It is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement.

(2) Dissolution is reasonably necessary for the protection of the

rights or interests of the complaining members.

(3) The business of the limited liability company has been abandoned.

(4) The management of the limited liability company is deadlocked or subject to internal dissention.

(5) Those in control of the company have been guilty of, or have knowingly countenanced persistent and pervasive fraud, mismanagement, or abuse of authority.

(b) (1) In any suit for judicial dissolution, the other members may avoid the dissolution of the limited liability company by purchasing for cash the membership interests owned by the members so initiating the proceeding (the "moving parties") at their fair market value. In fixing the value, the amount of any damages resulting if the initiation of the dissolution is a breach by any moving party or parties of an agreement with the purchasing party or parties, including, without limitation, the operating agreement, may be deducted from the amount payable to the moving party or parties; provided, that no member who sues for dissolution on the grounds set forth in paragraph (3), (4), or (5) of subdivision (a) shall be liable for damages for breach of contract in bringing that action.

(2) If the purchasing parties (A) elect to purchase the membership interests owned by the moving parties, (B) are unable to agree with the moving parties upon the fair market value of the membership interests, and (C) give bond with sufficient security to pay the estimated reasonable expenses, including attorneys' fees, of the moving parties if the expenses are recoverable under paragraph (3), the court, upon application of the purchasing parties, either in the pending action or in a proceeding initiated in the superior court of the proper county by the purchasing parties, shall stay the winding up and dissolution proceeding and shall proceed to ascertain and fix the fair market value of the membership interests owned by the moving parties.

(3) The court shall appoint three disinterested appraisers to appraise the fair market value of the membership interests owned by the moving parties, and shall make an order referring the matter to the appraisers so appointed for the purpose of ascertaining that value. The order shall prescribe the time and manner of producing evidence, if evidence is required. The award of the appraisers or a majority of them, when confirmed by the court, shall be final and conclusive upon all parties. The court shall enter a decree that shall provide in the alternative for winding up and dissolution of the limited liability company unless payment is made for the membership interests within the time specified by the decree. If the purchasing parties do not make payment for the membership interests within the time specified, judgment shall be entered against them and the surety or sureties on the bond for the amount of the expenses, including attorneys' fees, of the moving parties. Any member aggrieved by the action of the court may appeal therefrom.

(4) If the purchasing parties desire to prevent the winding up and

dissolution of the limited liability company, they shall pay to the moving parties the value of their membership interests ascertained and decreed within the time specified pursuant to this section, or, in the case of an appeal, as fixed on appeal. On receiving that payment or the tender thereof, the moving parties shall transfer their membership interests to the purchasing parties.

(5) For the purposes of this section, the valuation date shall be the date upon which the action for judicial dissolution was commenced. However, the court may, upon the hearing of a motion by any party, and for good cause shown, designate some other date as the valuation date.

17352. In the event of a dissolution of a limited liability company:

(a) The managers who have not wrongfully dissolved the limited liability company or, if none, the members may wind up the limited liability company's affairs, unless the dissolution occurs pursuant to subdivision (e) of Section 17350, in which event the winding up shall be conducted in accordance with the decree of dissolution. The persons winding up the affairs of the limited liability company shall give written notice of the commencement of winding up by mail to all known creditors and claimants whose addresses appear on the records of the limited liability company.

(b) Upon the petition of any manager or of any member or members, or three or more creditors, a court of competent jurisdiction may enter a decree ordering the winding up of the limited liability company if that appears necessary for the protection of any parties in interest. The decree shall designate the managers or members who are to wind up the limited liability company's affairs.

(c) The managers or members winding up the affairs of the limited liability company pursuant to this section shall be entitled to reasonable compensation.

17353. (a) Except as otherwise provided in the articles of organization or the written operating agreement, after determining that all the known debts and liabilities of a limited liability company in the process of winding up, including, without limitation, debts and liabilities to members who are creditors of the limited liability company, have been paid or adequately provided for, the remaining assets shall be distributed among the members according to their respective rights and preferences as follows:

(1) To members in satisfaction of liabilities for distributions pursuant to Section 17201, 17202, or 17255.

(2) To members of the limited liability company for the return of their contributions.

(3) To members in the proportions in which those members share in distributions.

(b) If the winding up is by court proceeding or subject to court supervision, the distribution shall not be made until after the expiration of any period for the presentation of claims that has been prescribed by order of the court.

(c) The payment of a debt or liability, whether the whereabouts of the creditor is known or unknown, has been adequately provided for if the payment has been provided for by either of the following means:

(1) Payment thereof has been assumed or guaranteed in good faith by one or more financially responsible persons or by the United States government or any agency thereof, and the provision, including the financial responsibility of the person, was determined in good faith and with reasonable care by the members or managers of the limited liability company to be adequate at the time of any distribution of the assets pursuant to this section.

(2) The amount of the debt or liability has been deposited as provided in Section 2008.

This subdivision shall not prescribe the exclusive means of making adequate provision for debts and liabilities.

17354. (a) A limited liability company that is dissolved nevertheless continues to exist for the purpose of winding up its affairs, prosecuting and defending actions by or against it in order to collect and discharge obligations, disposing of and conveying its property, and collecting and dividing its assets. A limited liability company shall not continue business except so far as necessary for the winding up thereof.

(b) No action or proceeding to which a limited liability company is a party abates by the dissolution of the limited liability company or by reason of proceedings for the winding up and dissolution thereof.

(c) Any assets inadvertently or otherwise omitted from the winding up continue in the dissolved limited liability company for the benefit of the persons entitled thereto upon dissolution and on realization shall be distributed accordingly.

17355. (a) (1) Causes of action against a dissolved limited liability company, whether arising before or after the dissolution of the limited liability company, may be enforced against any of the following:

(A) Against the dissolved limited liability company, to the extent of its undistributed assets, including, without limitation, any insurance assets held by the limited liability company that may be available to satisfy claims.

(B) If any of the assets of the dissolved limited liability company have been distributed to members, against members of the dissolved limited liability company to the extent of the limited liability company assets distributed to them upon dissolution of the limited liability company.

Any member compelled to return distributed assets in an amount that exceeds the sum of the member's pro rata share of the claim and the amount for which the member could otherwise be held liable under Section 17254 or 17255 may seek contribution for the excess from any other member or manager, up to the sum of that other person's pro rata share of the claim and that other person's liabilities

under Section 17254 or 17255.

(2) Except as set forth in subdivision (c), all causes of action against a member of a dissolved limited liability company arising under this section are extinguished unless the claimant commences a proceeding to enforce the cause of action against that member of a dissolved limited liability company prior to the earlier of the following:

(A) The expiration of the statute of limitations applicable to the cause of action.

(B) Four years after the effective date of the dissolution of the limited liability company.

(3) As a matter of procedure only, and not for purposes of determining liability, members of the dissolved limited liability company may be sued in the name of the limited liability company upon any cause of action against the limited liability company. This section does not affect the rights of the limited liability company or its creditors under Sections 17254 and 17255, or the rights, if any, of creditors under the Uniform Fraudulent Transfer Act, that may arise against the member of a limited liability company.

(b) Summons or other process against a limited liability company may be served by delivering a copy thereof to a manager, member, officer, or person having charge of its assets or, if no such person can be found, to any agent upon whom process might be served at the time of dissolution. If none of those persons can be found with due diligence and it is so shown by affidavit to the satisfaction of the court, then the court may make an order that summons or other process be served upon the dissolved limited liability company by personally delivering a copy thereof, together with a copy of the order, to the Secretary of State or an assistant or deputy Secretary of State. Service in this manner is deemed complete on the 10th day after delivery of the process to the Secretary of State. Upon receipt of process and the fee therefor, the Secretary of State shall give notice to the limited liability company as provided in Section 1702.

(c) Every limited liability company shall survive and continue to exist indefinitely for the purpose of being sued in any quiet title action. Any judgment rendered in any such action shall bind each and all of its members or other persons having any equity or other interest in the limited liability company, to the extent of their interest therein, and the action shall have the same force and effect as an action brought under the provisions of Sections 410.50 and 410.60 of the Code of Civil Procedure. Service of summons or other process in any action may be made as provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure or as provided in subdivision (b).

17356. (a) (1) The managers shall cause to be filed in the office of, and on a form prescribed by, the Secretary of State, a certificate of dissolution upon the dissolution of the limited liability company pursuant to Chapter 8 (commencing with Section 17350), unless the event causing the dissolution is that specified in subdivision (e) of

Section 17350, in which case the managers or members conducting the winding up of the limited liability company's affairs pursuant to Section 17352 shall have the obligation to file the certificate of dissolution.

(2) The certificate of dissolution shall set forth all of the following:

(A) The name of the limited liability company and the Secretary of State's file number.

(B) The event causing, and the date of, the dissolution.

(C) The effective date (which shall be a date certain) of the certificate of dissolution if it is not to be effective upon the filing.

(D) A statement that a person, limited liability company, or other business entity assumes the tax liability, if any, of the dissolving limited liability company as security for the issuance of a tax clearance certificate from the Franchise Tax Board and is responsible for additional taxes or fees, if any, that are assessed under the Revenue and Taxation Code and become due after the date of the assumption of tax liability.

(E) Any other information the managers or members filing the certificate of dissolution determine to include.

(3) The Secretary of State shall notify the Franchise Tax Board of the filing and shall forward to the Franchise Tax Board any statement of assumption of tax liability accompanying the certificate of dissolution. The Franchise Tax Board shall determine from the available evidence whether or not all taxes and fees imposed on the limited liability company under the Revenue and Taxation Code have been paid or secured and shall notify the taxpayer of any outstanding tax or fee liability and the necessity of satisfying that liability.

(b) (1) The managers or members who filed the certificate of dissolution shall cause to be filed in the office of, and on a form prescribed by, the Secretary of State, a certificate of cancellation of articles of organization upon the completion of the winding up of the affairs of the limited liability company pursuant to Chapter 8 (commencing with Section 17350), unless the event causing the dissolution is that specified in subdivision (e) of Section 17350, in which case the managers or members conducting the winding up of the limited liability company's affairs pursuant to Section 17352 shall have the obligation to file the certificate of cancellation of articles of organization.

(2) The certificate of cancellation of articles of organization shall set forth all of the following:

(A) The name of the limited liability company and the Secretary of State's file number.

(B) Any other information the managers or members filing the certificate of cancellation of articles of organization determine to include.

(3) The Franchise Tax Board shall notify the Secretary of State when all taxes and fees imposed on the limited liability company under the Revenue and Taxation Code have been paid or secured,

at which time the limited liability company shall cease to exist as of the date of filing its certificate of cancellation of articles of organization.

17357. (a) Notwithstanding the filing of a certificate of dissolution, a majority in interest of the members may cause to be filed, in the office of, and on a form prescribed by, the Secretary of State, a certificate of continuation, in any of the following circumstances:

(1) The business of the limited liability company is to be continued pursuant to a unanimous vote of the remaining members.

(2) The dissolution of the limited liability company was by vote of the members pursuant to subdivision (c) of Section 17350 and each member who consented to the dissolution has agreed in writing to revoke his or her vote in favor of or consent to the dissolution.

(3) The limited liability company was not, in fact, dissolved.

(b) The certificate of continuation shall set forth all of the following:

(1) The name of the limited liability company and the Secretary of State's file number.

(2) The grounds provided by subdivision (a) that are the basis for filing the certificate of continuation.

(c) Upon the filing of a certificate of continuation, the certificate of dissolution shall be of no effect from the time of the filing of the certificate of dissolution.

CHAPTER 9. PROFESSIONAL LIMITED LIABILITY COMPANIES: RESERVED

CHAPTER 10. FOREIGN LIMITED LIABILITY COMPANIES

17450. Subject to the provisions of Section 17453:

(a) The laws of the state under which a foreign limited liability company is organized shall govern its organization and internal affairs and the liability and authority of its managers and members.

(b) A foreign limited liability company may not be denied registration by reason of any difference between those laws and the laws of this state.

17451. (a) Before transacting intrastate business in this state, a foreign limited liability company shall register with the Secretary of State. In order to register, a foreign limited liability company shall submit to the Secretary of State an application for registration as a foreign limited liability company, signed by a person with authority to do so under the laws of the state of its organization, on a form prescribed by the Secretary of State and setting forth:

(1) The name of the foreign limited liability company and, if different, the name under which it proposes to transact business in this state.

(2) The state and date of its organization and a statement that the foreign limited liability company is authorized to exercise its powers

and privileges in that state.

(3) The name and address of an agent for service of process on the foreign limited liability company meeting the qualifications specified in paragraph (1) of subdivision (d) of Section 17061, unless a corporate agent is designated, in which case only the name of the agent shall be set forth.

(4) A statement that the Secretary of State is appointed the agent of the foreign limited liability company for service of process if the agent has resigned and has not been replaced or if the agent cannot be found or served with the exercise of reasonable diligence.

(5) The address of the principal executive office of the foreign limited liability company and of its principal office in this state, if any.

(b) Annexed to the application for registration shall be a certificate from an authorized public official of the foreign limited liability company's jurisdiction of organization to the effect that the foreign limited liability company is in good standing in that jurisdiction, if the laws of that jurisdiction permit the issuance of those certificates; or, in the alternative, a statement by the foreign limited liability company that the laws of its jurisdiction of organization do not permit the issuance of those certificates.

(c) The Secretary of State may cancel the application and certificate of registration of a foreign limited liability company if a check or other remittance accepted in payment of the filing fee is not paid upon presentation. Upon receiving written notification that the item presented for payment has not been honored for payment, the Secretary of State shall give a first written notice of the applicability of this section to the agent for service of process or to the person submitting the instrument. Thereafter, if the amount has not been paid by cashier's check or equivalent, the Secretary of State shall give a second written notice of cancellation and the cancellation shall thereupon be effective. The second notice shall be given 20 days or more after the first notice and 90 days or less after the original filing.

17452. (a) If the Secretary of State finds that an application for registration conforms to law and all requisite fees have been paid, the Secretary of State shall issue a certificate of registration to transact intrastate business in this state, subject, however, to any licensing requirements imposed by the laws of this state. However, no certificate of registration shall be issued for a foreign limited liability company to transact intrastate business in this state under a name that falls within the prohibitions of subdivision (c) of Section 17052.

(b) If the name of a foreign limited liability company does not satisfy the requirements of Section 17052, to obtain or maintain a certificate of registration, a foreign limited liability company may either:

(1) Add the words "limited liability company" or the abbreviation "LLC" to its name for use in this state.

(2) Use an assumed name that is available, and that satisfies the requirements of Section 17052, provided the foreign limited liability company agrees that it will use the assumed name in all its dealings

with the Secretary of State and in the conduct of its affairs in this state. The assumed name may be the name of the foreign limited liability company with the addition of some distinguishing word or words acceptable to the Secretary of State or a name available for the name of a domestic limited liability company pursuant to Section 17052. Any foreign limited liability company that has made such an agreement with the Secretary of State shall not do business in this state except under the name agreed upon, as long as the agreement remains in effect.

17453. If the members of a foreign limited liability company residing in this state represent 25 percent or more of the voting interests of members of that limited liability company, those members shall be entitled to all information and inspection rights provided in Section 17106.

17454. If any statement in the application for registration of a foreign limited liability company was false when made or any statements made have become erroneous, the foreign limited liability company shall promptly file in the office of the Secretary of State an amendment to the application for registration, signed by a person with authority to do so under the laws of the state of its organization, amending the statement.

17455. A foreign limited liability company may cancel its registration by filing with the Secretary of State a certificate of cancellation signed by a person with authority to do so under the laws of the state of its organization. A cancellation does not terminate the authority of the Secretary of State to accept service of process on the foreign limited liability company with respect to causes of action arising out of the transaction of business in this state.

17456. (a) A foreign limited liability company transacting intrastate business in this state shall not maintain any action, suit, or proceeding in any court of this state until it has registered in this state.

(b) Any foreign limited liability company that transacts intrastate business in this state without registration is subject to a penalty of twenty dollars (\$20) for each day that unauthorized intrastate business is transacted, up to a maximum of ten thousand dollars (\$10,000). An action to recover this penalty may be brought, and any recovery shall be paid, as provided in Section 2258.

(c) A member of a foreign limited liability company is not liable for the debts and obligations of the foreign limited liability company solely by reason of its having transacted business in this state without registration.

(d) A foreign limited liability company, transacting business in this state without registration, appoints the Secretary of State as its agent for service of process with respect to causes of action arising out of the transaction of business in this state.

17457. The Attorney General may bring an action to restrain a foreign limited liability company from transacting intrastate business in this state in violation of this chapter.

CHAPTER 11. CLASS ACTIONS AND DERIVATIVE ACTIONS

17500. Any member of a foreign or domestic limited liability company may bring a class action on behalf of all or a class of members to enforce any claim common to those members and any such action shall be governed by the law governing class actions generally, provided that in order to maintain the class action there shall be no requirement that the class be so numerous that joinder of all members of the class is impracticable.

17501. (a) No action shall be instituted or maintained in right of any domestic or foreign limited liability company by any member of the limited liability company unless both of the following conditions exist:

(1) The plaintiff alleges in the complaint that plaintiff was a member of record, or beneficiary, at the time of the transaction or any part thereof of which plaintiff complains, or that plaintiff's interest thereafter devolved upon plaintiff by operation of law from a member who was a member at the time of the transaction or any part thereof complained of. Any member who does not meet these requirements may nevertheless be allowed in the discretion of the court to maintain the action on a preliminary showing to and determination by the court, by motion and after a hearing at which the court shall consider any evidence, by affidavit or testimony, as it deems material, of all of the following:

(A) There is a strong prima facie case in favor of the claim asserted on behalf of the limited liability company.

(B) No other similar action has been or is likely to be instituted.

(C) The plaintiff acquired the interest before there was disclosure to the public or to the plaintiff of the wrongdoing of which plaintiff complains.

(D) Unless the action can be maintained, the defendant may retain a gain derived from defendant's willful breach of a fiduciary duty.

(E) The requested relief will not result in unjust enrichment of the limited liability company or any member of the limited liability company.

(2) The plaintiff alleges in the complaint with particularity plaintiff's efforts to secure from the managers the action plaintiff desires or the reasons for not making that effort, and alleges further that plaintiff has either informed the limited liability company or the managers in writing of the ultimate facts of each cause of action against each defendant or delivered to the limited liability company or the managers a true copy of the complaint that plaintiff proposes to file.

(b) In any action referred to in subdivision (a), at any time within 30 days after service of summons upon the limited liability company or upon any defendant who is a manager of the limited liability company or held that position at the time of the acts complained of, the limited liability company or the defendant may move the court

for an order, upon notice and hearing, requiring the plaintiff to furnish security as hereinafter provided. The motion shall be based upon one or both of the following grounds:

(1) That there is no reasonable possibility that the prosecution of the cause of action alleged in the complaint against the moving party will benefit the limited liability company or its members.

(2) That the moving party, if other than the limited liability company, did not participate in the transaction complained of in any capacity. The court, on application of the limited liability company or any defendant, may, for good cause shown, extend the 30-day period for an additional period not exceeding 60 days.

(c) At the hearing upon any motion pursuant to subdivision (b), the court shall consider evidence, written or oral, by witnesses or affidavit, as may be material (1) to the ground upon which the motion is based, or (2) to a determination of the probable reasonable expenses, including attorneys' fees, of the limited liability company and the moving party that will be incurred in the defense of the action.

If the court determines, after hearing the evidence adduced by the parties, that the moving party has established a probability in support of any of the grounds upon which the motion is based, the court shall fix the nature and amount of security, not to exceed fifty thousand dollars (\$50,000), to be furnished by the plaintiff for reasonable expenses, including attorneys' fees, that may be incurred by the moving party and the limited liability company in connection with the action. A ruling by the court on the motion shall not be a determination of any issue in the action or of the merits thereof. The amount of the security may thereafter be increased or decreased in the discretion of the court upon a showing that the security provided has or may become inadequate or is excessive, but the court may not in any event increase the total amount of the security beyond fifty thousand dollars (\$50,000) in the aggregate for all defendants. If the court, upon a motion, makes a determination that security shall be furnished by the plaintiff as to any one or more defendants, the action shall be dismissed as to that defendant or defendants, unless the security required by the court has been furnished within any reasonable time as may be fixed by the court. The limited liability company and the moving party shall have recourse to the security in the amount that the court determines upon the termination of the action.

(d) If the plaintiff, either before or after a motion is made pursuant to subdivision (b), or any order or determination pursuant to that motion, posts good and sufficient bond or bonds in the aggregate amount of fifty thousand dollars (\$50,000) to secure the reasonable expenses of the parties entitled to make the motion, the plaintiff shall be deemed to have complied with the requirements of this section and with any order for security made pursuant to this section. Any motion then pending shall be dismissed and no further or additional bond or other security shall be required.

(e) If a motion is filed pursuant to subdivision (b), no pleadings need be filed by the limited liability company or any other defendant and the prosecution of the action shall be stayed until 10 days after the motion has been disposed of.

CHAPTER 12. MERGER

17550. (a) The following entities may be merged pursuant to this chapter:

(1) Two or more limited liability companies into one limited liability company.

(2) One or more limited liability companies and one or more other business entities into one of those other business entities.

(3) One or more limited liability companies and one or more other business entities into one limited liability company.

(b) Notwithstanding this section, the merger of any number of limited liability companies with any number of other business entities may be effected only if the other business entities that are organized in California are authorized by the laws under which they are organized to effect the merger, and:

(1) If a limited liability company is the surviving limited liability company, the foreign other business entities are not prohibited by the laws under which they are organized from effecting that merger.

(2) If a foreign limited liability company or foreign other business entity is the survivor of the merger, the laws of the jurisdiction under which the survivor is organized authorize that merger. Notwithstanding the foregoing sentence, if one or more domestic corporations is also a party to the merger, the merger may be effected only if, with respect to any foreign other business entity that is a corporation, the foreign corporation is authorized by the laws under which it is organized to effect that merger.

17551. (a) Each limited liability company and other business entity that desires to merge shall approve an agreement of merger. The agreement of merger shall be approved by the vote of a majority in interest of the members of each constituent limited liability company, or such greater percentage of the voting interests of members as may be specified in the articles of organization or written operating agreement of that constituent limited liability company. Notwithstanding the previous sentence, if the members of any constituent limited liability company become personally liable for any obligations of a constituent limited liability company or constituent other business entity as a result of the merger, the principal terms of the agreement of merger shall be approved by all of the members of the constituent limited liability company, unless the agreement of merger provides that all members will have the dissenters' rights provided in Chapter 13 (commencing with Section 17600). The agreement of merger shall be approved on behalf of each constituent other business entity by those persons required to approve the merger by the laws under which it is organized. Other

persons, including a parent of a constituent limited liability company, may be parties to the agreement of merger. The agreement of merger shall state:

(1) The terms and conditions of the merger.

(2) The name and place of organization of the surviving limited liability company or surviving other business entity, and of each disappearing limited liability company and disappearing other business entity. The agreement of merger may change the name of the surviving limited liability company, which new name may be the same as or similar to the name of a disappearing domestic or foreign limited liability company, subject to Section 17052.

(3) The manner of converting the interests of each of the constituent limited liability companies into interests, shares, or other securities of the surviving limited liability company or surviving other business entity. If interests of any of the constituent limited liability companies are not to be converted solely into interests, shares, or other securities of the surviving limited liability company or surviving other business entity, the agreement of merger shall state the cash, property, rights, interests, or securities that the holders of the interests are to receive in exchange for the interests, that cash, property, rights, interests, or securities may be in addition to or in lieu of interests, shares, or other securities of the surviving limited liability company or surviving other business entity, or that the interests are canceled without consideration.

(4) The amendments to the articles of organization of the surviving limited liability company, if applicable, to be effected by the merger, if any.

(5) Any other details or provisions as are required by the laws under which any constituent other business entity is organized, including, if a domestic corporation is a party to the merger, subdivision (b) of Section 1113.

(6) Any other details or provisions that are desired, including, without limitation, a provision for the treatment of fractional interests.

(b) Each interest of the same class of any constituent limited liability company, other than an interest in another constituent limited liability company, that is being canceled and that is held by a constituent limited liability company or its parent or a limited liability company of which the constituent limited liability company is a parent, unless all members of the class consent, shall be treated equally with respect to any distribution of cash, property, rights, interests, or securities. Notwithstanding this subdivision, except in a merger of a limited liability company with a limited liability company in which it controls at least 90 percent of the membership interests entitled to vote with respect to the merger, the nonredeemable interests of a constituent limited liability company may be converted only into nonredeemable interests or securities of the surviving limited liability company or other business entity or a parent if a constituent limited liability company or a constituent

other business entity or its parent owns, directly or indirectly, prior to the merger, interests of another constituent limited liability company or interests or securities of a constituent other business entity representing more than 50 percent of the interests or securities entitled to vote with respect to the merger of the other constituent limited liability company or constituent other business entity, or more than 50 percent of the voting power, as defined in Section 194.5, of a constituent other business entity that is a domestic corporation unless all of the members of the class consent.

The provisions of this subdivision do not apply to any transaction if the commissioner has approved the terms and conditions of the transaction and the fairness of those terms and conditions pursuant to Section 25142.

(c) Notwithstanding its prior approval, an agreement of merger may be amended prior to the filing of the certificate of merger or the agreement of merger as provided in Section 17552 if the amendment is approved by the members of each constituent limited liability company in the same manner as required for approval of the original agreement of merger and, if the amendment changes any of the principal terms of the agreement of merger, the amendment is approved by each of the constituent other business entities in the same manner as required for approval of the original agreement of merger.

(d) A merger may be abandoned by the members of a constituent limited liability company in the same manner as required for approval of the agreement of merger, subject to the contractual rights, if any, of third parties, including other constituent limited liability companies and constituent other business entities, at any time before the merger is effective.

(e) An agreement of merger approved in accordance with subdivision (a) may effect any amendment to the operating agreement of any constituent limited liability company or effect the adoption of a new operating agreement for a constituent limited liability company if it is the surviving limited liability company in the merger. Any amendment to an operating agreement or adoption of a new operating agreement made pursuant to the foregoing sentence shall be effective at the effective time or date of the merger. Notwithstanding the above provisions of this subdivision, if a greater number of members is required to approve an amendment to the operating agreement of the constituent limited liability company than is required to approve the agreement of merger pursuant to subdivision (a), and the number of members that approve the agreement of merger is less than the number of members required to approve an amendment to the operating agreement of the constituent limited liability company, any amendment to the operating agreement or adoption of a new operating agreement of the surviving limited liability company made pursuant to the first sentence of this subdivision shall be effective only if the agreement of merger is approved by the number

of members required to approve an amendment to the operating agreement of the constituent limited liability company.

(f) The surviving limited liability company or surviving other business entity shall keep the agreement of merger at the office referred to in subdivision (a) of Section 17057 or at the business address specified in paragraph (5) of subdivision (a) of Section 17552, as applicable. Upon the request of a member of a constituent limited liability company or a holder of shares, interests, or other securities of a constituent other business entity, a manager or, if no managers have been elected, any member of the surviving limited liability company or a person with authority to do so on behalf of the surviving other business entity shall promptly deliver to the member or the holder of shares, interests, or other securities, at the expense of the surviving limited liability company or surviving other business entity, a copy of the agreement of merger. A waiver by a member or holder of shares, interests, or other securities of the rights provided in this subdivision shall be unenforceable.

17552. (a) If the surviving entity is a limited liability company or an other business entity (other than a corporation in a merger in which a domestic corporation is a constituent party), after approval of a merger by the constituent limited liability companies and any constituent other business entities, the constituent limited liability companies or constituent other business entities shall file a certificate of merger in the office of, and on a form prescribed by, the Secretary of State. The certificate of merger shall be executed and acknowledged by each domestic constituent limited liability company by all of the managers of the limited liability company, unless a lesser number is specified in the articles of organization or the operating agreement of the constituent limited liability company, and by each constituent foreign limited liability company and each constituent other business entity by those persons required to execute the certificate or agreement of merger by the laws under which the constituent foreign limited liability company or other business entity is organized. The certificate of merger shall set forth all of the following:

(1) The names and the Secretary of State's file numbers, if any, of each of the constituent limited liability companies and constituent other business entities, separately identifying the disappearing limited liability companies and disappearing other business entities and the surviving limited liability company or surviving other business entity.

(2) If a vote of the members was required under Section 17551, a statement setting forth the total number of outstanding interests of each class entitled to vote on the merger and that the principal terms of the agreement of merger were approved by a vote of the number of interests of each class that equaled or exceeded the vote required, specifying each class entitled to vote and the percentage vote required of each class.

(3) If the surviving entity is a limited liability company and not an

other business entity, any change required to the information set forth in the articles of organization of the surviving limited liability company resulting from the merger, including any change in the name of the surviving limited liability company resulting from the merger. The filing of a certificate of merger setting forth any changes to the articles of organization of the surviving limited liability company shall have the effect of the filing of an amendment to the articles of organization by the surviving limited liability company, and the surviving limited liability company need not file a certificate of amendment under Section 17054 to reflect those changes.

(4) The future effective date or time (which shall be a date or time certain not more than 90 days subsequent to the date of filing) of the merger, if the merger is not to be effective upon the filing of the certificate of merger with the office of the Secretary of State.

(5) If the surviving entity is an other business entity or a foreign limited liability company, the full name, type of entity, legal jurisdiction in which the entity was organized and by whose laws its internal affairs are governed, and the address of the principal place of business of the entity.

(6) Any other information required to be stated in the certificate of merger by the laws under which each constituent other business entity is organized, including, if a domestic corporation is a party to the merger, paragraph (2) of subdivision (g) of Section 1113.

If the surviving entity is a foreign limited liability company in a merger in which a domestic corporation is a disappearing other business entity, a copy of the agreement of merger and attachments as required under paragraph (1) of subdivision (g) of Section 1113 shall be filed at the same time as the filing of the certificate of merger.

(b) If the surviving entity is a domestic corporation or a foreign corporation in a merger in which a domestic corporation is a constituent party, after approval of the merger by the constituent limited liability companies and constituent other business entities, the surviving corporation shall file in the office of the Secretary of State a copy of the agreement of merger and attachments required under paragraph (1) of subdivision (g) of Section 1113. The certificate of merger shall be executed and acknowledged by each domestic constituent limited liability company by all of the managers of the limited liability company unless a lesser number is specified in the articles of organization or the operating agreement of the domestic constituent limited liability company.

(c) A certificate of merger, or the agreement of merger, as is applicable under subdivisions (a) or (b), shall have the effect of the filing of a certificate of cancellation of articles of organization for each disappearing limited liability company and no disappearing limited liability company need file a certificate of cancellation of articles of organization under Section 17356 as a result of the merger.

(d) If a disappearing other business entity is a foreign corporation qualified to transact intrastate business in this state, a certificate of

satisfaction of the Franchise Tax Board as required by Section 23334 of the Revenue and Taxation Code shall be filed with the certificate of merger or the agreement of merger, as is applicable under subdivision (a) or (b). By the filing of the certificate of merger or the agreement of merger, the foreign corporation shall automatically surrender its right to transact intrastate business.

(e) No certificate of merger shall be filed, however, until there has been filed on behalf of each constituent entity that is taxed under the Bank and Corporation Tax Law, the existence of which is terminated by the merger, the certificate of satisfaction of the Franchise Tax Board that all taxes imposed by that law have been paid or secured.

17553. (a) Unless a future effective date or time is provided in the certificate of merger or in any agreement of merger required to be filed under Section 17552, in which event the merger shall be effective at that future effective date or time (which shall be a date or time certain not more than 90 days subsequent to the date of filing), a merger shall be effective upon the filing of the certificate of merger, or the agreement of merger, as is applicable under subdivision (a) or (b), in the office of the Secretary of State.

(b) (1) For all purposes, a copy of the certificate of merger duly certified by the Secretary of State is conclusive evidence of the merger of (A) the constituent limited liability companies (either by themselves or together with constituent other business entities) into the surviving other business entity, or (B) the constituent limited liability companies or the constituent other business entities, or both, into the surviving limited liability company.

(2) In a merger in which the surviving entity is a corporation in a merger in which a domestic corporation and a domestic limited liability company are parties to the merger, a copy of an agreement of merger certified on or after the effective date by an official having custody thereof has the same force in evidence as the original and, except as against the state, is conclusive evidence of the performance of all conditions precedent to the merger, the existence on the effective date of the surviving corporation, and the performance of the conditions necessary to the adoption of any amendment to the articles of incorporation of the surviving corporation, if applicable, contained in the agreement of merger.

17554. (a) Upon a merger of limited liability companies or limited liability companies and other business entities pursuant to this chapter, the separate existence of the disappearing limited liability companies and disappearing other business entities ceases and the surviving limited liability company or surviving other business entity shall succeed, without other transfer, act, or deed, to all the rights and property, whether real, personal, or mixed, of each of the disappearing limited liability companies and disappearing other business entities and shall be subject to all the debts and liabilities of each in the same manner as if the surviving limited liability company or surviving other business entity had itself

incurred them.

(b) All rights of creditors and all liens upon the property of each of the constituent limited liability companies and constituent other business entities shall be preserved unimpaired and may be enforced against the surviving limited liability company or the surviving other business entity to the same extent as if the debt, liability, or duty that gave rise to that lien had been incurred or contracted by it, provided that such liens upon the property of a disappearing limited liability company or disappearing other business entity shall be limited to the property affected thereby immediately prior to the time the merger is effective.

(c) Any action or proceeding pending by or against any disappearing limited liability company or disappearing other business entity may be prosecuted to judgment, that shall bind the surviving limited liability company or surviving other business entity, or the surviving limited liability company or surviving other business entity may be proceeded against or be substituted in the disappearing limited liability company's or disappearing other business entity's place.

(d) If a partnership is a party to a merger nothing in this chapter is intended to affect the liability a general partner of a disappearing partnership may have in connection with the debts and liabilities of the disappearing partnership existing prior to the time the merger is effective.

17555. (a) The merger of any number of domestic limited liability companies with any number of foreign limited liability companies or foreign other business entities shall be required to comply with Section 17550.

(b) If the surviving entity is a domestic limited liability company or a domestic other business entity, the merger proceedings with respect to that limited liability company or other business entity and any domestic disappearing limited liability company shall conform to the provisions of this chapter governing the merger of domestic limited liability companies, but if the surviving entity is a foreign limited liability company or a foreign other business entity, then, subject to the requirements of subdivision (d) and Chapter 13 (commencing with Section 17600), with respect to any domestic constituent corporation, Section 1113 and Chapters 12 (commencing with Section 1200) and 13 (commencing with Section 1300) of Division 1 of Title 1, and with respect to any domestic constituent limited partnership, Article 7.6 (commencing with Section 15679.1) of Chapter 3 of Title 2, the merger proceedings may be in accordance with the laws of the state or place of organization of the surviving limited liability company or surviving other business entity.

(c) If the surviving entity is a domestic limited liability company or domestic other business entity, other than a domestic corporation, a certificate of merger shall be filed as provided in subdivision (a) of Section 17552 and thereupon, subject to subdivision (a) of Section 17553, the merger shall be effective as to each domestic constituent

limited liability company and domestic constituent other business entity. If the surviving entity is a domestic corporation, the agreement of merger with attachments shall be filed as provided in subdivision (b) of Section 17552, and thereupon, subject to subdivision (a) of Section 17553, the merger shall be effective as to each domestic constituent limited liability company and domestic constituent other business entity unless another effective date is provided for in Chapter 11 (commencing with Section 1100) of Division 1 of Title 1, with respect to any constituent corporation or any constituent other business entity.

(d) If the surviving entity is a foreign limited liability company or foreign other business entity, the merger shall become effective in accordance with the laws of the jurisdiction in which the surviving limited liability company or surviving other business entity is organized; but the merger shall be effective as to any domestic disappearing limited liability company as of the time of effectiveness in the foreign jurisdiction upon the filing in this state of a certificate of merger or agreement of merger as provided in Section 17552.

(e) If a merger described in subdivision (c) or (d) also includes a foreign disappearing limited liability company previously registered for the transaction of intrastate business in this state pursuant to Section 17451, the filing of the certificate of merger or agreement of merger, as applicable, automatically has the effect of a cancellation of registration for that foreign limited liability company pursuant to Section 17456 without the necessity of the filing of a certificate of cancellation.

(f) The provisions of subdivision (b) of Section 17551 and Chapter 13 (commencing with Section 17600) apply to the rights of the members of any of the constituent limited liability companies that are domestic limited liability companies and of any domestic limited liability company that is a parent of any foreign constituent limited liability company.

(g) If the surviving entity is a foreign limited liability company or foreign other business entity, the surviving entity shall file the following with the Secretary of State:

(1) An agreement that it may be served in this state in a proceeding for the enforcement of an obligation of any constituent entity and in a proceeding to enforce the rights of any holder of a dissenting interest or dissenting shares in a constituent domestic limited liability company or domestic other business entity.

(2) An irrevocable appointment of the Secretary of State as its agent for service of process, and an address to which process may be forwarded.

(3) An agreement that it will promptly pay the holder of any dissenting interest or dissenting share in a constituent domestic limited liability company or domestic other business entity the amount to which that person is entitled under California law.

17556. Whenever a domestic or foreign limited liability company or other business entity having any real property in this state merges

with another limited liability company or other business entity pursuant to the laws of this state or of the state or place in which any constituent limited liability company or constituent other business entity was organized, and the laws of the state or place of organization (including this state) of any disappearing limited liability company or disappearing other business entity provide substantially that the making and filing of the agreement of merger or certificate of merger vests in the surviving limited liability company or surviving other business entity all the real property of any disappearing limited liability company and disappearing other business entity, the filing for record in the office of the county recorder of any county in this state in which any of the real property of the disappearing limited liability company or disappearing other business entity is located of either of the documents specified in subdivision (a) or (b) shall evidence record ownership in the surviving limited liability company or surviving other business entity of all interest of the disappearing limited liability company or disappearing other business entity in and to the real property located in that county.

(a) A certificate of merger certified by the Secretary of State, or any other certificate as may be prescribed by the Secretary of State.

(b) A copy of the agreement of merger or certificate of merger, certified by the Secretary of State or an authorized public official of the state or place pursuant to the laws of which the merger is effected.

CHAPTER 13. DISSENTING MEMBERS' RIGHTS

17600. (a) For purposes of this chapter, "reorganization" refers to any of the following:

(1) A merger pursuant to Chapter 12 (commencing with Section 17550).

(2) The acquisition by one limited liability company, in exchange in whole or part for its membership interests (or the membership interests or equity securities of a limited liability company or other business entity that is in control of the acquiring limited liability company), of membership interests of another limited liability company or other business entity if, immediately after the acquisition, the acquiring limited liability company has control of the other limited liability company or other business entity.

(3) The acquisition by one limited liability company in exchange in whole or in part for its membership interests (or the membership interests or equity securities of a limited liability company or other business entity that is in control of the acquiring limited liability company) or for its debt securities (or debt securities of a limited liability company or other business entity that is in control of the acquiring limited liability company) that are not adequately secured and that have a maturity date in excess of five years after the consummation of the acquisition, or both, of all or substantially all of

the assets of another limited liability company or other business entity.

(b) For purposes of this chapter, “control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a limited liability company or other business entity.

17601. (a) If the approval of outstanding membership interests is required for a limited liability company to participate in a reorganization, pursuant to the operating agreement of the limited liability company, or otherwise, then each member of the limited liability company holding those membership interests may, by complying with this chapter, require the limited liability company to purchase for cash, at its fair market value, the interest owned by the member in the limited liability company, if the interest is a dissenting interest as defined in subdivision (b). The fair market value shall be determined as of the day before the first announcement of the terms of the proposed reorganization, excluding any appreciation or depreciation in consequence of the proposed reorganization unless exclusion would be inequitable.

(b) As used in this chapter, “dissenting interest” means a membership interest that satisfies all of the following conditions:

(1) The membership interest was outstanding on the date for the determination of members entitled to vote on the reorganization.

(2) (A) The membership interest was not voted in favor of the reorganization, or (B) the membership interest was voted against the reorganization; provided, however, that subparagraph (A) rather than subparagraph (B) of this paragraph applies in any event where the approval for the proposed reorganization is sought by written consent rather than at a meeting.

(3) That the member has demanded that the limited liability company purchase at its fair market value in accordance with Section 17602.

(4) That the member submits for endorsement, if applicable, in accordance with Section 17603.

(c) As used in this chapter, “dissenting member” means the recordholder of a dissenting interest, and includes an assignee of record of that interest.

17602. (a) If members have a right under Section 17601, subject to compliance with paragraphs (4) and (5) of subdivision (b) thereof, to require the limited liability company to purchase their membership interests for cash, that limited liability company shall mail to each member a notice of the approval of the reorganization by the requisite vote or consent of the members. This notice shall be mailed within 10 days after the date of the approval, accompanied by a copy of this section and Sections 17601, 17603, 17604, and 17605, a statement of the price determined by the limited liability company to represent the fair market value of its outstanding interests, a statement of the method of valuation employed, the latest available balance sheet of the limited liability company, the latest available

income statement of the limited liability company, and a brief description of the procedure to be followed if the member desires to exercise the member's rights under those sections. The statement of price constitutes an offer by the limited liability company to purchase at the price stated any dissenting interests as defined in subdivision (b) of Section 17601, unless they lose their status as dissenting interests under Section 17610.

(b) Any member who has a right to require the limited liability company to purchase the member's interest for cash under Section 17601, subject to compliance with paragraphs (4) and (5) of subdivision (b) thereof, and who desires the limited liability company to purchase that interest, shall make written demand upon the limited liability company for the purchase of the interest and the payment to the member in cash of its fair market value. The demand is not effective for any purpose unless it is received by the limited liability company or any transfer agent thereof within 30 days after the date on which notice of the approval of the reorganization by the requisite vote or consent of the members is mailed by the limited liability company to the members.

(c) The demand shall state the number or amount of the dissenting member's interest in the limited liability company and shall contain a statement of what that member claims to be the fair market value of that interest on the day before the announcement of the proposed reorganization. The statement of fair market value constitutes an offer by the dissenting member to sell the interest at that price.

17603. Within 30 days after the date on which notice of the approval of the outstanding interests of the limited liability company is mailed to the dissenting member pursuant to subdivision (a) of Section 17602, the member shall submit to the limited liability company at its principal office or at the office of any transfer agent thereof, the following:

(a) If the interest is evidenced by a certificate, the dissenting member's certificate representing the interest that the member demands that the limited liability company purchase, to be stamped or endorsed with a statement that the interest is a dissenting interest, or to be exchanged for certificates of appropriate denominations so stamped or endorsed.

(b) If the interest is not evidenced by a certificate, written notice of the number or amount of interest that the dissenting member demands that the limited liability company purchase. Upon subsequent transfers of the dissenting interest on the books of the limited liability company, the new certificates or other written statement issued therefor shall bear a like statement, together with the name of the original holder of the dissenting interest.

17604. (a) If the limited liability company and the dissenting member agree that the member's interest is a dissenting interest and agree upon the price to be paid for the dissenting interest, the dissenting member is entitled to the agreed price with interest

thereon at the legal rate on judgments from the date of consummation of the reorganization. All agreements fixing the fair market value of any dissenting member's interest as between the limited liability company and the member shall be in writing and filed in the records of the limited liability company.

(b) Subject to the provisions of Section 17607, payment of the fair market value for a dissenting interest shall be made within 30 days after the amount thereof has been agreed upon or within 30 days after any statutory or contractual conditions to the reorganization are satisfied, whichever is later. In the case of dissenting interests evidenced by certificates of interest, payment shall be subject to surrender of the certificates of interest, unless provided otherwise by agreement.

17605. (a) If the limited liability company denies that a membership interest is a dissenting interest, or the limited liability company and a dissenting member fail to agree upon the fair market value of a dissenting interest, then the member or any interested limited liability company, within six months after the date on which notice of the approval of the reorganization by the requisite vote or consent of the members was mailed to the member, but not thereafter, may file a complaint in the superior court of the proper county to determine whether the interest is a dissenting interest, or the fair market value of the dissenting interest, or both, or to intervene in any action pending on such a complaint.

(b) Two or more dissenting members may join as plaintiffs or be joined as defendants in any action and two or more actions may be consolidated.

(c) On the trial of the action, the court shall determine the issues. If the status of the membership interest as a dissenting interest is an issue, the court shall first determine that issue. If the fair market value of the dissenting interest is an issue, the court shall determine, or shall appoint one or more impartial appraisers to determine, the fair market value of the dissenting interest.

17606. (a) If the court appoints an appraiser or appraisers, they shall determine the fair market value per interest of the outstanding membership interests of the limited liability company, by class if necessary. Within the time fixed by the court, the appraisers, or a majority of them, shall make and file a report in the office of the clerk of the court. On the motion of any party, the report shall be submitted to the court and considered along with any additional evidence as the court considers relevant. If the court finds the report reasonable, the court may confirm it.

(b) If a majority of the appraisers appointed fail to make and file a report within 30 days from the date of their appointment, or within such further time as may be allowed by the court, or the report is not confirmed by the court, the court shall determine the fair market value per interest of the outstanding membership interests of the limited liability company, by class if necessary.

(c) Subject to Section 17607, judgment shall be rendered against

the limited liability company for payment of an amount equal to the fair market value, as determined by the court, of each dissenting interest that any dissenting member who is a party, or has intervened, is entitled to require the limited liability company to purchase, with interest thereon at the legal rate on judgments from the date of consummation of the reorganization.

(d) Any judgment shall be payable forthwith, provided, however, that with respect to membership interests evidenced by transferable certificates of interest, only upon the endorsement and delivery to the limited liability company of those certificates representing the interest described in the judgment. Any party may appeal from the judgment.

(e) The costs of the action, including reasonable compensation for the appraisers, to be fixed by the court, shall be assessed or apportioned as the court considers equitable, but, if the appraisal exceeds the price offered by the limited liability company, the limited liability company shall pay the costs, including, in the discretion of the court, if the value awarded by the court for the dissenting interest is more than 125 percent of the price offered by the limited liability company under subdivision (a) of Section 17602, attorneys' fees and fees of expert witnesses.

17607. To the extent that the payment to dissenting members of the fair market value of their dissenting interests would require the dissenting members to return that payment or a portion thereof by reason of subdivision (f) of Section 17254 or the Uniform Fraudulent Transfer Act (Chapter 1 (commencing with Section 3439) of Title 2 of Part 2 of Division 4 of the Civil Code), then that payment or portion thereof shall not be made and the dissenting members shall become creditors of the limited liability company for the amount not paid, together with interest thereon at the legal rate on judgments until the date of payment. The dissenting members shall be subordinate to all other creditors in any proceeding relating to the winding up and dissolution of the limited liability company.

17608. Any cash distributions made by a limited liability company to a dissenting member after the date of consummation of the reorganization, but prior to any payment by the limited liability company for the dissenting member's interest, shall be credited against the total amount to be paid by the limited liability company for that dissenting interest.

17609. Except as expressly limited by this chapter, dissenting members shall continue to have all the rights and privileges incident to their interests immediately prior to the reorganization, including limited liability, until payment by the limited liability company for their dissenting interests. A dissenting member may not withdraw a demand for payment unless the limited liability company consents thereto.

17610. A dissenting interest loses its status as a dissenting interest and the holder thereof ceases to be a dissenting member and ceases to be entitled to require the limited liability company to purchase

the interest upon the occurrence of any of the following:

(a) The limited liability company abandons the reorganization. Upon abandonment of the reorganization, the limited liability company shall pay, on demand, to any dissenting member who has initiated proceedings in good faith under this chapter, all reasonable expenses incurred in those proceedings and reasonable attorneys' fees.

(b) The interest is transferred prior to its submission for endorsement in accordance with Section 17603.

(c) The dissenting member and the limited liability company do not agree upon the status of the interest as a dissenting interest or upon the purchase price of the dissenting interest, and neither files a complaint nor intervenes in a pending action, as provided in Section 17605, within six months after the date upon which notice of the approval of the reorganization by the requisite vote or consent of members was mailed to the member.

(d) The dissenting member, with the consent of the limited liability company, withdraws that member's demand for purchase of the dissenting interest.

17611. If litigation is instituted to test the sufficiency or regularity of the vote of the members in authorizing a reorganization, any proceedings under Sections 17605 and 17606 shall be suspended until final determination of that litigation.

17612. (a) Subject to subdivisions (b) and (c), this chapter applies to the following:

(1) A domestic limited liability company.

(2) A foreign limited liability company if members holding more than 50 percent of the voting interests of the foreign limited liability company reside in this state.

(b) This chapter does not apply to membership interests governed by operating agreements whose terms and provisions specifically set forth the amount to be paid in respect of those interests in the event of a reorganization of the limited liability company.

(c) This chapter shall not apply to any limited liability company with 35 or fewer members if all the members have waived the application of this chapter in writing, whether in an operating agreement or otherwise, provided that if, at the time of the reorganization, the limited liability company had more than 35 members, any waiver shall be ineffective as to that reorganization.

17613. (a) No member of a limited liability company who has a right under this chapter to demand payment of cash for the interest owned by that member in a limited liability company shall have any right at law or in equity to attack the validity of the reorganization, or to have the reorganization set aside or rescinded, except (1) in an action to test whether the vote or consent of members required to authorize or approve the reorganization has been obtained in accordance with the procedures established therefor by the operating agreement of the limited liability company, or if there is

no written operating agreement, this chapter, or (2) when the limited liability company action is fraudulent with respect to the complaining member or the limited liability company.

(b) If one of the parties to a reorganization is directly or indirectly controlled by, or under common control with, another party to the reorganization, subdivision (a) shall not apply to any member of the controlled party who has not demanded payment of cash for the member's interest pursuant to this chapter; but if the member institutes any action to attack the validity of the reorganization or to have the reorganization set aside or rescinded, the member shall not thereafter have any right to demand payment of cash for that member's interest pursuant to this chapter.

(c) If one of the parties to a reorganization is directly or indirectly controlled by, or under common control with, another party to the reorganization, then, in any action to attack the validity of the reorganization or to have the reorganization set aside or rescinded, (1) a party to a reorganization that controls another party to a reorganization shall have the burden of proving that the transaction is just and reasonable as to the members of the controlled party, and (2) a person who controls two or more parties to a reorganization shall have the burden of proving that the transaction is just and reasonable as to the members of any party so controlled.

(d) Subdivisions (b) and (c) shall not apply if a majority in interest of the members other than members who are directly or indirectly controlled by, or under common control with, another party to the reorganization approve or consent to the reorganization.

(e) This section shall not prevent a member of a limited liability company that is a party to a reorganization from bringing an action against the limited liability company or any manager, officer, employee, or agent of the limited liability company, at law or in equity, as to any matters, including, without limitation, an action for breach of fiduciary obligation or fraud, other than to attack the validity of the reorganization or to have the reorganization set aside or rescinded.

CHAPTER 14. MISCELLANEOUS PROVISIONS

17650. (a) If a manager or member required by this title to execute or file any document fails, after demand, to do so within a reasonable time or refuses to do so, any other manager or member, or any person appointed by a court of competent jurisdiction, may prepare, execute, and file that document with the Secretary of State.

(b) If there is any dispute concerning the filing of a document, or the failure to file a document, any manager or member may petition the superior court to direct the execution of the document.

(c) If the court finds that it is proper for the document to be executed and that any person so designated has failed or refused to execute the document, or if the court determines that any document should be filed, it shall order a party to file the document, on a form

prescribed by the Secretary of State if appropriate, as ordered by the court.

(d) In any action under this section, if the court finds the failure of the manager or member to comply with the requirement to file any document to have been without justification, the court may award an amount sufficient to reimburse the managers or members bringing the action for the reasonable expenses incurred by them, including attorneys' fees, in connection with the action or proceeding.

(e) Any member who is not a manager, or any person filing any document under this section, shall state the statutory authority after the signature on the appropriate document.

17651. (a) Every limited liability company that neglects, fails, or refuses to keep or cause to be kept or maintained the documents, books, and records required by Section 17058 to be kept or maintained shall be subject to a penalty of twenty-five dollars (\$25) for each day that the failure or refusal continues, beginning 30 days after receipt of written request by any member that the duty be performed, up to a maximum of one thousand five hundred dollars (\$1,500). The penalty shall be paid to the member or members jointly making the request for performance of the duty and damaged by the neglect, failure, or refusal, if suit therefor is commenced within 90 days after the written request is made; but the maximum daily penalty because of failure to comply with any number of separate requests made on any one day or for the same act shall be two hundred fifty dollars (\$250).

(b) Upon the failure of a limited liability company, or a foreign limited liability company registered to transact intrastate business in this state, to file the statement required by Section 17060, the Secretary of State shall mail a notice of that delinquency to the limited liability company or foreign limited liability company. The notice shall also contain information concerning the application of this section, advise the limited liability company or foreign limited liability company of the penalty imposed by this subdivision for failure to timely file the required statement after notice of delinquency has been mailed by the Secretary of State, and shall advise the limited liability company or foreign limited liability company of its right to request relief from the Secretary of State because of reasonable cause or unusual circumstances that justify the failure to file. If, within 60 days after the mailing of the notice of delinquency, a statement pursuant to Section 17060 has not been filed by the limited liability company or foreign limited liability company, the limited liability company or foreign limited liability company shall be subject to a penalty of two hundred fifty dollars (\$250).

17652. Any penalty prescribed by Section 17651 shall be in addition to any remedy by injunction or action for damages or by writ of mandate for the nonperformance of acts and duties enjoined by law upon the limited liability company or its managers.

The court in which an action for any penalty is brought may reduce, remit or suspend the penalty on any terms and conditions as it may deem reasonable when it is made to appear that the neglect, failure or refusal was inadvertent or excusable.

17653. (a) Upon the failure of a limited liability company to file the statement required by Section 17060, the Secretary of State shall mail a notice of the delinquency to the limited liability company. The notice shall also contain information concerning the application of this section, advise the limited liability company of the penalty imposed by Section 19141 of the Revenue and Taxation Code for failure to timely file the required statement after notice of delinquency has been mailed by the Secretary of State, and shall advise the limited liability company of its right to request relief from the Secretary of State because of reasonable cause or unusual circumstances that justify such failure to file. If, within 60 days after the mailing of the notice of delinquency, a statement pursuant to Section 17060 has not been filed by the limited liability company, the Secretary of State shall certify the name of such limited liability company to the Franchise Tax Board.

(b) Upon certification pursuant to subdivision (a), the Franchise Tax Board shall assess against the limited liability company the penalty provided in Section 19141 of the Revenue and Taxation Code.

(c) The penalty provided by Section 19141 shall not apply to a limited liability company that on or prior to the date of certification pursuant to subdivision (a) has dissolved or has been merged into another limited liability company or other business entity.

(d) The penalty herein provided shall not apply and the Secretary of State need not mail a notice of delinquency to a limited liability company the powers, rights and privileges of which have been suspended by the Franchise Tax Board pursuant to Section 23301, 23301.5 or 23775 of the Revenue and Taxation Code on or prior to, and remain suspended on, the last day of the filing period pursuant to Section 17060. The Secretary of State need not mail a form pursuant to Section 17060 to a limited liability company the powers, rights and privileges of which have been so suspended by the Franchise Tax Board on or prior to, and remain suspended on, the day the Secretary of State prepares the forms for mailing.

(e) If, after certification pursuant to subdivision (a) the Secretary of State finds (1) the required statement was filed or the required fee was paid before the expiration of the 60-day period after mailing of the notice of delinquency, or (2) the failure to provide notice of delinquency was due to an error of the Secretary of State, the Secretary of State shall promptly decertify the name of the limited liability company to the Franchise Tax Board. The Franchise Tax Board shall then promptly abate any penalty assessed against the limited liability company pursuant to Section 19141 of the Revenue and Taxation Code.

(f) If the Secretary of State determines that the failure of a limited

liability company to file the statement required by Section 17060, or to pay the fee imposed by Section 23092 of the Revenue and Taxation Code, is excusable because of reasonable cause or unusual circumstances that justify such failure, the Secretary of State may waive the penalty imposed by this section and by Section 19141 of the Revenue and Taxation Code, in which case the Secretary of State shall not certify the name of the limited liability company to the Franchise Tax Board, or if already certified, the Secretary of State shall promptly decertify the name of the limited liability company.

17654. (a) A limited liability company that (1) fails to file a statement pursuant to Section 17060 for an applicable filing period, (2) has not filed a statement pursuant to Section 17060 during the preceding 24 months, and (3) was certified for penalty pursuant to Section 17653 for the same filing period of the prior year, shall be subject to suspension pursuant to this section rather than to penalty pursuant to Section 17653.

(b) When subdivision (a) is applicable, the Secretary of State shall mail a notice to the limited liability company informing the limited liability company that its powers, rights, and privileges will be suspended after 60 days if it fails to file a statement pursuant to Section 17060.

(c) After the expiration of the 60-day period without any statement filed pursuant to Section 17060, the Secretary of State shall notify the Franchise Tax Board of the suspension, and mail a notice of the suspension to the limited liability company and thereupon, except for the purpose of amending the articles of organization to set forth a new name, the powers, rights, and privileges of the limited liability company are suspended.

(d) A statement pursuant to Section 17060 may be filed notwithstanding suspension of the powers, rights, and privileges pursuant to this section or Section 23301 or 23301.5 of the Revenue and Taxation Code. Upon the filing of a statement pursuant to Section 17060 by a limited liability company that has suffered suspension pursuant to this section, the Secretary of State shall certify that fact to the Franchise Tax Board and the limited liability company may thereupon, in accordance with Section 23305a of the Revenue and Taxation Code, be relieved from suspension unless the limited liability company is held in suspension by the Franchise Tax Board by reason of Section 23301 or 23301.5 of the Revenue and Taxation Code.

17655. (a) Sections 17653 and 17654 apply to foreign limited liability companies with respect to the statements required to be filed by Section 17060. For this purpose, the suspension of the powers, rights, and privileges of a domestic limited liability company shall mean the forfeiture of the exercise of the powers, rights, and privileges of a foreign limited liability company in this state.

(b) The forfeiture of the exercise of the powers, rights, and privileges of a foreign limited liability company in this state as used in subdivision (a) does not prohibit the transaction of business in this

state by a foreign limited liability company if the business transacted subsequent to the forfeiture would not, considered as an entirety, require the foreign limited liability company to obtain a certificate of registration pursuant to subdivision (ao) of Section 17001 and Section 17452.

CHAPTER 15. FEE PROVISIONS

17700. For services performed, the Secretary of State shall charge and collect the fees fixed in this chapter.

17701. (a) The fee for issuing a certificate of reservation of limited liability company name is ten dollars (\$10).

(b) The fee for filing articles of organization of a limited liability company is eighty dollars (\$80).

(c) The fee for filing an application for registration as a foreign limited liability company is eighty dollars (\$80).

(d) The fee for filing a certificate of amendment to the articles of organization of a limited liability company is thirty dollars (\$30).

(e) The fee for filing restated articles of organization of a limited liability company is thirty dollars (\$30).

(f) The fee for filing an amendment to the application for registration as a foreign limited liability company is thirty dollars (\$30).

(g) The fee for filing a certificate of correction for a limited liability company pursuant to Section 17055 is thirty dollars (\$30).

(h) The fee for filing a certificate of continuation for a limited liability company after a certificate of dissolution has been filed is thirty dollars (\$30).

(i) For purposes of the merger of a limited liability company solely with one or more other limited liability companies (not including the merger of one or more limited liability companies with one or more other business entities), the fee for filing a certificate of merger pursuant to Section 17552 is eighty dollars (\$80) for each merger transaction, regardless of the number of constituent limited liability companies.

(j) For purposes of the merger of one or more limited liability companies with one or more other business entities, the fee for filing all merger documents required by the Corporations Code is one hundred fifty dollars (\$150) for any or all of the filings for each merger transaction, regardless of the number of constituent limited liability companies and constituent other business entities.

(k) The fee for filing the annual or current statement of information of a limited liability company or of a foreign limited liability company pursuant to Section 17060 is five dollars (\$5).

(l) There is no fee for filing a certificate of dissolution or a certificate of cancellation of articles of organization for purposes of the dissolution of a limited liability company.

(m) There is no fee for filing a certificate of cancellation for purposes of the cancellation of registration of a foreign limited

liability company.

(n) Unless another fee is specified by law or the law specifies that no fee is to be charged, the fee for filing any instrument by or on behalf of a limited liability company is thirty dollars (\$30).

17702. There is no fee for filing a statement of resignation as an agent pursuant to paragraph (2) of subdivision (d) of Section 17061 for an individual or entity previously designated as an agent for service of process by a limited liability company.

17703. The fee for furnishing a copy of an annual or current statement filed by a limited liability company or a foreign limited liability company pursuant to Section 17060 is five dollars (\$5).

17704. Unless another fee is specified by law or the law specifies that no fee is to be charged, the fee for acceptance of copies of process against a limited liability company is fifty dollars (\$50) for each limited liability company upon whom service is sought.

17705. The sum of two hundred thirty-four thousand dollars (\$234,000) is hereby appropriated to the Secretary of State from the Secretary of State's Business Fees Fund for expenditure in the 1994-95 fiscal year, to be expended on the initial program costs and to initiate the development of an automated system to support the program.

SEC. 28. Section 25013 of the Corporations Code is amended to read:

25013. "Person" means an individual, a corporation, a partnership, a limited liability company, a joint venture, an association, a joint stock company, a trust, an unincorporated organization, a government, or a political subdivision of a government.

SEC. 29. Section 25019 of the Corporations Code is amended to read:

25019. "Security" means any note; stock; treasury stock; membership in an incorporated or unincorporated association; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; interest in a limited liability company and any class or series of such interests (including any fractional or other interest in such interest), except a membership interest in a limited liability company in which the person claiming this exception can prove that all of the members are actively engaged in the management of the limited liability company; provided that evidence that members vote or have the right to vote, or the right to information concerning the business and affairs of the limited liability company, or the right to participate in management, shall not establish, without more, that all members are actively engaged in the management of the limited liability company; certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease; put, call,

straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof); or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; any beneficial interest or other security issued in connection with a funded employees' pension, profit sharing, stock bonus, or similar benefit plan; or, in general, any interest or instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. All of the foregoing are securities whether or not evidenced by a written document. "Security" does not include: (1) any beneficial interest in any voluntary inter vivos trust which is not created for the purpose of carrying on any business or solely for the purpose of voting, or (2) any beneficial interest in any testamentary trust, or (3) any insurance or endowment policy or annuity contract under which an insurance company admitted in this state promises to pay a sum of money (whether or not based upon the investment performance of a segregated fund) either in a lump sum or periodically for life or some other specified period, or (4) any franchise subject to registration under the Franchise Investment Law, or exempted from such registration by Section 31100 or 31101 of that law.

SEC. 30. Section 1220 of the Financial Code is amended to read: 1220. For the purpose of this article:

(a) "Obligations" means the total sums for the payment of which a person is obligated, primarily or secondarily, to a commercial bank.

(b) Obligations of a person include obligations of others to a commercial bank arising out of loans made by the bank for the benefit of the person.

(c) Obligations of an individual include the obligations of a partnership or association for which obligations the individual is liable.

(d) Obligations of a partnership include the obligations of its members who are liable for its obligations.

(e) Obligations of a corporation include the obligations of all subsidiaries in which it owns or controls a majority interest, except to the extent and under such restrictions as the superintendent may prescribe in specific instances upon special application made by any bank prior to the creation of the obligations.

(f) Obligations of a sovereign government or agency include the obligations of instrumentalities or political subdivisions of the government or agency, except to the extent and under such restrictions as the superintendent may prescribe in specific instances upon special application made by any bank prior to the creation of the obligations.

(g) Obligations of a limited liability company include the obligations of all subsidiaries in which it owns or controls a majority interest, except to the extent and under any restrictions the

superintendent may prescribe in specific instances upon special application made by any bank prior to the creation of the obligations.

SEC. 31. Section 8670.3 of the Government Code is amended to read:

8670.3. Unless the context requires otherwise, the following definitions shall govern the construction of this chapter:

(a) "Administrator" means the administrator for oil spill response appointed by the Governor pursuant to Section 8670.4.

(b) "Barges" means any vessel that carries oil in commercial quantities as cargo but is not equipped with a means of self-propulsion.

(c) (1) "Best achievable protection" means that the highest level of protection which can be achieved through both the use of the best achievable technology and those manpower levels, training procedures, and operational methods which provide the greatest degree of protection achievable. The administrator's determination of best achievable protection shall be guided by the critical need to protect valuable coastal resources and marine waters, while also considering (1) the protection provided by the measures, (2) the technological achievability of the measures, and (3) the cost of the measures.

(2) It is not the intent of the Legislature that the administrator use a cost-benefit or cost-effectiveness analysis or any particular method of analysis in determining which measures to require. Instead, it is the intent of the Legislature that the administrator give reasonable consideration to the protection provided by the measures, the technological achievability of the measures, and the cost of the measures when establishing the requirements to provide the best achievable protection for coastal and marine resources.

(d) "Best achievable technology" means that technology which provides the greatest degree of protection taking into consideration (1) processes which are being developed, or could feasibly be developed anywhere in the world, given overall reasonable expenditures on research and development, and (2) processes which are currently in use anywhere in the world. In determining what is best achievable technology, the administrator shall consider the effectiveness and engineering feasibility of the technology.

(e) "Local government" means any chartered or general law city, chartered or general law county, or any city and county.

(f) "Marine facility" means any facility of any kind, other than a vessel, which is or was used for the purposes of exploring for, drilling for, producing, storing, handling, transferring, processing, refining, or transporting oil and is located in marine waters, or is located where a discharge could impact marine waters unless the facility (1) is subject to Chapter 6.67 (commencing with Section 25270) or Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code or (2) is placed on a farm, nursery, logging site, or construction site and does not exceed 20,000 gallons in a single storage tank. For the purposes of this chapter, a drill ship,

semisubmersible drilling platform, jack-up type drilling rig, or any other floating or temporary drilling platform is a "marine facility." For the purposes of this chapter, a small craft refueling dock is not a "marine facility."

(g) "Marine terminal" means any marine facility used for transferring oil to or from tankers or barges. For the purposes of this section, a marine terminal includes all piping not integrally connected to a tank facility as defined in subdivision (k) of Section 25270.2 of the Health and Safety Code.

(h) "Marine waters" means those waters subject to tidal influence, except for waters in the Sacramento-San Joaquin Delta upstream from a line running north and south through the point where Contra Costa, Sacramento, and Solano Counties meet.

(i) "Nonpersistent oil" means a petroleum-based oil, such as gasoline, diesel, or jet fuel, which evaporates relatively quickly. Specifically, it is an oil with hydrocarbon fractions, at least 50 percent of which, by volume, distills at a temperature of 645° Fahrenheit, and at least 95 percent of which, by volume, distills at a temperature of 700° Fahrenheit.

(j) "Oil" means any kind of petroleum, liquid hydrocarbons, or petroleum products or any fraction or residues therefrom, including, but not limited to, crude oil, bunker fuel, gasoline, diesel fuel, aviation fuel, oil sludge, oil refuse, oil mixed with waste, and liquid distillates from unprocessed natural gas.

(k) "Onshore facility" means any facility of any kind which is located entirely on lands not covered by marine waters.

(l) (1) "Owner" or "operator" means any of the following:

(A) In the case of a vessel, any person who owns, has an ownership interest in, operates, charters by demise, or leases, the vessel.

(B) In the case of a marine facility, any person who owns, has an ownership interest in, or operates the marine facility.

(C) Except as provided in subparagraph (D), in the case of any vessel or marine facility, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to an entity of state or local government, any person who owned, held an ownership interest in, operated, or otherwise controlled activities concerning the vessel or facility immediately beforehand.

(D) An entity of the state or local government which acquired ownership or control of a vessel or marine facility, when the entity of the state or local government has caused or contributed to a spill or discharge of oil into marine waters.

(2) "Owner" or "operator" does not include a person who, without participating in the management of a vessel or marine facility, holds indicia of ownership primarily to protect his or her security interest in the vessel or marine facility.

(3) "Operator" does not include any person who owns the land underlying a marine facility or the facility itself if the person is not involved in the operations of the facility.

(m) "Person" means any individual, trust, firm, joint stock company, or corporation, including, but not limited to, a government corporation, partnership, limited liability company, and association. "Person" also includes any city, county, city and county, district, and the state or any department or agency thereof, and the federal government, or any department or agency thereof, to the extent permitted by law.

(n) "Pipeline" means any pipeline used at any time to transport oil.

(o) "Responsible party" or "party responsible" means any of the following:

(1) The owner or transporter of oil or a person or entity accepting responsibility for the oil.

(2) The owner, operator, or lessee of, or person who charters by demise, any vessel or marine facility, or a person or entity accepting responsibility for the vessel or marine facility.

(p) "Small craft refueling dock" means a facility that dispenses nonpersistent oil to small craft having tank storage capacity not exceeding 20,000 gallons in any single storage tank.

(q) "Spill" or "discharge" means any release of at least one barrel (42 gallons) of oil into marine waters which is not authorized by any federal, state, or local government entity.

(r) "State Interagency Oil Spill Committee" means the committee established pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7.

(s) "State oil spill contingency plan" means the state oil spill contingency plan prepared pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7.

(t) "Tanker" means any self-propelled, waterborne vessel, constructed or adapted for the carriage of oil in bulk or in commercial quantities as cargo.

(u) "Vessel" means a tanker or barge as defined in this section.

SEC. 32. Section 12164.7 is added to the Government Code, to read:

12164.7. The Secretary of State may cause to be returned to the limited liability company to which they relate, or to be destroyed, the articles of organization and other limited liability company records filed in his or her office by any limited liability company, domestic or foreign, if the Secretary of State complies with both of the following requirements:

(a) He or she maintains for the use of the public a microphotographic film print or copy of each document, record, instrument, or paper so returned or destroyed, prepared in accordance with the procedure specified in Sections 1531 and 1531 of the Evidence Code.

(b) He or she promptly seals and stores at least one original negative of each microphotographic film in the manner and place as reasonably to ensure its preservation indefinitely against loss, theft, defacement, or destruction.

SEC. 33. Section 12185 of the Government Code is amended to read:

12185. The fee for filing a designation of agent for or on behalf of any person, partnership, or firm, but not including a corporation or a limited liability company, is twenty-five dollars (\$25).

SEC. 34. Section 25118 of the Health and Safety Code is amended to read:

25118. "Person" means an individual, trust, firm, joint stock company, business concern, partnership, limited liability company, association, and corporation, including, but not limited to, a government corporation. "Person" also includes any city, county, district, commission, the state or any department, agency, or political subdivision thereof, any interstate body, and the federal government or any department or agency thereof to the extent permitted by law.

SEC. 35. Section 25281 of the Health and Safety Code, as amended by Chapter 432 of the Statutes of 1993, is amended to read:

25281. For purposes of this chapter, the following definitions apply:

(a) "Automatic line leak detector" means any method of leak detection, as determined in regulations adopted by the board, which alerts the owner or operator of an underground storage tank to the presence of a leak. "Automatic line leak detector" includes, but is not limited to, any device or mechanism which alerts the owner or operator of an underground storage tank to the presence of a leak by restricting or shutting off the flow of hazardous substance through piping, or by triggering an audible or visual alarm, and which detects leaks of three gallons or more per hour at 10 pounds per square inch line pressure within one hour.

(b) "Board" means the State Water Resources Control Board. "Regional board" means a California regional water quality control board.

(c) "Department" means the Department of Toxic Substances Control.

(d) "Facility" means any one, or combination of, underground storage tanks used by a single business entity at a single location or site.

(e) "Federal act" means Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code, as added by the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616), or as it may subsequently be amended or supplemented.

(f) "Hazardous substance" means both of the following:

(1) All of the following liquid and solid substances, unless the department, in consultation with the board, determines that the substance could not adversely affect the quality of the waters of the state:

(A) Substances on the list prepared by the Director of Industrial Relations pursuant to Section 6382 of the Labor Code.

(B) Hazardous substances, as defined in Section 25316.

(C) Any substance or material which is classified by the National

Fire Protection Association (NFPA) as a flammable liquid, a class II combustible liquid, or a class III-A combustible liquid.

(2) Any regulated substance, as defined in subsection (2) of Section 6991 of Title 42 of the United States Code, as that section reads on January 1, 1989, or as it may subsequently be amended or supplemented.

(g) "Local agency" means the department, office, or other agency of a county or city designated pursuant to Section 25283.

(h) "Operator" means any person in control of, or having daily responsibility for, the daily operation of an underground storage tank system.

(i) "Owner" means the owner of an underground storage tank.

(j) "Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, limited liability company, or association. "Person" also includes any city, county, district, the state, any department or agency thereof, or the United States to the extent authorized by federal law.

(k) "Pipe" means any pipeline or system of pipelines which is used in connection with the storage of hazardous substances and which is not intended to transport hazardous substances in interstate or intrastate commerce or to transfer hazardous materials in bulk to or from a marine vessel.

(l) "Primary containment" means the first level of containment, such as the portion of a tank which comes into immediate contact on its inner surface with the hazardous substance being contained.

(m) "Product tight" means impervious to the substance which is contained, or is to be contained, so as to prevent the seepage of the substance from the primary containment. To be product tight, the tank shall not be subject to physical or chemical deterioration by the substance which it contains over the useful life of the tank.

(n) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into or on the waters of the state, the land, or the subsurface soils.

(o) "Secondary containment" means the level of containment external to, and separate from, the primary containment.

(p) "Single walled" means construction with walls made of only one thickness of material. For the purposes of this chapter, laminated, coated, or clad materials are considered single walled.

(q) "Special inspector" means a professional engineer, registered pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, who is qualified to attest, at a minimum, to structural soundness, seismic safety, the compatibility of construction materials with contents, cathodic protection, and the mechanical compatibility of the structural elements of underground storage tanks.

(r) "Storage" or "store" means the containment, handling, or treatment of hazardous substances, either on a temporary basis or for a period of years. "Storage" or "store" does not mean the storage of hazardous wastes in an underground storage tank if the person

operating the tank has been issued a hazardous waste facilities permit by the department pursuant to Section 25200 or granted interim status under Section 25200.5.

(s) "SWEEPS" means the Statewide Environmental Evaluation and Planning System administered by the California Association of Environmental Health Administrators.

(t) "Tank" means a stationary device designed to contain an accumulation of hazardous substances which is constructed primarily of nonearthen materials (e.g. wood, concrete, steel, plastic) which provides structural support.

(u) "Tank integrity test" means a test method capable of detecting an unauthorized release from an underground storage tank consistent with the minimum standards adopted by the board.

(v) "Tank tester" means an individual who performs tank integrity tests on underground storage tanks.

(w) "Unauthorized release" means any release of any hazardous substance which does not conform to this chapter, including, but not limited to, an unauthorized release specified in Section 25295.5, unless this release is authorized by the board or a regional board pursuant to Division 7 (commencing with Section 13000) of the Water Code.

(x) (1) "Underground storage tank" means any one or combination of tanks, including pipes connected thereto, which is used for the storage of hazardous substances and which is substantially or totally beneath the surface of the ground. "Underground storage tank" does not include any of the following:

(A) A tank with a capacity of 1,100 gallons or less which is located on a farm and which stores motor vehicle fuel used primarily for agricultural purposes and not for resale.

(B) A tank which is located on a farm or at the residence of a person, which has a capacity of 1,100 gallons or less, and which stores home heating oil for consumptive use on the premises where stored.

(C) Structures, such as sumps, separators, storm drains, catch basins, oil field gathering lines, refinery pipelines, lagoons, evaporation ponds, well cellars, separation sumps, lined and unlined pits, sumps and lagoons. Sumps which are a part of a monitoring system required under Section 25291 or 25292 and sumps or other structures defined as underground storage tanks under the federal act are not exempted by this subparagraph.

(D) Until January 1, 1996, a tank holding hydraulic fluid for a closed loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

(2) Structures identified in subparagraphs (C) and (D) of paragraph (1) may be regulated by the board and any regional board pursuant to the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code) to ensure that they do not pose a threat to water quality.

(y) "Underground tank system" or "tank system" means an underground storage tank, connected piping, ancillary equipment,

and containment system, if any.

SEC. 36. Section 387 of the Penal Code is amended to read:

387. (a) Any corporation, limited liability company, or person who is a manager with respect to a product, facility, equipment, process, place of employment, or business practice, is guilty of a public offense punishable by imprisonment in the county jail for a term not exceeding one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both that fine and imprisonment; or by imprisonment in the state prison for 16 months, two, or three years, or by a fine not exceeding twenty-five thousand dollars (\$25,000); or by both that fine and imprisonment, but if the defendant is a corporation or a limited liability company the fine shall not exceed one million dollars (\$1,000,000), if that corporation, limited liability company, or person does all of the following:

(1) Has actual knowledge of a serious concealed danger that is subject to the regulatory authority of an appropriate agency and is associated with that product or a component of that product or business practice.

(2) Knowingly fails during the period ending 15 days after the actual knowledge is acquired, or if there is imminent risk of great bodily harm or death, immediately, to do both of the following:

(A) Inform the Division of Occupational Safety and Health in the Department of Industrial Relations in writing, unless the corporation, limited liability company, or manager has actual knowledge that the division has been so informed.

Where the concealed danger reported pursuant to this paragraph is subject to the regulatory authority of an agency other than the Division of Occupational Safety and Health in the Department of Industrial Relations, it shall be the responsibility of the Division of Occupational Safety and Health in the Department of Industrial Relations, within 24 hours of receipt of the information, to telephonically notify the appropriate government agency of the hazard, and promptly forward any written notification received.

(B) Warn its affected employees in writing, unless the corporation, limited liability company, or manager has actual knowledge that the employees have been so warned.

The requirement for disclosure is not applicable if the hazard is abated within the time prescribed for reporting, unless the appropriate regulatory agency nonetheless requires disclosure by regulation.

Where the Division of Occupational Safety and Health in the Department of Industrial Relations was not notified, but the corporation, limited liability company, or manager reasonably and in good faith believed that they were complying with the notification requirements of this section by notifying another government agency, as listed in paragraph (8) of subdivision (d), no penalties shall apply.

(b) As used in this section:

(1) "Manager" means a person having both of the following:

(A) Management authority in or as a business entity.

(B) Significant responsibility for any aspect of a business that includes actual authority for the safety of a product or business practice or for the conduct of research or testing in connection with a product or business practice.

(2) "Product" means an article of trade or commerce or other item of merchandise that is a tangible or an intangible good, and includes services.

(3) "Actual knowledge," used with respect to a serious concealed danger, means has information that would convince a reasonable person in the circumstances in which the manager is situated that the serious concealed danger exists.

(4) "Serious concealed danger," used with respect to a product or business practice, means that the normal or reasonably foreseeable use of, or the exposure of an individual to, the product or business practice creates a substantial probability of death, great bodily harm, or serious exposure to an individual, and the danger is not readily apparent to an individual who is likely to be exposed.

(5) "Great bodily harm" means a significant or substantial physical injury.

(6) "Serious exposure" means any exposure to a hazardous substance, when the exposure occurs as a result of an incident or exposure over time and to a degree or in an amount sufficient to create a substantial probability that death or great bodily harm in the future would result from the exposure.

(7) "Warn its affected employees" means give sufficient description of the serious concealed danger to all individuals working for or in the business entity who are likely to be subject to the serious concealed danger in the course of that work to make those individuals aware of that danger.

(8) "Appropriate government agency" means an agency on the following list that has regulatory authority with respect to the product or business practice and serious concealed dangers of the sort discovered:

(A) The Division of Occupational Safety and Health in the Department of Industrial Relations.

(B) State Department of Health Services.

(C) Department of Agriculture.

(D) County departments of health.

(E) The United States Food and Drug Administration.

(F) The United States Environmental Protection Agency.

(G) The National Highway Traffic Safety Administration.

(H) The Federal Occupation Safety and Health Administration.

(I) The Nuclear Regulatory Commission.

(J) The Consumer Product Safety Commission.

(K) The Federal Aviation Administration.

(L) The Federal Mine Safety and Health Review Commission.

(c) Notification received pursuant to this section shall not be used against any manager in any criminal case, except a prosecution for

perjury or for giving a false statement.

(d) No person who is a manager of a limited liability company shall be personally liable for acts or omissions for which the limited liability company is liable under subdivision (a) solely by reason of being a manager of the limited liability company. A person who is a manager of a limited liability company may be held liable under subdivision (a) if that person is also a "manager" within the meaning of paragraph (1) of subdivision (b).

SEC. 37. Section 653s of the Penal Code is amended to read:

653s. (a) Any person who transports or causes to be transported for monetary or other consideration within this state, any article containing sounds of a live performance with the knowledge that the sounds thereon have been recorded or mastered without the consent of the owner of the sounds of the live performance is guilty of a public offense punishable as provided in subdivision (g) or (h).

(b) As used in this section and Section 653u:

(1) "Live performance" means the recitation, rendering, or playing of a series of musical, spoken, or other sounds in any audible sequence thereof.

(2) "Article" means the original disc, wire, tape, film, phonograph record, or other recording device used to record or master the sounds of the live performance and any copy or reproduction thereof which duplicates, in whole or in part, the original.

(3) "Person" means any individual, partnership, partnership member or employee, corporation, association, or corporation or association employee, officer, or director, limited liability company, or limited liability company manager or officer.

(c) In the absence of a written agreement or operation of law to the contrary, the performer or performers of the sounds of a live performance shall be presumed to own the right to record or master those sounds.

(d) For purposes of this section, a person who is authorized to maintain custody and control over business records reflecting the consent of the owner to the recordation or master recording of a live performance shall be a proper witness in any proceeding regarding the issue of consent.

Any witness called pursuant to this section shall be subject to all rules of evidence relating to the competency of a witness to testify and the relevance and admissibility of the testimony offered.

(e) This section shall neither enlarge nor diminish the rights and remedies of parties to a recording or master recording which they might otherwise possess by law.

(f) This section shall not apply to persons engaged in radio or television broadcasting or cablecasting who record or fix the sounds of a live performance for, or in connection with, broadcast or cable transmission and related uses in educational television or radio programs, for archival purposes, or for news programs or purposes if the recordation or master recording is not commercially distributed independent of the broadcast or cablecast by or through

the broadcasting or cablecasting entity to subscribers or the general public.

(g) Any person who has been convicted of a violation of subdivision (a), shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison for two, three, or five years, or by a fine not to exceed two hundred fifty thousand dollars (\$250,000), or by both, if the offense involves the transportation or causing to be transported of not less than 1,000 articles described in subdivision (a).

(h) Any person who has been convicted of any other violation of subdivision (a) not described in subdivision (g) shall be punished by imprisonment in the county jail not to exceed one year, or by a fine not to exceed twenty-five thousand dollars (\$25,000), or both. A second or subsequent conviction under subdivision (a) not described in subdivision (g) shall be punished by imprisonment in the county jail not to exceed one year or in the state prison, or by a fine not to exceed one hundred thousand dollars (\$100,000), or by both.

(i) Every person who offers for sale or resale, or sells or resells, or causes the sale or resale, or rents, or possesses for these purposes, any article described in subdivision (a) with knowledge that the sounds thereon have been so recorded or mastered without the consent of the owner of the sounds of a live performance is guilty of a public offense.

(1) A violation of subdivision (i) involving not less than 100 of those articles shall be punishable by imprisonment in a county jail not to exceed one year or by a fine not to exceed ten thousand dollars (\$10,000), or by both. A second or subsequent conviction for the conduct described in this paragraph shall be punishable by imprisonment in the county jail not to exceed one year or in the state prison, or by a fine not to exceed twenty-five thousand dollars (\$25,000), or by both.

(2) A person who has been convicted of any violation of this subdivision not described in paragraph (1) shall be punished by imprisonment in the county jail not to exceed six months or by a fine not to exceed five thousand dollars (\$5,000), or by both. A second conviction for the conduct described in this paragraph shall be punishable by imprisonment in the county jail not to exceed one year or by a fine not to exceed ten thousand dollars (\$10,000), or by both. A third or subsequent conviction for the conduct described in this paragraph shall be punishable by imprisonment in the county jail not to exceed one year or in the state prison, or by a fine not to exceed twenty-five thousand dollars (\$25,000), or by both.

SEC. 38. Section 40170 of the Public Resources Code is amended to read:

40170. "Person" includes an individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

SEC. 39. Section 19 of the Revenue and Taxation Code, as

amended by Chapter 1187 of the Statutes of 1993, is amended to read:

19. "Person" includes any person, firm, partnership, general partner of a partnership, limited liability company, association, corporation, company, syndicate, estate, trust, business trust, or organization of any kind. As used in Division 2 (commencing with Section 6001), "person" shall include, in addition to the items of definition contained in the first sentence, trustee, trustee in bankruptcy, receiver, executor, administrator, or assignee.

SEC. 40. Section 28 of the Revenue and Taxation Code is repealed.

SEC. 41. Section 28.5 is added to the Revenue and Taxation Code, to read:

28.5. As used in Division 1 of this code, "partnership" shall include limited liability company, except where the context or the specific provisions of this division otherwise require.

SEC. 42. Section 64 of the Revenue and Taxation Code is amended to read:

64. (a) Except as provided in subdivision (h) of Section 61 and subdivisions (c) and (d) of this section, the purchase or transfer of ownership interests in legal entities, such as corporate stock or partnership or limited liability company interests, shall not be deemed to constitute a transfer of the real property of the legal entity.

(b) Any corporate reorganization, where all of the corporations involved are members of an affiliated group, and which qualifies as a reorganization under Section 368 of the United States Internal Revenue Code and which is accepted as a nontaxable event by similar California statutes, or any transfer of real property among members of an affiliated group, or any reorganization of farm credit institutions pursuant to the federal Farm Credit Act of 1971 (Public Law 92-181), as amended, shall not be a change of ownership. The taxpayer shall furnish proof, under penalty of perjury, to the assessor that the transfer meets the requirements of this subdivision.

For purposes of this subdivision "affiliated group" means one or more chains of corporations connected through stock ownership with a common parent corporation if:

(1) One hundred percent of the voting stock, exclusive of any share owned by directors, of each of the corporations, except the parent corporation, is owned by one or more of the other corporations; and

(2) The common parent corporation owns, directly, 100 percent of the voting stock, exclusive of any shares owned by directors, of at least one of the other corporations.

(c) When a corporation, partnership, limited liability company, other legal entity, or any other person obtains control, as defined in Section 25105 (as enacted by Chapter 938 of the Statutes of 1955), in any corporation, or obtains a majority ownership interest in any partnership, limited liability company, or other legal entity through the purchase or transfer of corporate stock, partnership, or limited

liability company interest, or ownership interests in other legal entities, such purchase or transfer of such stock or other interest shall be a change of ownership of property owned by the corporation, partnership, limited liability company, or other legal entity in which the controlling interest is obtained.

(d) If property is transferred on or after March 1, 1975, to a legal entity in a transaction excluded from change in ownership by paragraph (2) of subdivision (a) of Section 62, then the persons holding ownership interests in such legal entity immediately after the transfer shall be considered the "original coowners." Whenever shares or other ownership interests representing cumulatively more than 50 percent of the total interests in the entity are transferred by any of the original coowners in one or more transactions, a change in ownership of that real property owned by the legal entity shall have occurred, and the property which was previously excluded from change in ownership under the provisions of paragraph (2) of subdivision (a) of Section 62 shall be reappraised.

The date of reappraisal shall be the date of the transfer of the ownership interest representing individually or cumulatively more than 50 percent of the interests in the entity.

A transfer of shares or other ownership interests which results in a change in control of a corporation, partnership, limited liability company, or any other legal entity is subject to reappraisal as provided in subdivision (c) rather than this subdivision.

(e) In order to assist in the determination of whether a change of ownership has occurred under subdivisions (c) and (d), the Franchise Tax Board shall include a question in substantially the following form on returns for partnerships, banks and corporations (except tax-exempt organizations):

If the corporation (or partnership or limited liability company) owns real property in California, has cumulatively more than 50 percent of the voting stock (or more than 50 percent of total interest in both partnership or limited liability company capital and partnership or limited liability company profits) (1) been transferred by the corporation (or partnership or limited liability company) since March 1, 1975, or (2) been acquired by another legal entity or person during the year? (See instructions.)

If the entity answers "yes" to (1) or (2) in the above question, then the Franchise Tax Board shall furnish the names and addresses of that entity and of the stock or partnership or limited liability company ownership interest transferees to the State Board of Equalization.

SEC. 43. Section 480 of the Revenue and Taxation Code is amended to read:

480. (a) Whenever any change in ownership of real property or of a mobilehome subject to local property taxation, and which is assessed by the county assessor, occurs, the transferee shall file a

signed change in ownership statement in the county where the real property or mobilehome is located, as provided for in subdivision (c). In the case of a change in ownership where the transferee is not locally assessed, no change in ownership statement is required.

(b) The personal representative shall file a change in ownership statement with the county recorder or assessor in each county where the decedent owned real property at the time of death. The statement shall be filed at the time the inventory and appraisal is filed with the court clerk.

(c) Except as provided in subdivision (d), the change in ownership statement as required pursuant to subdivision (a) shall be declared to be true under penalty of perjury and shall give such information relative to the real property or mobilehome acquisition transaction as the board shall prescribe after consultation with the California Assessors' Association. The information shall include, but not be limited to, a description of the property, the parties to the transaction, the date of acquisition, the amount, if any, of the consideration paid for the property, whether paid in money or otherwise, and the terms of the transaction. The change in ownership statement shall not include any question which is not germane to the assessment function. The statement shall contain a notice informing the transferee of the property tax relief available under Section 69.5. The statement shall contain a notice that is printed, with the title in at least 12-point boldface type and the body in at least 8-point boldface type, in the following form:

“Important Notice”

“The law requires any transferee acquiring an interest in real property or mobilehome subject to local property taxation, and which is assessed by the county assessor, to file a change in ownership statement with the county recorder or assessor. The change in ownership statement must be filed at the time of recording or, if the transfer is not recorded, within 45 days of the date of the change in ownership. The failure to file a change in ownership statement within 45 days from the date of a written request by the assessor results in a penalty of either: (1) one hundred dollars (\$100), or (2) 10 percent of the taxes applicable to the new base year value reflecting the change in ownership of the real property or mobilehome, whichever is greater, but not to exceed two thousand five hundred dollars (\$2,500) if such failure to file was not willful. This penalty will be added to the assessment roll and shall be collected like any other delinquent property taxes, and be subject to the same penalties for nonpayment.”

(d) The change in ownership statement may be attached to or accompany the deed or other document evidencing a change in ownership filed for recording, in which case such notice, declaration under penalty of perjury, and any information contained in the deed

or other transfer document otherwise required by subdivision (c) may be omitted.

(e) If the document evidencing a change in ownership is recorded in the county recorder's office, then the statement shall be filed with the recorder at the time of recordation. However, the recordation of the deed or other document evidencing a change in ownership shall not be denied or delayed because of the failure to file a change of ownership statement, or filing of an incomplete statement, in accordance with this subdivision. If the document evidencing a change in ownership is not recorded or is recorded without the concurrent filing of a change in ownership statement, then the statement shall be filed with the assessor no later than 45 days from the date the change in ownership occurs.

(f) Whenever a change in ownership statement is filed with the county recorder's office, the recorder shall transmit, as soon as possible, the original statement or a true copy thereof to the assessor along with a copy of every recorded document as required by Section 255.7.

(g) The change in ownership statement may be filed with the assessor through the United States mail, properly addressed with the postage prepaid.

(h) In the case of a corporation, the change in ownership statement shall be signed either by an officer of the corporation or an employee or agent who has been designated in writing by the board of directors to sign such statements on behalf of the corporation. In the case of a partnership, limited liability company, or other legal entity, the statement shall be signed by an officer, partner, manager, or an employee or agent who has been designated in writing by the partnership, limited liability company, or legal entity.

(i) No person or entity acting for or on behalf of the parties to a transfer of real property shall incur liability for the consequences of assistance rendered to the transferee in preparation of any change in ownership statement, and no action may be brought or maintained against any such person or entity as a result of such assistance.

Nothing in this section shall create a duty, either directly or by implication, that such assistance be rendered by any person or entity acting for or on behalf of parties to a transfer of real property.

SEC. 44. Section 480.1 of the Revenue and Taxation Code is amended to read:

480.1. (a) Whenever there is a change in control of any corporation, partnership, limited liability company, or other legal entity, as defined in subdivision (c) of Section 64, a signed change in ownership statement as provided for in subdivision (b), shall be filed by the person or legal entity acquiring ownership control of such corporation, partnership, limited liability company, or other legal entity with the board at its office in Sacramento. The statement shall list all counties in which the corporation, partnership, limited liability company, or legal entity owns real property.

(b) The change in ownership statement as required pursuant to subdivision (a), shall be declared to be true under penalty of perjury and shall give such information relative to the ownership control acquisition transaction as the board shall prescribe after consultation with the California Assessors' Association. The information shall include, but not be limited to, a description of the property owned by the corporation, partnership, limited liability company, or other legal entity, the parties to the transaction, and the date of the ownership control acquisition. The change in ownership statement shall not include any question which is not germane to the assessment function. The statement shall contain a notice that is printed, with the title at least 12-point boldface type and the body in at least 8-point boldface type, in the following form:

“Important Notice”

“The law requires any person or legal entity acquiring ownership control in any corporation, partnership, limited liability company, or other legal entity owning real property in California subject to local property taxation to complete and file a change in ownership statement with the State Board of Equalization at its office in Sacramento. The change in ownership statement must be filed within 45 days from the date of the change in control of a corporation, partnership, limited liability company, or other legal entity. The law further requires that a change in ownership statement be completed and filed whenever a written request is made therefor by the State Board of Equalization, regardless of whether a change in control of the legal entity has occurred. The failure to file a change in ownership statement within 45 days from the date of a written request by the State Board of Equalization results in a penalty of 10 percent of the taxes applicable to the new base year value reflecting the change in control of the real property owned by the corporation, partnership, limited liability company, or legal entity (or 10 percent of the current year's taxes on that property if no change in control occurred). This penalty will be added to the assessment roll and shall be collected like any other delinquent property taxes, and be subject to the same penalties for nonpayment.”

(c) In the case of a corporation, the change in ownership statement shall be signed either by an officer of the corporation or an employee or agent who has been designated in writing by the board of directors to sign such statements on behalf of the corporation. In the case of a partnership, limited liability company, or other legal entity, the statement shall be signed by an officer, partner, manager, or an employee or agent who has been designated in writing by the partnership, limited liability company, or legal entity.

(d) No person or entity acting for or on behalf of the parties to a

transfer of real property shall incur liability for the consequences of assistance rendered to the transferee in preparation of any change in ownership statement, and no action may be brought or maintained against any such person or entity as a result of such assistance.

Nothing in this section shall create a duty, either directly or by implication, that such assistance be rendered by any person or entity acting for or on behalf of parties to a transfer of real property.

(e) The board or assessors may inspect any and all records and documents of a corporation, partnership, limited liability company, or legal entity to ascertain whether a change in control as defined in subdivision (c) of Section 64 has occurred. The corporation, partnership, limited liability company, or legal entity shall upon request, make such documents available to the board during normal business hours.

SEC. 45. Section 480.2 of the Revenue and Taxation Code is amended to read:

480.2. (a) Whenever there is a change in ownership of any corporation, partnership, limited liability company, or other legal entity, as defined in subdivision (d) of Section 64, a signed change in ownership statement as provided in subdivision (b) shall be filed by such corporation, partnership, limited liability company, or other legal entity with the board at its office in Sacramento. The statement shall list all counties in which the corporation, partnership, limited liability company, or legal entity owns real property.

(b) The change in ownership statement required pursuant to subdivision (a) shall be declared to be true and under penalty of perjury and shall give such information relative to the ownership interest acquisition transaction as the board shall prescribe after consultation with the California Assessors' Association. The information shall include, but not be limited to, a description of the property owned by the corporation, partnership, limited liability company, or other legal entity, the parties to the transaction, the date of the ownership interest acquisition, and a listing of the "original coowners" of the corporation, partnership, limited liability company, or other legal entity prior to the transaction. The change in ownership statement shall not include any question which is not germane to the assessment function. The statement shall contain a notice that is printed, with the title in at least 12-point boldface type and the body in at least 8-point boldface type, in the following form:

"Important Notice"

"The law requires any corporation, partnership, limited liability company, or other legal entity owning real property in California subject to local property taxation and transferring shares or other ownership interest in such legal entity which constitute a change in ownership pursuant to subdivision (d) of Section 64 of the Revenue and Taxation Code to complete and file a change in ownership statement with the State Board of Equalization at its office in

Sacramento. The change in ownership statement must be filed within 45 days from the date that shares or other ownership interests representing cumulatively more than 50 percent of the total control or ownership interests in the entity are transferred by any of the original coowners in one or more transactions. The law further requires that a change in ownership statement be completed and filed whenever a written request is made therefor by the State Board of Equalization, regardless of whether a change in ownership of the legal entity has occurred. The failure to file a change in ownership statement within 45 days from the date of a written request by the Board of Equalization results in a penalty of 10 percent of the taxes applicable to the new base year value reflecting the change in ownership of the real property owned by the corporation, partnership, limited liability company, or legal entity (or 10 percent of the current year's taxes on that real property if no change in ownership occurred). This penalty will be added to the assessment roll and shall be collected like any other delinquent property taxes, and be subject to the same penalties for nonpayment."

(c) In the case of a corporation, the change in ownership statement shall be signed either by an officer of the corporation or an employee or agent who has been designated in writing by the board of directors to sign such statements on behalf of the corporation. In the case of a partnership, limited liability company, or other legal entity, the statement shall be signed by an officer, partner, manager, or an employee or agent who has been designated in writing by the partnership, limited liability company, or legal entity.

(d) No person or entity acting for or on behalf of the parties to a transfer of real property shall incur liability for the consequences of assistance rendered to the transferee in preparation of any change in ownership statement, and no action may be brought or maintained against any such person or entity as a result of such assistance.

Nothing in this section shall create a duty, either directly or by implication, that such assistance be rendered by any person or entity acting for or on behalf of parties to a transfer of real property.

(e) The board or assessors may inspect any and all records and documents of a corporation, partnership, limited liability company, or legal entity to ascertain whether a change in ownership as defined in subdivision (d) of Section 64 has occurred. The corporation, partnership, limited liability company, or legal entity shall upon request, make such documents available to the board during normal business hours.

SEC. 46. Section 6005 of the Revenue and Taxation Code is amended to read:

6005. "Person" includes any individual, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, assignee for the benefit of creditors, trustee, trustee in bankruptcy,

syndicate, the United States, this state, any county, city and county, municipality, district, or other political subdivision of the state, or any other group or combination acting as a unit.

SEC. 47. Section 6829 of the Revenue and Taxation Code is amended to read:

6829. (a) Notwithstanding Section 17101, 17158, 17355, 17450, or 17456 of the Corporations Code, upon termination, dissolution, or abandonment of a domestic or foreign corporate or limited liability company business, any officer, member, manager, or other person having control or supervision of, or who is charged with the responsibility for the filing of returns or the payment of tax, or who is under a duty to act for the corporation or limited liability company in complying with any requirement of this part, shall be personally liable for any unpaid taxes and interest and penalties on those taxes, if the officer, member, manager, or other person willfully fails to pay or to cause to be paid any taxes due from the corporation or limited liability company pursuant to this part.

(b) The officer, member, manager, or other person shall be liable only for taxes that became due during the period he or she had the control, supervision, responsibility, or duty to act for the corporation or limited liability company described in subdivision (a), plus interest and penalties on those taxes.

(c) Personal liability may be imposed pursuant to this section, only if the board can establish that the corporation or limited liability company had included tax reimbursement in the selling price of, or added tax reimbursement to the selling price of, tangible personal property sold in the conduct of its business, or when it can be established that the corporation or limited liability company consumed tangible personal property and failed to pay the tax to the seller or has included use tax on the billing and collected the use tax or has issued a receipt for the use tax and failed to report and pay use tax.

(d) For purposes of this section “willfully fails to pay or to cause to be paid” means that the failure was the result of an intentional, conscious, and voluntary course of action.

(e) The sum due for the liability under this section may be collected by determination and collection in the manner provided in Chapter 5 (commencing with Section 6451) and Chapter 6 (commencing with Section 6701).

SEC. 48. Section 7310 of the Revenue and Taxation Code is amended to read:

7310. “Person” includes any individual, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, the United States, this state, any county, city and county, municipality, district, or other political subdivision of the state, or any other group or combination acting as a unit.

SEC. 49. Section 8606 of the Revenue and Taxation Code is amended to read:

8606. "Person" includes any individual, firm, partnership, joint venture, limited liability company, association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city and county, municipality, district, or other political subdivision thereof, or any other group or combination acting as a unit.

SEC. 50. Section 11204 of the Revenue and Taxation Code is amended to read:

11204. "Person" includes any individual, firm, partnership, joint venture, limited liability company, association, corporation, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit.

SEC. 51. Section 17007 of the Revenue and Taxation Code is amended to read:

17007. "Person" includes individuals, fiduciaries, partnerships, limited liability companies, and corporations.

SEC. 52. Section 17087.6 is added to the Revenue and Taxation Code, to read:

17087.6. If a limited liability company is classified as a partnership for California tax purposes, a person with a membership or economic interest shall take into account amounts required to be recognized under Chapter 10 (commencing with Section 17851).

SEC. 53. Section 17220 of the Revenue and Taxation Code is amended to read:

17220. (a) Section 164(a)(3) of the Internal Revenue Code, relating to the deductibility of state, local, and foreign income, war profits, and excess profits taxes, shall not apply.

(b) In addition to the provisions of Section 164(c) of the Internal Revenue Code relating to the deduction denied in the case of certain taxes, no deduction shall be allowed for any of the following:

(1) Taxes paid under Chapter 1.5 (commencing with Section 23081) of Part 11 (relating to tax on limited partnerships).

(2) Taxes paid under Chapter 4.5 (commencing with Section 23800) of Part 11 (relating to tax treatment of S corporations and their shareholders).

(3) Taxes paid under Chapter 1.6 (commencing with Section 23091) of Part 11 (relating to tax on limited liability companies).

SEC. 53.5. Section 17220 of the Revenue and Taxation Code is amended to read:

17220. (a) Section 164(a)(3) of the Internal Revenue Code, relating to the deductibility of state, local, and foreign income, war profits, and excess profits taxes, shall not apply.

(b) In addition to the provisions of Section 164(c) of the Internal Revenue Code relating to deduction denied in case of certain taxes, no deduction shall be allowed for any tax imposed under Part 11 (commencing with Section 23001).

SEC. 54. Section 18402 of the Revenue and Taxation Code is amended to read:

18402. (a) Except where the context otherwise requires, the general provisions and definitions provided in Chapter 1

(commencing with Section 17001) of Part 10 and in Chapter 1 (commencing with Section 23001) of Part 11 shall apply to this part.

(b) For purposes of this part, "person" includes an individual, fiduciary, partnership, limited liability company, bank, corporation, or organization exempt from taxation under Section 23701.

(c) (1) Whenever provisions of this part are applied in connection with Part 10 (commencing with Section 17001), the terms "taxpayer," "corporation" and "taxable year" have the same meaning as defined in Chapter 1 (commencing with Section 17001) of Part 10.

(2) Whenever provisions of this part are applied in connection with Part 11 (commencing with Section 23001), the terms "taxpayer," "corporation" and "taxable year" have the same meaning as defined in Article 2 (commencing with Section 23030) of Chapter 1 of Part 11.

SEC. 54.5. Section 18402 of the Revenue and Taxation Code is amended to read:

18402. (a) Except where the context otherwise requires, the general provisions and definitions provided in Chapter 1 (commencing with Section 17001) of Part 10 and in Chapter 1 (commencing with Section 23001) of Part 11 shall apply to this part.

(b) For purposes of this part, "person" includes an individual, fiduciary, partnership, limited liability company, bank, corporation, or organization exempt from taxation under Section 23701.

(c) (1) Whenever provisions of this part are applied in connection with Part 10 (commencing with Section 17001), the terms "taxpayer," "corporation," "income year," and "taxable year" have the same meaning as defined in Chapter 1 (commencing with Section 17001) of Part 10.

(2) Whenever provisions of this part are applied in connection with Part 11 (commencing with Section 23001), the terms "taxpayer," "corporation" and "taxable year" have the same meaning as defined in Article 2 (commencing with Section 23030) of Chapter 1 of Part 11.

SEC. 55. Section 18535 of the Revenue and Taxation Code is amended to read:

18535. (a) In lieu of electing nonresident partners filing a return pursuant to Section 18501 or 18507, the Franchise Tax Board may, pursuant to requirements and conditions set forth in forms and instructions, provide for the filing of a group return for electing nonresident partners by a partnership doing business in, or deriving income from, sources in California. The tax rate or rates applicable to each electing partner's distributive share shall be the highest marginal rate or rates provided by Part 10 (commencing with Section 17001). Except as provided in subdivision (b), no deductions shall be allowed except those necessary to determine each partner's distributive share, and no credits shall be allowed except those directly attributable to the partnership. As required by the Franchise Tax Board, the partnership as agent for the electing partners shall

make the payments of tax, additions to tax, interest, and penalties otherwise required to be paid by the electing partners.

(b) Deductions provided by Chapter 5 (commencing with Section 17501) of Part 10, attributable to earned income of a partner derived from a partnership filing a group return on behalf of electing nonresident partners under subdivision (a), shall be allowed if the partner certifies, in the form and manner as the Franchise Tax Board may prescribe, that he or she has no earned income from any other source.

(c) This section shall also be applicable to nonresident shareholders of a corporation which is treated as an "S corporation" under Chapter 4.5 (commencing with Section 23800) of Part 11. In that case, the provisions of subdivisions (a) and (b) are modified to refer to "shareholders" in lieu of "partners" and to "S corporation" in lieu of "partnership."

(d) This section shall also be applicable to a nonresident person with a membership or economic interest in a limited liability company which is classified as a partnership for California tax purposes. In that case, the provisions of subdivisions (a) and (b) are modified to refer to "holders of a membership or economic interest" in lieu of "partners" and to "limited liability companies" in lieu of "partnerships."

SEC. 56. Section 18621.5 of the Revenue and Taxation Code, as added by Chapter 31 of the Statutes of 1993, is amended to read:

18621.5. (a) Any return, declaration, statement, or other document required to be made under this part that is filed using electronic technology shall be in a form as the Franchise Tax Board may prescribe and shall be accompanied by a transmittal document signed in accordance with Section 18621 in the case of individuals, banks, or corporations, or limited liability companies classified as corporations for California income tax purposes, or subdivision (a) of Section 18633 in the case of a partnership, or Section 18633.5 in the case of limited liability companies classified as partnerships for California income tax purposes.

(b) Notwithstanding any other provision of law, any return, declaration, statement, or other document otherwise required to be signed that is filed in a traditional medium and captured using electronic imaging technology shall be deemed to be a valid original document upon reproduction to paper form by the Franchise Tax Board.

(c) "Electronic imaging technology" means a system of microphotography, optical disk, or reproduction by other technique that does not permit additions, deletions, or changes to the original document. The system may include, but is not limited to, any magnetic media or other machine readable form.

(d) "Traditional medium" means any return, declaration, statement, or other document required to be made pursuant to this article other than those made using electronic imaging technology.

SEC. 56.5. Section 18621.5 of the Revenue and Taxation Code is

amended to read:

18621.5. (a) Any return, declaration, statement, or other document required to be made under this part that is filed using electronic technology shall be in a form as the Franchise Tax Board may prescribe and is not complete, and therefore not filed, unless an electronic filing declaration is signed by the taxpayer, in accordance with Section 18621 in the case of individuals, or subdivision (a) of Section 18505 in the case of estates or trusts, banks, corporations, or limited liability companies classified as corporations for California income tax purposes, or subdivision (a) of Section 18633 in the case of a partnership, or Section 18633.5 in the case of limited liability companies classified as partnerships for California income tax purposes. The Franchise Tax Board may prescribe forms and instructions for requiring the electronic filing declaration to be retained by the preparer or taxpayer and may require the declaration to be furnished to the Franchise Tax Board upon request.

(b) Notwithstanding any other provision of law, any return, declaration, statement, or other document otherwise required to be signed that is filed in a traditional medium and captured using electronic imaging technology shall be deemed to be a valid original document upon reproduction to paper form by the Franchise Tax Board.

(c) Notwithstanding any other law, any return, declaration, statement, or other document otherwise required to be signed that is filed by the taxpayer using electronic technology in a form as required by the Franchise Tax Board shall be deemed to be a signed, valid original document, including upon reproduction to paper form by the Franchise Tax Board.

(d) "Electronic imaging technology" means a system of microphotography, optical disk, or reproduction by other technique that does not permit additions, deletions, or changes to the original document. The system may include, but is not limited to, any magnetic media or other machine readable form.

(e) "Traditional medium" means any return, declaration, statement, or other document required to be made pursuant to this article other than those made using electronic technology or electronic imaging technology.

(f) "Electronic technology" includes, but is not limited to, computer modem, magnetic media, optical disk, facsimile machine, or telephone.

SEC. 57. Section 18633.5 is added to the Revenue and Taxation Code, to read:

18633.5. (a) Every limited liability company which is classified as a partnership for California tax purposes that is doing business in this state, organized in this state, or registered with the Secretary of State shall file its return within three months and 15 days after the close of its taxable or income year, shall make a return for that taxable year, stating specifically the items of gross income and the deductions allowed by Part 10 (commencing with Section 17001). The return

shall include the names, addresses, and taxpayer identification numbers of the persons, whether residents or nonresidents, who would be entitled to share in the net income if distributed and the amount of the distributive share of each person. The return shall contain or be verified by a written declaration that it is made under the penalties of perjury, signed by one of the limited liability company members.

(b) Each limited liability company required to file a return under subdivision (a) for any limited liability company taxable or income year shall, on or before the day on which the return for that taxable or income year was required to be filed, furnish to each person who holds an interest in that limited liability company at any time during that taxable year a copy of that information required to be shown on that return as may be required by forms and instructions prescribed by the Franchise Tax Board.

(c) Any person who holds an interest in a limited liability company as a nominee for another person shall do both of the following:

(1) Furnish to the limited liability company, in the manner prescribed by the Franchise Tax Board, the name, address, and taxpayer identification number of that person, and any other information for that taxable or income year as the Franchise Tax Board may prescribe by forms and instructions.

(2) Furnish to that other person, in the manner prescribed by the Franchise Tax Board, the information provided by that limited liability company under subdivision (b).

(d) The provisions of Section 6031(d) of the Internal Revenue Code, relating to the separate statement of items of unrelated business taxable income, shall apply.

(e) A limited liability company shall file with its return required under subdivision (a), in the form required by the Franchise Tax Board, the agreement of each nonresident member to file a return pursuant to Section 18501, to make timely payment of all taxes imposed on the member by this state with respect to the income of the limited liability company, and to be subject to personal jurisdiction in this state for purposes of the collection of income taxes, together with related interest and penalties, imposed on the member by this state with respect to the income of the limited liability company. If the limited liability company fails timely to file said agreements on behalf of each of its nonresident members, then the limited liability company shall, at the time set forth in subdivision (f), pay to this state on behalf of each nonresident member of whom an agreement has not been timely filed an amount equal to the highest marginal tax rate in effect under Section 17041 in the case of members which are individuals, estates, or trusts, and Section 23151 in the case of members which are corporations, multiplied by the amount of the member's distributive share of the income source to the state reflected on the limited liability company's return for the taxable period. A limited liability company shall be entitled to

recover the payment made from the member on whose behalf the payment was made.

(f) Any agreement of a nonresident member required to be filed pursuant to subdivision (e) shall be filed at either of the following times:

(1) The time the annual return is required to be filed pursuant to this section for the first taxable period for which the limited liability company became subject to tax pursuant to Chapter 1.6 (commencing with Section 23091).

(2) The time the annual return is required to be filed pursuant to this section for any taxable period in which the limited liability company had a nonresident member on whose behalf such an agreement has not been previously filed.

(g) Any amount paid by the limited liability company to this state pursuant to subdivision (e) shall be considered to be a payment by the member on account of the income tax imposed by this state on the member for the taxable period.

(h) Every limited liability company that is classified as a corporation for California tax purposes shall be subject to the requirement to file a tax return under the provisions of Part 10.2 (commencing with Section 18401) and the applicable taxes imposed by Part 11 (commencing with Section 23001) including Section 23221 relating to the prepayment of the minimum tax to the Secretary of State.

SEC. 58. Section 18637 of the Revenue and Taxation Code, as added by Chapter 31 of the Statutes of 1993, is amended to read:

18637. (a) Every individual, partnership, limited liability company, bank, corporation, joint stock company or association, insurance company, business trust, or so-called Massachusetts trust, engaged in a trade or business in this state and making payment in the course of the trade or business to another person, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of this state or any political subdivision of this state, or any city organized under a freeholder's charter, or any political body not a subdivision or agency of the state, having the control, receipt, custody, disposal, or payment of interest (other than interest coupons payable to bearer), dividends, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income amounting to six hundred dollars (\$600) or over, paid or payable during any year to any taxpayer, shall make a complete return to the Franchise Tax Board, which shall contain or be verified by a written declaration that it is made under the penalties of perjury, under the regulations and in the form and manner and to the extent as may be prescribed by it.

(b) For purposes of subdivision (a), "trade or business" includes the activities of nonprofit organizations.

(c) In lieu of an information return required by subdivision (a), the Franchise Tax Board may require that a copy of the federal

information return be filed with the Franchise Tax Board.

(d) Every entity required to make a return under subdivision (a) shall furnish to each person whose name is required to be set forth in the return a written statement showing both of the following:

(1) The name, address, and identification number of the entity required to make the return.

(2) The aggregate amount of payments to the person required to be shown on the return.

The written statement required under this subdivision shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subdivision (a) was required to be made.

(e) This section shall not apply to tips with respect to which Section 13055 of the Unemployment Insurance Code applies. The only records which an employer shall be required to keep under this section in connection with charged tips shall be charge receipts and copies of statements furnished by employees under Section 13055 of the Unemployment Insurance Code.

SEC. 59. Section 18638 of the Revenue and Taxation Code, as added by Chapter 31 of the Statutes of 1993, is amended to read:

18638. Every individual, partnership, limited liability company, bank, corporation, joint stock company or association, insurance company, business trust, or so-called Massachusetts trust, shall be required to file a return for certain payments of remuneration for services and furnish a written statement to the person whose name is required to be set forth on the return in accordance with the provisions of Section 6041A of the Internal Revenue Code, except that no return or statement shall be required if a statement with respect to the services is required to be furnished under Division 6 (commencing with Section 13000) of the Unemployment Insurance Code (relating to withholding tax on wages) or Section 18647, and no return or statement shall be required with respect to direct sales pursuant to Section 6041A(b) of the Internal Revenue Code.

SEC. 60. Section 18648 of the Revenue and Taxation Code is amended to read:

18648. (a) Any person who is a promoter of tax shelters, as defined in subdivision (c), shall, within 60 days of a request, make a complete return to the Franchise Tax Board containing the full identification of each investment sold during the reporting period. For each investment, all of the following information shall be provided:

(1) Name of investment.

(2) Description of the business activities of the investment.

(3) Form of investment, such as limited partnership, limited liability company, investment plan, or arrangement.

(4) A list of investors showing full name, address, social security number, and the amount invested by each investor in the investment during the reporting period.

(5) The total amount invested by all investors during the

reporting period in the investment.

(6) Any other related information which the Franchise Tax Board may request.

The return shall be verified by a written declaration that it is made under penalty of perjury.

(b) Every person making a return under subdivision (a) shall furnish, within 60 days of the request, to each investor whose name is set forth in the return a written statement showing all of the following:

(1) The name and address of the person making the return.

(2) The aggregate amount of investments of each investor as shown on that return for each reporting period.

(c) For purposes of this section, the term "a promoter of tax shelters" shall mean any person who:

(1) (A) Organizes (or assists in the organization of) any entity, any investment plan or arrangement, or any other plan or arrangement which generates a loss for any investor in excess of his or her cash investment from an activity described in Section 465(c) of the Internal Revenue Code.

(B) Participates in the sale of any interest in any entity or plan or arrangement referred to in subparagraph (A).

(2) Makes or furnishes (in connection with that organization or sale):

(A) A statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit by reason of holding an interest in the entity or participating in the plan or arrangement.

(B) A statement as to the value of any property or services.

(d) A promoter of tax shelters shall keep records necessary to substantiate the information required to be contained on a return.

(e) "Reporting period," as used in subdivision (a), shall mean each calendar year specified on the request from the Franchise Tax Board.

(f) A return filed by a partnership or limited liability company classified as a partnership for California income tax purposes under this part shall be deemed to have satisfied the reporting requirement of this section for the reporting period covered by the partnership or limited liability company return with respect to the investors in the partnership.

(g) The Franchise Tax Board shall establish a review process for all requests for information under this section comparable to the process of obtaining an administrative subpoena, including the requirement that a member of the Franchise Tax Board shall approve each request.

SEC. 61. Section 19002 of the Revenue and Taxation Code is amended to read:

19002. (a) The amount withheld under Article 5 (commencing with Section 18661) of Chapter 2 or Section 13020 of the Unemployment Insurance Code during any calendar year shall be

allowed to the recipient of the income as a credit against the tax for the taxable year with respect to which the amount was withheld.

(b) In the case of a partnership, limited liability company classified as a partnership for California income tax purposes, or S corporation filing a group return as agent for electing nonresident partners or shareholders in accordance with Section 18535, for purposes of this part, the amount withheld under Article 5 (commencing with Section 18661) of Chapter 2 during any taxable year shall be allowed as a credit attributable to the partnership, limited liability company, or S corporation on the group return for the taxable year with respect to which that amount was withheld.

(c) (1) For purposes of Section 19306, any tax actually deducted and withheld during any calendar year under Article 5 (commencing with Section 18661) of Chapter 2 or Section 13020 of the Unemployment Insurance Code shall, in respect of the recipient of the income, be deemed to have been paid on the last day prescribed for filing the return under Article 1 (commencing with Section 18501) or Article 2 (commencing with Section 18601) of Chapter 2 (without regard to any extension of time for filing the return), with respect to which the tax is allowable as a credit under subdivision (a) or (b).

(2) For purposes of Sections 19306 and 19340, any amount paid as estimated tax under Section 19025 or 19136 of this code or Section 13043 of the Unemployment Insurance Code for any taxable year shall be deemed to have been paid on the last day prescribed for filing the return under Article 1 (commencing with Section 18501) or Article 2 (commencing with Section 18601) of Chapter 2 (without regard to any extension of time for filing the return).

(d) Notwithstanding subdivision (b) or (c), for purposes of Section 19306 with respect to any tax deducted and withheld under Article 5 (commencing with Section 18661) of Chapter 2 or Section 13020 of the Unemployment Insurance Code both of the following shall apply:

(1) If a return is filed before the due date for that return, the return shall be considered filed on the due date.

(2) If a tax with respect to an amount paid is paid before the due date for that return, the tax shall be considered paid on the due date.

(e) If any overpayment of income tax is claimed as a credit against estimated tax for the succeeding taxable year, that amount shall be considered as a payment of estimated tax in accordance with Section 19007, for the succeeding taxable year, and no claim for credit or refund of the overpayment shall be allowed for the taxable year in which the overpayment arises.

SEC. 62. Section 19009 of the Revenue and Taxation Code, as added by Chapter 31 of the Statutes of 1993, is amended to read:

19009. (a) Whenever any person or employer who is required to collect, account for, and pay over any tax—

(1) At the time and in the manner prescribed by law or regulations (A) fails to collect, truthfully account for, or pay over the

tax, or (B) fails to make deposits, payments, or returns of the tax, and

(2) Is notified, by notice delivered in hand or by registered mail of any such failure, then all the requirements of subdivision (b) shall be complied with. In the case of a bank, corporation, partnership, limited liability company, or trust, notice to an officer, partner, manager, member, or trustee, shall, for purposes of this section, be deemed to be sufficient notice to the bank, corporation, partnership, limited liability company, or trust and to all officers, partners, managers, members, trustees, and employees thereof.

(b) Any person or employer who is required to collect, account for, and pay over any tax imposed by Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001), if notice has been delivered to that person or employer in accordance with subdivision (a), shall collect the taxes, which become collectible after delivery of the notice, shall (not later than the end of the second banking day after any amount of the taxes is collected) deposit that amount in a separate account in a bank located within the limits of this state, and shall keep the amount of those taxes in that account until payment over to the Franchise Tax Board. Any such account shall be designated as a special fund in trust for the Franchise Tax Board, payable to the Franchise Tax Board by that person or employer as trustee.

(c) Whenever the Franchise Tax Board is satisfied, with respect to any notification made under subdivision (a), that all requirements of law and regulations with respect to the taxes, will henceforth be complied with, it may cancel the notification. The cancellation shall take effect at the time as is specified in the notice of the cancellation.

SEC. 63. Section 19132 of the Revenue and Taxation Code is amended to read:

19132. (a) (1) Unless it is shown that the failure is due to reasonable cause and not due to willful neglect, a penalty computed in accordance with paragraph (2) is hereby imposed in the case of failure to pay any of the following:

(A) The amount shown as tax on any return on or before the date prescribed for payment of that tax determined with regard to any extension of time for payment.

(B) Any amount in respect of any tax required to be shown on a return which is not so shown including an assessment made pursuant to Section 19051 within 10 days of the date of the notice and demand therefor.

(C) The amount required to be paid by Section 19021, if applicable, that is not paid.

(D) The amount required to be paid by Section 23091, if applicable, that is not paid.

(2) The penalty imposed under paragraph (1) shall consist of both of the following:

(A) Five percent of the total tax unpaid as defined in subdivision (c).

(B) An amount computed at the rate of 0.5 percent per month of

the “remaining tax” as defined in subdivision (d) for each additional month or fraction thereof not to exceed 40 months during which the “remaining tax” is greater than zero.

(3) The aggregate amount of penalty imposed by this subdivision shall not exceed 25 percent of the total unpaid tax and shall be due and payable upon notice and demand by the Franchise Tax Board. The tender of a check or money order does not constitute payment of the tax for purposes of this section unless the check or money order is paid on presentment.

(b) The penalty prescribed by subdivision (a) shall not be assessed if, for the same taxable year, the sum of any penalties imposed under Section 19131 relating to failure to file return and Section 19133 relating to failure to file return after demand is equal to or greater than the subdivision (a) penalty. In the event the penalty imposed under subdivision (a) is greater than the sum of any penalties imposed under Sections 19131 and 19133, the penalty imposed under subdivision (a) shall be the amount which exceeds the sum of any penalties imposed under Sections 19131 and 19133.

(c) For purposes of this section, total tax unpaid means the amount of tax shown on the return reduced by both of the following:

(1) The amount of any part of the tax which is paid on or before the date prescribed for payment of the tax.

(2) The amount of any credit against the tax which may be claimed upon the return.

(d) For purposes of this section, “remaining tax” means total tax unpaid reduced by the amount of any payment of the tax.

(e) If the amount required to be shown as a tax on a return is less than the amount shown as tax on that return, subdivisions (a), (c), and (d) shall be applied by substituting that lower amount.

(f) No interest shall accrue on the portion of the penalty prescribed in subparagraph (B) of paragraph (2) of subdivision (a).

SEC. 64. Section 19254 of the Revenue and Taxation Code is amended to read:

19254. (a) (1) If any person, other than an organization exempt from taxation under Section 23701, fails to pay any amount of tax, penalty, addition to tax, interest, or other liability imposed and delinquent under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part, a collection cost recovery fee shall be imposed if the Franchise Tax Board has mailed notice to that person for payment that advises that continued failure to pay the amount due may result in collection action, including the imposition of a collection cost recovery fee. The collection cost recovery fee shall be in the amount of:

(A) In the case of an individual, partnership, limited liability company classified as a partnership for California income tax purposes, or fiduciary, eighty-eight dollars (\$88) or an amount as adjusted under subdivision (b).

(B) In the case of a bank, corporation, or limited liability company classified as a corporation for California income tax purposes, one

hundred sixty-six dollars (\$166) or an amount as adjusted under subdivision (b).

(2) If any person, other than an organization exempt from taxation under Section 23701, fails or refuses to make and file a tax return required by Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part, within 25 days after formal legal demand to file the tax return is mailed to that person by the Franchise Tax Board, the Franchise Tax Board shall impose a filing enforcement cost recovery fee in the amount of:

(A) In the case of an individual, partnership, limited liability company classified as a partnership for California income tax purposes, or fiduciary, fifty-one dollars (\$51) or an amount as adjusted under subdivision (b).

(B) In the case of a bank, corporation, or limited liability company classified as a corporation for California income tax purposes, one hundred nineteen dollars (\$119) or an amount as adjusted under subdivision (b).

(b) For fees imposed under this section during the fiscal year 1993-94 and fiscal years thereafter, the amount of those fees shall be set to reflect actual costs and shall be specified in the annual Budget Act.

(c) Interest shall not accrue with respect to the cost recovery fees provided by this section.

(d) The amounts provided by this section are obligations imposed by this part and may be collected in any manner provided under this part for the collection of a tax.

(e) Subdivision (a) is operative with respect to the notices for payment or formal legal demands to file, either of which is mailed on or after September 15, 1992.

(f) The Franchise Tax Board shall determine the total amount of the cost recovery fees collected or accrued through June 30, 1993, and shall notify the Controller of that amount. The Controller shall transfer that amount to the Franchise Tax Board, and that amount is hereby appropriated to the board for the 1992-93 fiscal year for reimbursement of its collection and filing enforcement efforts.

SEC. 65. Section 23036 of the Revenue and Taxation Code is amended to read:

23036. (a) (1) The term "tax" includes any of the following:

(A) The tax imposed under Chapter 2 (commencing with Section 23101).

(B) The tax imposed under Chapter 3 (commencing with Section 23501).

(C) The tax on unrelated business taxable income, imposed under Section 23731.

(D) The tax on S corporations imposed under Section 23802.

(2) The term "tax" does not include any amount imposed under paragraph (1) of subdivision (e) of Section 24667 or paragraph (2) of subdivision (f) of Section 24667.

(b) For purposes of Article 5 (commencing with Section 18661) of

Chapter 2, Article 3 (commencing with Section 19031) of Chapter 4, Article 6 (commencing with Section 19101) of Chapter 4, and Chapter 7 (commencing with Section 19501) of Part 10.2, and for purposes of Sections 18601, 19001, and 19005, the term "tax" shall also include all of the following:

(1) The tax on limited partnerships, imposed under Section 23081 and the tax on limited liability companies, imposed under Section 23091.

(2) The alternative minimum tax imposed under Chapter 2.5 (commencing with Section 23400).

(3) The tax on built-in gains of S corporations, imposed under Section 23809.

(4) The tax on excess passive investment income of S corporations, imposed under Section 23811.

(c) Notwithstanding any other provision of this part, credits shall be allowed against the "tax" in the following order:

(1) Credits which do not contain carryover provisions.

(2) Credits which, when the credit exceeds the "tax," allow the excess to be carried over to offset the "tax" in succeeding taxable years. The order of credits within this paragraph shall be determined by the Franchise Tax Board.

(3) The minimum tax credit allowed by Section 23453.

(4) Credits for taxes withheld under Section 18662.

(d) Notwithstanding any other provision of this part, each of the following shall be applicable:

(1) No credit shall reduce the "tax" below the tentative minimum tax (as defined by paragraph (1) of subdivision (a) of Section 23455), except the following credits, but only after allowance of the credit allowed by Section 23453:

(A) The credit allowed by former Section 23601 (relating to solar energy).

(B) The credit allowed by former Section 23601.4 (relating to solar energy).

(C) The credit allowed by Section 23601.5 (relating to solar energy).

(D) The credit allowed by Section 23609 (relating to research expenditures).

(E) The credit allowed by Section 23609.5 (relating to clinical testing expenses).

(F) The credit allowed by Section 23610.5 (relating to low-income housing).

(G) The credit allowed by Section 23612 (relating to sales and use tax credit).

(H) The credit allowed by Section 23612.6 (relating to Los Angeles Revitalization Zone sales tax credit).

(I) The credit allowed by Section 23622 (relating to enterprise zone hiring credit).

(J) The credit allowed by Section 23623 (relating to program area hiring credit).

(K) The credit allowed by Section 23625 (relating to Los Angeles Revitalization Zone hiring credit).

(L) The credit allowed by Section 23649 (relating to qualified property).

(2) No credit against the tax shall reduce the minimum franchise tax imposed under Chapter 2 (commencing with Section 23101).

(e) Any credit which is partially or totally denied under subdivision (d) shall be allowed to be carried over to reduce the "tax" in the following year, and succeeding years if necessary, if the provisions relating to that credit include a provision to allow a carryover of the unused portion of that credit.

(f) Unless otherwise provided, any remaining carryover from a credit which has been repealed or made inoperative shall continue to be allowed to be carried over and applied against the "tax" until the credit has been exhausted.

(g) Unless otherwise provided, if two or more taxpayers share in costs that would be eligible for a tax credit allowed under this part, each taxpayer shall be eligible to receive the tax credit in proportion to its respective share of the costs paid or incurred.

SEC. 65.5. Section 23036 of the Revenue and Taxation Code is amended to read:

23036. (a) (1) The term "tax" includes any of the following:

(A) The tax imposed under Chapter 2 (commencing with Section 23101).

(B) The tax imposed under Chapter 3 (commencing with Section 23501).

(C) The tax on unrelated business taxable income, imposed under Section 23731.

(D) The tax on S corporations imposed under Section 23802.

(2) The term "tax" does not include any amount imposed under paragraph (1) of subdivision (e) of Section 24667 or paragraph (2) of subdivision (f) of Section 24667.

(b) For purposes of Article 5 (commencing with Section 18661) of Chapter 2, Article 3 (commencing with Section 19031) of Chapter 4, Article 6 (commencing with Section 19101) of Chapter 4, and Chapter 7 (commencing with Section 19501) of Part 10.2, and for purposes of Sections 18601, 19001, and 19005, the term "tax" shall also include all of the following:

(1) The tax on limited partnerships, imposed under Section 23081 and the tax on limited liability companies, imposed under Section 23091.

(2) The alternative minimum tax imposed under Chapter 2.5 (commencing with Section 23400).

(3) The tax on built-in gains of S corporations, imposed under Section 23809.

(4) The tax on excess passive investment income of S corporations, imposed under Section 23811.

(c) Notwithstanding any other provision of this part, credits shall be allowed against the "tax" in the following order:

(1) Credits which do not contain carryover provisions.
(2) Credits which, when the credit exceeds the "tax," allow the excess to be carried over to offset the "tax" in succeeding taxable years. The order of credits within this paragraph shall be determined by the Franchise Tax Board.

(3) The minimum tax credit allowed by Section 23453.

(4) Credits for taxes withheld under Section 18662.

(d) Notwithstanding any other provision of this part, each of the following shall be applicable:

(1) No credit shall reduce the "tax" below the tentative minimum tax (as defined by paragraph (1) of subdivision (a) of Section 23455), except the following credits, but only after allowance of the credit allowed by Section 23453:

(A) The credit allowed by former Section 23601 (relating to solar energy).

(B) The credit allowed by former Section 23601.4 (relating to solar energy).

(C) The credit allowed by Section 23601.5 (relating to solar energy).

(D) The credit allowed by Section 23609 (relating to research expenditures).

(E) The credit allowed by Section 23609.5 (relating to clinical testing expenses).

(F) The credit allowed by Section 23610.5 (relating to low-income housing).

(G) The credit allowed by Section 23612 (relating to sales and use tax credit).

(H) The credit allowed by Section 23612.6 (relating to Los Angeles Revitalization Zone sales tax credit).

(I) The credit allowed by Section 23622 (relating to enterprise zone hiring credit).

(J) The credit allowed by Section 23623 (relating to program area hiring credit).

(K) For each income year beginning on or after January 1, 1994, the credit allowed by Section 23623.5 (relating to Los Angeles Revitalization Zone hiring credit).

(L) The credit allowed by Section 23625 (relating to Los Angeles Revitalization Zone hiring credit).

(M) The credit allowed by Section 23649 (relating to qualified property).

(2) No credit against the tax shall reduce the minimum franchise tax imposed under Chapter 2 (commencing with Section 23101).

(e) Any credit which is partially or totally denied under subdivision (d) shall be allowed to be carried over to reduce the "tax" in the following year, and succeeding years if necessary, if the provisions relating to that credit include a provision to allow a carryover of the unused portion of that credit.

(f) Unless otherwise provided, any remaining carryover from a credit that has been repealed or made inoperative shall continue to

be allowed to be carried over under the provisions of that section as it read immediately prior to being repealed or becoming inoperative.

(g) Unless otherwise provided, if two or more taxpayers share in costs that would be eligible for a tax credit allowed under this part, each taxpayer shall be eligible to receive the tax credit in proportion to its respective share of the costs paid or incurred.

SEC. 66. Section 23038 of the Revenue and Taxation Code is amended to read:

23038. "Corporation" includes every corporation except:

(a) Banks.

(b) Corporations expressly exempt from the tax by this part or the Constitution of this state.

For the purposes of the tax imposed under Chapter 3 (commencing with Section 23501) of Part 11 of Division 2, "corporation" also includes associations (including nonprofit associations that perform services, borrow money or own property), other than banking associations, and Massachusetts or business trusts. For the purposes of this part, a Massachusetts or business trust includes every business organization consisting essentially of an arrangement whereby property is conveyed to one, or more than one, trustee for purposes other than the mere conservation of assets, collecting and disbursing of fixed or periodic income, or the securing of an obligation.

In addition to the above, for purposes of the tax imposed under Chapter 2 (commencing with Section 23101) of Part 11 of Division 2 for the purpose of exercising its franchise within this state, "corporation" also includes any limited liability company that is classified as an association for California tax purposes.

"Corporation" includes any "corporation" operated by any receiver, liquidator, referee, trustee or other officers or agents appointed by any court, or an assignee for the benefit of creditors.

"Corporation" includes any professional corporation incorporated pursuant to Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code.

Notwithstanding the above, "corporation" also includes a trust organized and operated exclusively for purposes contained in Section 23701d.

SEC. 67. Chapter 1.6 (commencing with Section 23091) is added to Part 11 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 1.6. TAX AND FEES ON LIMITED LIABILITY COMPANIES

23091. (a) For each taxable year beginning on or after January 1, 1994, every limited liability company doing business in this state (as defined in Section 23101) and required to file a return under Section 18633.5, shall pay annually to this state a tax for the privilege of doing business in this state in an amount equal to the applicable

amount specified in paragraph (1) of subdivision (d) of Section 23153 for the taxable year.

(b) In addition to any limited liability company which is doing business in this state and is therefore subject to the tax imposed by subdivision (a), for each taxable year beginning on or after January 1, 1994, a limited liability company shall pay annually the tax prescribed in subdivision (a) if articles of organization have been accepted, or a certificate of registration has been issued, by the office of the Secretary of State. The tax shall be paid for each taxable year, or part thereof, until a certificate of dissolution or certificate of cancellation of registration or of articles of organization is filed on behalf of the limited liability company with the office of the Secretary of State.

(c) The tax assessed under this section shall be due and payable on or before the 15th day of the fourth month of the taxable year. Notwithstanding the preceding sentence, no penalty under Section 19131 shall be imposed for failure to pay this tax prior to January 3, 1995.

(d) For purposes of this section, "limited liability company" means any organization formed by one or more persons under the law of this state, any other country, or any other state, as a "limited liability company" and which is classified as a partnership for California tax purposes.

23092. (a) In addition to the tax imposed under Section 23091, every limited liability company subject to tax under Section 23091 shall pay annually to this state a fee equal to:

(1) Five hundred dollars (\$500), if the total income from all sources reportable to this state for the taxable year is two hundred fifty thousand dollars (\$250,000) or more, but less than five hundred thousand dollars (\$500,000).

(2) One thousand dollars (\$1,000), if the total income from all sources reportable to this state for the taxable year is five hundred thousand dollars (\$500,000) or more, but less than one million dollars (\$1,000,000).

(3) Two thousand dollars (\$2,000), if the total income from all sources reportable to this state for the taxable year is one million dollars (\$1,000,000) or more, but less than five million dollars (\$5,000,000).

(4) Four thousand dollars (\$4,000), if the total income from all sources reportable to this state for the taxable year is five million dollars (\$5,000,000) or more.

(5) This subdivision shall be operative for taxable years beginning on or before December 31, 1995.

(b) In addition to the tax imposed under Section 23091, every limited liability company subject to tax under subdivision (b) of Section 23091 shall pay annually to this state a fee equal to:

(1) Five hundred dollars (\$500), if the total income from all sources reportable for the taxable year is two hundred fifty thousand dollars (\$250,000) or more, but less than five hundred thousand

(\$500,000).

(2) One thousand five hundred dollars (\$1,500), if the total income from all sources reportable to this state for the taxable year is five hundred thousand dollars (\$500,000) or more, but less than one million dollars (\$1,000,000).

(3) Three thousand dollars (\$3,000), if the total income from all sources reportable to this state for the taxable year is one million dollars (\$1,000,000) or more, but less than five million dollars (\$5,000,000).

(4) Four thousand five hundred dollars (\$4,500), if the total income from all sources reportable to this state for the taxable year is five million dollars (\$5,000,000) or more.

(5) This subdivision shall apply to taxable years beginning on or after January 1, 1996.

(c) (1) For purposes of this section, "total income" means gross income, as defined in Section 24271, plus the cost of goods sold that are paid or incurred in connection with the trade or business of the taxpayer.

(2) For purposes of determining the total income from all sources reportable to this state of the taxpayer under this section, the aggregate total income of all commonly controlled entities, as defined in Section 25105, taking into account any election under Section 25110, shall be considered the total income of the taxpayer.

(d) The fee assessed under this section shall be due and payable on the date the return of the limited liability company is required to be filed under Section 18633.5.

23093. (a) On or before January 1, 1999, and annually thereafter, the Franchise Tax Board shall conduct a study using the methodology and assumptions set forth in the report dated August 9, 1994, and titled "Methodology for the Limited Liability Company Fee Adjustment Calculation," which is hereby incorporated by reference into this section. The study shall be submitted to the Joint Legislative Budget Committee and made available, upon request, to any Member of the Legislature. If the Franchise Tax Board determines, in accordance with the methodology and assumptions set forth in the study referenced in this subdivision that the act that added this section results in a net gain or reduction in state income and franchise tax revenues, the Franchise Tax Board annually shall, after a public hearing, increase or decrease the amounts of the fees imposed under Section 23092 in a manner that offsets the computed revenue gain or loss. Notwithstanding the above, in no case shall the amount of the fees be less than one dollar (\$1).

(b) Limited liability companies shall provide, upon request, any information that the Secretary of State or the Franchise Tax Board determines to be necessary to complete the revenue analysis pursuant to this section.

(c) The annual increase or decrease in the amounts of the fees as determined by the Franchise Tax Board in accordance with this section shall apply to each taxable year beginning on or after January

1, 1999.

(d) The Secretary of State shall provide the Franchise Tax Board with an annual listing, in a form and manner agreed upon by the Franchise Tax Board and the Secretary of State, of the limited liability companies registered with the Secretary of State during the previous calendar year, including, but not limited to, the following information:

(1) The name and the mailing address of the limited liability company.

(2) The name of the state or foreign country in which the limited liability company has filed articles of organization.

(3) The intent of the limited liability company to be treated as a corporation or as a partnership for tax purposes in this state.

23094. (a) The effective date of dissolution, withdrawal, or cancellation of a limited liability company is the date on which the certified copy of the court decree, judgment, or order declaring the limited liability company duly wound up and dissolved is filed in the office of the Secretary of State or the date on which the certificate of winding up and dissolution is filed in the office of the Secretary of State. For the purposes of this chapter, the effective date of cancellation of registration of a foreign limited liability company is the date on which the certificate of cancellation of registration is filed in the office of the Secretary of State.

(b) The Secretary of State shall, through an information program and by forms and instructions, recommend that all required documents filed with the Secretary of State be sent, if mailed, by certified mail with return receipt requested. The Secretary of State shall also notify persons that receipt of documents by the Secretary of State will be acknowledged within 21 days of receipt.

(c) On or before 21 days after their receipt, the Secretary of State shall provide a payer with acknowledgment of the receipt of documents submitted by a limited liability company pursuant to this chapter.

23095. No decree of dissolution, withdrawal, or cancellation shall be made and entered by any court, nor shall the county clerk of any county or the Secretary of State file any such decree, withdrawal, or cancellation or any other document by which the term of existence of the limited liability company shall be reduced or terminated, nor shall the Secretary of State file any certificate of the surrender or cancellation by a foreign limited liability company of its rights to do intrastate business in this state unless the limited liability company obtains from the Franchise Tax Board and files from the court, county clerk, or Secretary of State as the case may be, a tax clearance certificate indicating that the Franchise Tax Board is satisfied from the available evidence that all taxes and fees imposed by this chapter have been paid or are secured by bond, deposit, or otherwise. Within 30 days after receiving a request for a certificate, the Franchise Tax Board shall either issue the certificate or notify the person requesting the certificate of the amount of tax or fees that must be paid or the

amount of bond, deposit, or other security that must be furnished as a condition of issuing the certificate. The issuance of the certificate shall not relieve the taxpayer or any individual, bank, or corporation from liability for any taxes, fees, penalties, or interest imposed by this code. The Franchise Tax Board shall furnish a copy of the tax clearance certificate to the Secretary of State.

23096. A limited liability company shall not be subject to the taxes and fees imposed by this chapter if the limited liability company did no business in this state during the taxable or income year and the taxable or income year was 15 days or less.

SEC. 68. Section 23305.5 is added to the Revenue and Taxation Code, to read:

23305.5. (a) For the purposes of this article, "taxpayer" shall include any limited liability company, foreign or domestic, that is organized in this state or registered with the Secretary of State.

(b) For purposes of this article, in the case of a limited liability company:

(1) "Articles of incorporation" shall include a limited liability company's articles of organization.

(2) "Tax" shall include the tax and fee imposed by Sections 23091 and 23092, respectively, with respect to a limited liability company classified as a partnership for California tax purposes.

SEC. 69. Section 25141 of the Revenue and Taxation Code is amended to read:

25141. (a) For purposes of this section, the following definitions shall apply:

(1) "Entity" means an individual, corporation, association, partnership, limited liability company, estate, trust, or any combination thereof.

(2) "Person" means an individual or corporation.

(3) "Professional athletic team" means any entity which has all of the following characteristics:

(A) Employs concurrently during the income year five or more persons, who are compensated for being participating members of an athletic team engaging in public contests.

(B) Is a member of a league composed of at least five entities which are engaged in the operation of an athletic team and which are located in this and other states or in other countries.

(C) Has total minimum paid attendance in the aggregate for all contests wherever played during the income year of 40,000 persons.

(D) Has minimum gross income in the income year of one hundred thousand dollars (\$100,000).

(b) For purposes of this chapter, a team shall be considered to have its operations based in the state or country in which the team derives its territorial rights under the rules of the league of which it is a member.

(c) The business income of a professional athletic team derived directly or indirectly from its operations as a professional athletic team shall be allocated to this state pursuant to the following

three-factor formula:

(1) Computation of the property factor under Section 25129:

(A) For a team that has its operations based in this state, the average value of all real and tangible personal property, wherever located, and owned or rented and used during the income year, shall be deemed to have been owned or rented and used in this state during the income year.

(B) For a team that has its operations based outside of this state, the average value of all real and tangible personal property, wherever located, and owned or rented and used during the income year, shall be deemed to have been owned or rented and used outside this state during the income year.

(2) Computation of the payroll factor under Section 25132:

(A) For a team that has its operations based in this state, the total compensation paid everywhere during the income year shall be deemed to have been paid in this state during the income year.

(B) For a team that has its operations based outside of this state, the total compensation paid everywhere during the income year shall be deemed to have been paid outside this state during the income year.

(3) Computation of the sales factor under Section 25134:

(A) For a team that has its operations based in this state, the total sales everywhere during the income year shall be deemed to have been made in this state during the income year.

(B) For a team that has its operations based outside of this state, the total sales everywhere during the income year shall be deemed to have been made outside this state during the income year.

(d) If any team that has its operations based in this state is required to allocate or apportion a part of its business income derived directly or indirectly from its operations as a professional athletic team to another state or country by the laws, regulations, or requirements of the other state or country and pays an income or franchise tax measured by income thereon as a result of the allocation or apportionment, then all of the following shall apply:

(1) The business income of the team otherwise subject to this section shall be reduced for purposes of this section by the amount of the business income which is allocated or apportioned to and taxed by the other state or country.

(2) This section shall not apply to any team in the same league that has its operations based in the other state or country, and the business income of any such team derived directly or indirectly from its operations as a professional athletic team shall be allocated or apportioned to this state in a manner consistent with the method of allocation or apportionment imposed by the other state or country on the business income of the team that has its operations based in this state.

(e) For purposes of the minimum tax imposed under Sections 23151 and 23151.1, an entity which operates a professional athletic team shall be treated as a corporation. The liability under Sections

23151 and 23151.1 of any corporation owning any portion or share of an entity shall be satisfied by payment of the minimum tax by that entity, if the corporation is not otherwise doing business in this state.

SEC. 70. Section 30010 of the Revenue and Taxation Code is amended to read:

30010. "Person" includes any individual, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, this state, any county, city and county, municipality, district, or other political subdivision of the state, or any other group or combination acting as a unit.

SEC. 71. Section 38106 of the Revenue and Taxation Code is amended to read:

38106. "Person" includes any individual, firm, partnership, joint venture, association, social club, fraternal organization, corporation, limited liability company, estate, trust, business trust, receiver, trustee, syndicate, this state, any county, city and county, municipality, district, or other political subdivision of the state, or any other group or combination acting as a unit.

SEC. 72. Section 40004 of the Revenue and Taxation Code is amended to read:

40004. "Person" includes any individual, firm, cooperative organization, fraternal organization, corporation, limited liability company, estate, trust, business trust, receiver, trustee, syndicate, this state, any county, city and county, municipality, district, public agency or subdivision of this state or any other group or combination acting as a unit.

SEC. 73. Section 41003 of the Revenue and Taxation Code is amended to read:

41003. "Person" includes an individual, firm, partnership, joint venture, limited liability company, association, cooperative organization, fraternal organization, nonprofit organization, corporation, estate, trust, business or common law trust, receiver, assignee for the benefit of creditors, trustee or trustee in bankruptcy.

"Person" does not include a nonprofit hospital, nonprofit educational organization, or a public agency.

SEC. 74. Section 43006 of the Revenue and Taxation Code is amended to read:

43006. "Person" means an individual, trust, firm, joint stock company, business concern, corporation, including, but not limited to, a government corporation, partnership, limited liability company, and association. "Person" also includes any city, county, city and county, district, commission, the state or any department, agency, or political subdivision thereof, any interstate body, and the United States and its agencies and instrumentalities to the extent permitted by law.

SEC. 75. Section 45006 of the Revenue and Taxation Code is amended to read:

45006. "Person" includes any individual, firm, cooperative

organization, fraternal organization, corporation, limited liability company, estate, trust, business trust receiver, trustee, syndicate, this state, any county, city and county, municipality, district, public agency, or subdivision of this state or any other group or combination acting as a unit.

SEC. 76. Section 46020 of the Revenue and Taxation Code is amended to read:

46020. "Person" means any individual, trust, firm, joint stock company, or corporation, including, but not limited to, a government corporation, partnership, limited liability company, and association. "Person" also includes any city, county, city and county, district, and the state or any department or agency thereof, and the federal government, or any department or agency thereof, to the extent permitted by law.

SEC. 77. Section 55002 of the Revenue and Taxation Code is amended to read:

55002. "Person" means an individual, trust firm, joint stock company, business concern, corporation, including, but not limited to, a government corporation, partnership, limited liability company, and association. "Person" also includes any city, county, city and county, district, commission, the state or any department, agency, or political subdivision thereof, any interstate body, and the United States and its agencies and instrumentalities to the extent permitted by law.

SEC. 78. Section 125.4 of the Unemployment Insurance Code is amended to read:

125.4. "American employer" means a person who is any of the following:

- (a) An individual who is a resident of the United States.
- (b) A partnership, if two-thirds or more of the partners are residents of the United States.
- (c) A trust, if all of the trustees are residents of the United States.
- (d) A corporation organized under the laws of the United States or of any state.
- (e) A limited liability company organized under the laws of the United States or of any state.

SEC. 79. Section 135 of the Unemployment Insurance Code is amended to read:

135. (a) "Employing unit" means any individual or type of organization that has in its employ one or more individuals performing services for it within this state, and includes but is not limited to, the following individuals and organizations:

(1) Any individual or type of organization or public entity that elects coverage pursuant to any provision of this division.

(2) Any joint venture, partnership, association, trust, estate, joint stock company, insurance company, corporation whether domestic or foreign, limited liability company, whether domestic or foreign, community chest, fund, or foundation.

(3) Any public entity. As used in this section, "public entity"

means the State of California (including the Trustees of the California State University), any instrumentality of this state (including the Regents of the University of California), any political subdivision of this state or any of its instrumentalities, a county, city, district (including the governing board of any school district or community college district, any county board of education, any county superintendent of schools, or any personnel commission of a school district or community college district that has a merit system pursuant to any provision of the Education Code), entities receiving state money to conduct county fairs and agricultural fairs pursuant to Sections 25905 and 25906 of the Government Code and that perform no other functions, any public authority, public agency, or public corporation of this state, any instrumentality of more than one of the foregoing, and any instrumentality of any of the foregoing and one or more other states or political subdivisions.

(4) Any instrumentality of the United States required to make payments under this division.

(5) The receiver, trustee in bankruptcy, trustee or successor thereof, and the legal representative of a deceased person.

(b) All individuals performing services within this state for any employing unit that maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this division.

SEC. 80. Section 135.1 of the Unemployment Insurance Code is amended to read:

135.1. (a) A new employing unit shall not be created when there is an acquisition or change in the form or organization of an existing business enterprise, or severable portion thereof, and there is a continuity of control of the business enterprise.

(b) Control of a business enterprise may occur by means of ownership of the organization conducting the business enterprise, ownership of assets necessary to conduct the business enterprise, security arrangements or lease arrangements covering assets necessary to conduct the business enterprise, or a contract when the ownership, stated arrangements or contract provide for or allow direction of the internal affairs or conduct of the business enterprise.

(c) A continuity of control will exist if one or more persons, entities, or other organizations controlling the business enterprise remains in control of the business enterprise after an acquisition or change in form. Evidence of continuity of control shall include, but not be limited to, changes of an individual proprietorship to a corporation, partnership, limited liability company, association, or estate; a partnership to an individual proprietorship, corporation, limited liability company, association, estate, or the addition, deletion, or change of partners; a limited liability company to an individual proprietorship, partnership, corporation, association, estate, or to another limited liability company; a corporation to an individual proprietorship partnership, limited liability company, association, estate, or to another corporation or from any form to

another form.

(d) An employing unit described in subdivision (a) shall continue to be the same employer for the purposes of this code as before the acquisition or change in form.

(e) This section shall not modify the provisions of Article 2 (commencing with Section 1731) of Chapter 7.

(f) This section shall be subject to subdivision (e) of Section 982 and subdivision (d) of Section 1127.5.

SEC. 81. Section 610 of the Unemployment Insurance Code is amended to read:

610. "Employment" shall include the service of an individual who is a citizen of the United States, performed outside the United States (except in Canada), after December 31, 1971, in the employ of an American employer as defined in Section 125.4 other than service that is deemed "employment" under Section 602 or 603 or the equivalent provisions of another state's unemployment compensation law, if:

(a) The employer's principal place of business in the United States is located in this state; or

(b) The employer has no place of business in the United States, but:

(1) The employer is an individual who is a resident of this state; or

(2) The employer is a corporation or limited liability company that is organized under the laws of this state; or

(3) The employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(c) None of the criteria of subdivisions (a) and (b) of this section is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under this division.

SEC. 82. Section 1116 of the Unemployment Insurance Code is amended to read:

1116. (a) (1) Every employing unit except a domestic or foreign corporation or a domestic or foreign limited liability company shall, within 10 days of quitting business, file with the director a final return and report of wages of its workers, in such form and containing such information as the director prescribes.

(2) Every domestic corporation and domestic limited liability company shall, within 10 days of quitting business or within 10 days of the commencement of proceedings to windup its affairs and voluntarily dissolve, whichever expires the earlier, file with the director a return and a report of wages of its workers, in such form and containing such information as the director prescribes.

(3) Every foreign corporation and foreign limited liability company shall, within 10 days of quitting business or within 10 days of the surrender of its right to engage in business of this state in

accordance with Section 2112 and subdivision (d) of Section 2114 of the Corporations Code for foreign corporations or Section 17455 of the Corporations Code for foreign limited liability companies, whichever expires the earlier, file with the director a final return and report of wages of its workers, in such form and containing such information as the director prescribes.

(4) As used in this section, "quitting business" does not include any change in the form or membership of an employing unit if before and after such change 50 percent or more of the control of management is held by the same individual, or is held by an individual before death and after the individual's death by the individual's estate or heirs.

(b) Contributions with respect to a return required under subdivision (a) are due and payable on the first day of the applicable 10-day period established pursuant to subdivision (a) and shall become delinquent if not paid within 10 days of the due date.

(c) The director for good cause may extend for not to exceed 30 days the time for making a return or paying without penalty or interest any amount required to be paid under this section.

SEC. 83. Section 1735 of the Unemployment Insurance Code is amended to read:

1735. Any officer, major stockholder, or other person, having charge of the affairs of a corporate, association, or limited liability company employing unit, who willfully fails to pay contributions required by this division or withholdings required by Division 6 (commencing with Section 13000) on the date on which they become delinquent, shall be personally liable for the amount of the contributions, withholdings, penalties, and interest due and unpaid by such employing unit. The director may assess such officer, stockholder, or other person for the amount of such contributions, withholdings, penalties, and interest. The provisions of Article 8 (commencing with Section 1126) and Article 9 (commencing with Section 1176) of Chapter 4 of Part 1 apply to assessments made pursuant to this section. Sections 1221, 1222, 1223, and 1224 shall apply to assessments made pursuant to this section. With respect to such officer, stockholder, or other person, the director shall have all the collection remedies set forth in this chapter.

SEC. 84. Section 2071 of the Unemployment Insurance Code is amended to read:

2071. As used in this chapter:

(a) "Employee" does not include any individual employed by his parents, spouse or child or in the domestic service of any person.

(b) "Employer" does not include any employer with less than six persons in his employ. It does include any employer with six or more employees. It also includes the State of California and any political subdivision thereof.

(c) "Employment agency" includes any person undertaking to procure employees or opportunities to work.

(d) "Labor organization" includes any organization that is

constituted for the purpose, in whole or in part, of collective bargaining or in dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in connection with employees.

(e) "Person" includes one or more individuals, partnerships, associations, corporations, limited liability companies, legal representatives, trustees, trustees in bankruptcy or receivers.

SEC. 85. Section 2107 of the Unemployment Insurance Code is amended to read:

2107. It is a violation of this chapter for any employing unit, including a manager or managing member of a limited liability company, or any officer or agent of an employing unit or any individual to connive or conspire to aid such individual to obtain benefits to which he or she is not entitled by the willful withholding of information or by the willful failure to report any relevant information.

SEC. 86. Section 2109 of the Unemployment Insurance Code is amended to read:

2109. The executive officer, general manager, or any other person having charge of the affairs of a corporation, association, or limited liability company who willfully fails to register such corporation, association, or limited liability company as an employing unit, or willfully fails to submit contribution returns, earning reports, or other returns and reports required by this division, or by authorized regulations, is in violation of this chapter.

SEC. 87. Section 2110 of the Unemployment Insurance Code is amended to read:

2110. Any employing unit, including any individual member of a partnership employing unit, any officer of a corporate or association employing unit, any manager or managing member of a limited liability company, or any other person having charge of the affairs of a corporate, association, or limited liability company employing unit, that knowingly withholds the deductions required by this division from remuneration paid to its workers, and willfully fails or is willfully financially unable to pay such deductions to the department on the date on which they become delinquent is in violation of this chapter.

SEC. 88. Section 2110.3 of the Unemployment Insurance Code is amended to read:

2110.3. Any employing unit, including any individual member of a partnership employing unit, any officer of a corporate or association employing unit, any manager or managing member of a limited liability company, or any other person having charge of the affairs of a corporate, association, or limited liability company employing unit, that knowingly undertakes or agrees to pay without deduction from remuneration paid to its workers the amount of any contributions to the Disability Fund required of the workers under this division and that willfully fails or is willfully financially unable to pay the amount to the department on the date on which the

contributions become delinquent is in violation of this chapter.

SEC. 89. Section 2110.5 of the Unemployment Insurance Code is amended to read:

2110.5. Any employing unit, including any individual member of a partnership employing unit, any officer of a corporate or association employing unit, any manager or managing member of a limited liability company, or any other person having charge of the affairs of a corporate, association, or limited liability company employing unit, that willfully fails to withhold in trust the deductions required by this division from remuneration paid to its workers, except where such employing unit undertakes or agrees to pay without deduction from the wages of its workers the amount of worker contributions required of its workers under this division, is in violation of this chapter.

SEC. 90. Section 2110.7 of the Unemployment Insurance Code is amended to read:

2110.7. Any employing unit, including any individual member of a partnership employing unit, any officer of a corporate or association employing unit, any manager or managing member of a limited liability company, or any other person having charge of the affairs of a corporate, association, or limited liability company employing unit, that knowingly undertakes or agrees to pay without deduction from remuneration paid to its workers the amount of any contributions to the Disability Fund required of such workers under this division and that willfully fails to hold in trust the amount of worker contributions required of such workers under this division is in violation of this chapter.

SEC. 91. Section 13005 of the Unemployment Insurance Code is amended to read:

13005. (a) "Employer" means any individual, person, corporation, association, partnership, or limited liability company, or any agent thereof, doing business in this state, deriving income from sources within this state, or in any manner whatsoever subject to the laws of this state, the State of California or any political subdivision or agency thereof, including the Regents of the University of California, any city organized under a freeholders' charter, or any political body not a subdivision or agency of the state, and any person, officer, employee, department, or agency thereof, making payment of wages to employees for services performed within this state, except as provided in subdivision (b).

(b) If the employer, as defined in subdivision (a), for whom the employee performs or performed the service does not have control of the payment of wages for such services, "employer" (except for purposes of Section 13009) means the person having control of the payment of such wages, whether or not the person having control of the payment of such wages is subject to the jurisdiction of the laws of this state.

SEC. 92. Section 675 of the Vehicle Code is amended to read:

675. (a) "Vehicle salesperson" is a person not otherwise

expressly excluded by this section, who does one or a combination of the following:

(1) Is employed as a salesperson by a dealer, as defined in Section 285, or who, under any form of contract, agreement, or arrangement with a dealer, for commission, money, profit, or other thing of value, sells, exchanges, buys, or offers for sale, negotiates, or attempts to negotiate, a sale, or exchange of an interest in a vehicle required to be registered under this code.

(2) Induces or attempts to induce any person to buy or exchange an interest in a vehicle required to be registered, and who receives or expects to receive a commission, money, brokerage fees, profit, or any other thing of value, from either the seller or purchaser of the vehicle.

(3) Exercises managerial control over the business of a licensed vehicle dealer or who supervises vehicle salespersons employed by a licensed dealer, whether compensated by salary or commission, including, but not limited to, any person who is employed by the dealer as a general manager, assistant general manager, or sales manager, or any employee of a licensed vehicle dealer who negotiates with or induces a customer to enter into a security agreement or purchase agreement or purchase order for the sale of a vehicle on behalf of the licensed vehicle dealer.

(b) The term "vehicle salesperson" does not include any of the following:

(1) Representatives of insurance companies, finance companies, or public officials, who in the regular course of business, are required to dispose of or sell vehicles under a contractual right or obligation of the employer, or in the performance of an official duty, or under the authority of any court of law, if the sale is for the purpose of saving the seller from any loss or pursuant to the authority of a court of competent jurisdiction.

(2) Persons who are licensed as a manufacturer, remanufacturer, transporter, distributor, or representative.

(3) Persons exclusively employed in a bona fide business of exporting vehicles, or of soliciting orders for the sale and delivery of vehicles outside the territorial limits of the United States.

(4) Persons not engaged in the purchase or sale of vehicles as a business, disposing of vehicles acquired for their own use, or for use in their business when the vehicles have been so acquired and used in good faith, and not for the purpose of avoiding the provisions of this code.

(5) Persons regularly employed as salespersons by persons who are engaged in a business involving the purchase, sale, or exchange of boat trailers.

(6) Persons regularly employed as salespersons by persons who are engaged in a business activity which does not involve the purchase, sale, or exchange of vehicles, except incidentally in connection with the purchase, sale, or exchange of vehicles of a type not subject to registration under this code, boat trailers, or midget

autos or racers advertised as being built exclusively for use by children.

(7) Persons licensed as a vehicle dealer under this code doing business as a sole ownership or member of a partnership or a stockholder and director of a corporation or a member and manager of a limited liability company licensed as a vehicle dealer under this code. However, those persons shall engage in the activities of a salesperson, as defined in this section, exclusively on behalf of the sole ownership or partnership or corporation or limited liability company in which they own an interest or stock, and those persons owning stock shall be directors of the corporation; otherwise, they are vehicle salespersons and subject to Article 2 (commencing with Section 11800) of Chapter 4 of Division 5.

(8) Persons regularly employed as salespersons by a vehicle dealer authorized to do business in California under Section 11700.1 of the Vehicle Code.

SEC. 93. Nothing in this act shall be construed to permit a domestic or foreign limited liability company to render professional services, as defined in subdivision (a) of Section 13401 of the Corporations Code, in this state unless expressly authorized under applicable provisions of the Business and Professions Code or the Chiropractic Act.

SEC. 94. For purposes of implementing and administering this act in the 1994-95 fiscal year, the sum of three hundred fifty thousand dollars (\$350,000) is hereby appropriated from the General Fund to the Franchise Tax Board, in augmentation of Item 1730-001-001 of the Budget Act of 1994. It is the intent of the Legislature that the funds required to administer this act for the 1995-96 fiscal year and each fiscal year thereafter, shall be provided for in the annual Budget Act.

SEC. 95. It is a concern of the Legislature that, while this act is designed to assist the formation and operation of small or closely held or controlled business arrangements, limited liability companies may become a format for a publicly held business entity to transact business without adequate provision for governance standards, including rights of securities holders. The Legislature is mindful, also, of the severe financial damage caused to investors in publicly held limited partnerships whose securities were either listed on, or involved in rollup transactions resulting in the issuance of securities to be listed on, a national securities exchange or interdealer quotation system, that had not adopted or imposed standards relating to these securities or transactions. Therefore, it is the intent of the Legislature that a national securities exchange or interdealer quotation system, certified by the Commissioner of Corporations under subdivision (o) of Section 25100 of the Corporations Code, shall adopt, subject to the review and approval of the Commissioner of Corporations, listing standards or designation criteria for the securities of limited liability companies prior to the listing or designation of any such securities on the exchange or system. The Commissioner of Corporations shall withdraw the exemption under

subdivision (o) of Section 25100 of the Corporations Code for securities of a limited liability company on an exchange or system if an exchange or system fails to adopt such standards or criteria.

SEC. 96. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 96.5. Section 65.5 of this bill incorporates amendments to Section 23036 of the Revenue and Taxation Code proposed by both this bill and AB 3316. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1995, (2) each bill amends Section 23036 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 3316, in which case Section 23036 of the Revenue and Taxation Code, as amended by AB 3316, shall remain operative only until the operative date of this bill, at which time Section 65.5 of this bill shall become operative, and Section 65 of this bill shall not become operative.

SEC. 97. Section 53.5 of this bill incorporates amendments to Section 17220 of the Revenue and Taxation Code proposed by both this bill and SB 1805. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1995, (2) each bill amends Section 17220 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 1805, in which case Section 17220 of the Revenue and Taxation Code, as amended by SB 1805, shall remain operative only until the operative date of this bill, at which time Section 53.5 of this bill shall become operative, and Section 53 of this bill shall not become operative.

SEC. 98. Section 54.5 of this bill incorporates amendments to Section 18402 of the Revenue and Taxation Code proposed by both this bill and SB 1805. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1995, (2) each bill amends Section 18402 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 1805, in which case Section 18402 of the Revenue and Taxation Code, as amended by SB 1805, shall remain operative only until the operative date of this bill, at which time Section 54.5 of this bill shall become operative, and Section 54 of this bill shall not become operative.

SEC. 99. Section 56.5 of this bill incorporates amendments to Section 18621.5 of the Revenue and Taxation Code proposed by both this bill and SB 1805. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1995, (2) each bill amends Section 18621.5 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 1805, in which case Section 18621.5

of the Revenue and Taxation Code, as amended by SB 1805, shall remain operative only until the operative date of this bill, at which time Section 56.5 of this bill shall become operative, and Section 56 of this bill shall not become operative.

SEC. 100. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Limited liability companies may presently do business in at least 43 of the United States. It is essential to the California economy that the state provide an attractive business environment, which includes provision for limited liability companies. In order to help stem the flow of business and jobs from California, protect the rights of Californians dealing with limited liability companies, and improve California's business climate and tax base, it is necessary that this act go into effect immediately.

CHAPTER 1201

An act to amend Sections 61600 and 61601.10 of, and to add Sections 56833.5, 61107.1, 61121.1, 61200.1, 61601.26, 61601.27, 61613.2, 61613.3, 61613.4, 61613.5, 61620.1, 61621.10, and 61742.1 to, the Government Code, relating to community services districts.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 56833.5 is added to the Government Code, to read:

56833.5. (a) For any proposal for incorporation of the territory within the Mountain House Community Services District, San Joaquin County shall provide the required funds to those petitioners filing the incorporation application for all costs involved in filing the application for incorporation pursuant to this division, including the preparation of the comprehensive fiscal analysis pursuant to Section 56833.1.

(b) The funds provided by the county pursuant to this section shall not be construed to be a gift of public funds and may only be granted to a quasi-public or nonprofit organization formed for the purpose of pursuing incorporation of the Mountain House area.

(c) San Joaquin County shall provide the funds required in subdivision (a) only one time, upon the first filing of application for incorporation.

SEC. 2. Section 61107.1 is added to the Government Code, to read:

61107.1. Nothing in Section 61121.1, 61601.26, 61601.27, 61613.2,

61613.3, 61613.5, 61621.4, 61621.10, or 61742.1 shall affect the San Joaquin County local agency formation commission's exercise of authority under Section 61107.

SEC. 3. Section 61121.1 is added to the Government Code, to read:

61121.1. The initial Board of Directors of the Mountain House Community Services District shall be the Board of Supervisors of San Joaquin County.

SEC. 4. Section 61200.1 is added to the Government Code, to read:

61200.1. (a) Notwithstanding any other provision of this division, the Board of Directors of the Mountain House Community Services District shall be the Board of Supervisors of San Joaquin County, until conversion to a registered voter board.

(b) If the registrar of voters certifies in writing that the number of registered voters in the district has reached or exceeded 1,000, the board of supervisors shall adopt a resolution placing the question of having a registered voter board of directors on the ballot.

(c) The question shall be submitted to registered voters of the district at a general district election, and notice of the question required by Section 23511 of the Elections Code shall contain a statement of the question to appear on the ballot.

(d) If a majority of the registered voters that voted upon the question are in favor, the members of the board shall be elected at the next general district election.

SEC. 5. Section 61600 of the Government Code is amended to read:

61600. A district formed under this law may exercise the powers granted for any of the following purposes designated in the petition for formation of the district and for any other of the following purposes that the district shall adopt:

(a) To supply the inhabitants of the district with water for domestic use, irrigation, sanitation, industrial use, fire protection, and recreation.

(b) The collection, treatment, or disposal of sewage, waste, and storm water of the district and its inhabitants.

(c) The collection or disposal of garbage or refuse matter.

(d) Protection against fire.

(e) Public recreation including, but not limited to, aquatic parks and recreational harbors, equestrian trails, playgrounds, golf courses, swimming pools, or recreational buildings.

(f) Street lighting.

(g) Mosquito abatement.

(h) The equipment and maintenance of a police department, other police protection, or other security services to protect and safeguard life and property.

(i) To acquire sites for, construct, and maintain library buildings, and to cooperate with other governmental agencies for library service.

(j) The constructing, opening, widening, extending, straightening, surfacing, and maintaining, in whole or in part, of any street in the district, subject to the consent of the governing body of the county or city in which the improvement is to be made.

(k) The construction and improvement of bridges, culverts, curbs, gutters, drains, and works incidental to the purposes specified in subdivision (j), subject to the consent of the governing body of the county or city in which the improvement is to be made.

(l) The conversion of existing overhead electric and communication facilities to underground locations, which facilities are owned and operated by either a "public agency" or a "public utility," as defined in Section 5896.2 of the Streets and Highways Code, and to take proceedings for and to finance the cost of the conversion in accordance with Chapter 28 (commencing with Section 5896.1) of Part 3 of Division 7 of the Streets and Highways Code, subject to the consent of the public agency or public utility responsible for the owning, operation, and maintenance of the facilities. Nothing in this section gives a district formed under this law the power to install, own, or operate the facilities that are described in this subdivision.

(m) To contract for ambulance service to serve the residents of the district as convenience requires, if a majority of the voters in the district, voting in an election thereon, approve.

(n) To provide and maintain public airports and landing places for aerial traffic.

(o) To provide transportation services.

(p) To abate graffiti.

SEC. 6. Section 61601.10 of the Government Code is amended to read:

61601.10. (a) Notwithstanding the provisions of Section 61600, whenever the board of directors of a district listed in subdivision (b) determines by resolution that it is feasible, economically sound, and in the public interest, and if a majority of the voters voting on the proposition vote in favor of the additional purpose pursuant to Section 61601, the district may enforce the covenants, conditions, and restrictions adopted for each tract within the district and assume the duties of the architectural control committee for each tract within the district for the purposes of maintaining uniform standards of development within each tract as adopted in the covenants, conditions, and restrictions. The district shall exercise the duties of an architectural control committee for any tract only to the extent that an architectural control committee is authorized by the covenants, conditions, and restrictions that apply to the tract. For the purposes of this subdivision, "tract" means any parcel of land for which the county or the city has authorized development. The district may divest itself of the power in the same manner as the power was acquired.

(b) This section shall apply only to the following districts:

(1) Bel Marin Keys Community Services District.

- (2) Big River Community Services District.
- (3) Brooktrails Community Services District.
- (4) Cameron Estates Community Services District.
- (5) Cameron Park Community Services District.
- (6) El Dorado Hills Community Services District.
- (7) Golden West Community Services District.
- (8) Lake Shastina Community Services District.
- (9) Rancho Murieta Community Services District.
- (10) Salton Community Services District.
- (11) Sea Oasis Community Services District.
- (12) Stallion Springs Community Services District.
- (13) Tenaja Community Services District.
- (14) Springfield Meadows Community Services District.
- (15) Wallace Community Services District.
- (16) Mountain House Community Services District.

SEC. 7. Section 61601.26 is added to the Government Code, to read:

61601.26. In addition to the powers that may be exercised pursuant to Sections 61600 and 61601, the Mountain House Community Services District may exercise the following powers, including, but not limited to:

(a) Provide for animal control, subject to the consent of the Board of Supervisors of San Joaquin County.

(b) Provide flood control protection, including, but not limited to, building and maintaining levees and channel clearance for stormwaters and floodwaters, subject to the consent of the Board of Supervisors of the San Joaquin County Flood Control and Water Conservation District and in cooperation with the state to the extent of the state's jurisdiction.

(c) Adopt and enforce by ordinance measures for the abatement of pests and the control, removal, and abatement of weeds, rubble, and rubbish on property within the district. Enforcement may include imposition of charges, which may constitute a special assessment against a property and may become a lien thereon, and may also include the cost of abatement, and civil penalties for failure to comply.

(d) Adopt and enforce by ordinance water conservation measures to the extent that the ordinance is not less restrictive than a similar ordinance adopted by the county.

(e) Acquire, own, maintain, and operate land for wildlife habitat mitigation or other environmental protection or mitigation within or without the district.

(f) To provide facilities for television and telecommunications systems including the installation of wires, cables, conduits, fibre optic lines, terminal panels, service space, and appurtenances required to provide television, telecommunication, and data transfer services to the district and its inhabitants, and provide facilities for a cable television system, including the installation of wires, cables, conduits, and appurtenances to serve the district and its inhabitants

by franchise or license; provided, however, that the district may not provide or install any facilities under this subdivision unless one or more cable franchises or licenses have been awarded under Section 53066 and the franchised or licensed cable television and telecommunications services providers are permitted equal access to the utility trenches, conduits, service spaces, easements, utility poles, and rights-of-way in the district necessary to construct their facilities concurrently with the construction of the district's facilities. The district shall not have the authority to operate television, cable, or telecommunications systems. The district shall have the same powers as a city or county under Section 53066 in granting a franchise or license for the operation of a cable television system.

(g) Provide and maintain equipment, tools, and administrative facilities, including, but not limited to, shops, storage areas, and maintenance yards.

(h) Disseminate information to the public concerning activities and actions within the district.

(i) Acquire, own, maintain, and operate land for disposal of sewage effluent by irrigation or otherwise within or outside of the district, subject to all applicable state and federal laws, except within the area described in Section 29728 of the Public Resources Code.

(j) Acquire, own, maintain, and operate land for disposal of sludge created by a water treatment plant and sewage treatment plant within or outside of the district, subject to all applicable state and federal laws, except within the area described in Section 29728 of the Public Resources Code.

SEC. 8. Section 61601.27 is added to the Government Code, to read:

61601.27. Formation of the Mountain House Community Services District, and any powers that may be exercised by the district, shall be subject to approval by the local agency formation commission for San Joaquin County in accordance with the Cortese-Knox Local Government Reorganization Act of 1985 (Division 1 (commencing with Section 56000) of Title 6), following the submittal of a resolution of application.

SEC. 9. Section 61613.2 is added to the Government Code, to read:

61613.2. (a) Notwithstanding any other provision of this division, the Mountain House Community Services District may authorize, issue, and sell revenue bonds for any authorized capital facility of the district, if the board has submitted to the voters of the district, at a special election called by a resolution of the board, a proposition as to whether the district may authorize and sell revenue bonds for an amount determined to be required for the capital facilities necessary to serve the Mountain House Community, and a majority of the voters of the district voting on the proposition at the election vote in favor of the proposition. Notwithstanding any other provision of law, the board may issue all or any portion of bonds authorized pursuant to this section at a time or times determined by the board.

If the proposition fails to carry at the election, the proposition shall not again be voted upon until at least six months have elapsed since the date of the last election at which the proposition was submitted. The resolution calling the election shall fix the date on which the election is to be held, the proposition to be submitted, the manner of holding the election and of voting for or against the proposition, and shall state that in all other particulars, the election shall be held and the votes canvassed as provided by law for the holding of elections within the district. The election may be held separately or may be consolidated with any other election authorized by law at which the voters of the district may vote. The resolution calling the election shall be published and no other notice of the election need be given.

(b) The charges to pay revenue bonds and interest thereon may include standby charges and may be made payable in advance before service is provided to the land. All revenue bond redemption and interest charges are a first lien on all revenues received for the services provided, unless the district limits the charge and lien to a part of the revenues of the district or to a fixed portion of all revenue from the services. The collection of charges to pay revenue bonds and interest thereon shall be continued each year until all revenue bonds, together with interest thereon, are fully redeemed and paid.

SEC. 10. Section 61613.3 is added to the Government Code, to read:

61613.3. The Mountain House Community Services District may authorize, issue, and sell general obligation bonds pursuant to Section 61613.1 once the board of directors has been converted to a registered voter board.

SEC. 11. Section 61613.4 is added to the Government Code, to read:

61613.4. The Mountain House Community Services District may borrow money in anticipation of the sale of authorized bonds of the district pursuant to and in the manner provided by Section 36408.7 of the Water Code.

SEC. 12. Section 61613.5 is added to the Government Code, to read:

61613.5. The Mountain House Community Services District may sell general obligation bonds and revenue bonds at a private sale without first advertising for bids, only if the board of directors of the district determines by resolution that to do so would produce a lower interest cost on the bonds. The San Joaquin County Treasurer shall conduct the negotiated sale of the bonds on behalf of the district, and any expenses incurred by the county treasurer shall be paid by the district.

SEC. 13. Section 61620.1 is added to the Government Code, to read:

61620.1. The County of San Joaquin shall maintain a labor compliance program pursuant to Section 1771.5 of the Labor Code for all work within the Mountain House Community Services

District.

SEC. 14. Section 61621.10 is added to the Government Code, to read:

61621.10. Notwithstanding Section 61621, the Mountain House Community Services District may, by resolution, add any delinquent rate or charge, and any penalties and interest thereon, to any monthly charges levied and collected by the district against the parcel of land to which they relate.

SEC. 15. Section 61742.1 is added to the Government Code, to read:

61742.1. The Mountain House Community Services District may issue and sell warrants based upon, and in anticipation of, the collection of any assessment levied by the district, in the same manner as a reclamation district.

SEC. 16. The Legislature finds and declares that:

(a) The Mountain House area of San Joaquin County has been approved for development as a new town pursuant to San Joaquin County General Plan Amendment 92-9. The Mountain House Community Services District is expected to be formed to provide water and various other services through a single entity rather than obtaining services from many entities.

(b) The special powers provided in this act are necessary to provide an orderly and financially sound transition from a rural community to an urban community in a manner consistent with the San Joaquin County General Plan. This act will serve a special need, which is not common to all districts formed under the Community Services District Law. It is, therefore, hereby declared that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the Constitution, and that the enactment of this act as a special law is necessary for the orderly development of the Mountain House area.

SEC. 17. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act is in accordance with the request of a local agency or school district which desired legislative authority to carry out the program specified in this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1202

An act to add Section 1281.9 to the Code of Civil Procedure, relating to arbitration.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 1281.9 is added to the Code of Civil Procedure, to read:

1281.9. (a) In any arbitration pursuant to an arbitration agreement involving a claim for damages, when a person is proposed for nomination by all parties or all party arbitrators to serve as a neutral arbitrator, or is proposed for appointment by the court to serve as a neutral arbitrator in response to any petition brought pursuant to Section 1281.6, the proposed nominee or appointee shall disclose, within 10 days of service of notice of the proposed nomination or appointment, to all parties, both of the following:

(1) The names of any prior or pending cases in which the proposed neutral arbitrator served or is serving as a party arbitrator for any party to the arbitration agreement, or for a lawyer for a party, and the results of each case arbitrated to conclusion, including the date of the arbitration award, identification of the prevailing party, the names of the parties' attorneys, if known, and the amount of monetary damages awarded, if any.

(2) The names of any prior or pending cases involving any party to the arbitration agreement or the lawyer for a party for which the proposed neutral arbitrator served or is serving as neutral arbitrator, and the results of each case arbitrated to conclusion, including the date of the arbitration award, identification of the prevailing party, the names of the parties' attorneys, if known, and the amount of monetary damages awarded, if any.

(b) A proposed nominee or appointee shall be disqualified as a neutral arbitrator if the proposed nominee or appointee fails to comply with subdivision (a) and any party entitled to receive the disclosure serves a notice of disqualification within 15 days after the proposed nominee or appointee fails to comply with subdivision (a). A proposed nominee or appointee shall be deemed to have complied with subdivision (a) with respect to any arbitration commenced prior to January 1, 1995, if the person declares that he or she has disclosed all required information pertaining to those arbitrations within his or her knowledge or possession and has made a good faith effort to obtain the required information from any arbitration service serving in that prior case.

(c) (1) If the proposed nominee or appointee complies with subdivision (a), the proposed nominee or appointee shall be disqualified as a neutral arbitrator on the basis of the disclosure

statement after any party entitled to receive the disclosure serves a notice of disqualification within 15 days after service of the disclosure statement.

(2) A party shall have the right to disqualify one court-appointed arbitrator without cause in any one arbitration, and may petition the court to disqualify a subsequent appointee only upon a showing of cause.

(d) The right of a party to disqualify a proposed nominee or appointee shall be waived if the party fails to serve the notice pursuant to the times set forth in this section, unless the proposed nominee or appointee makes a material omission or material misrepresentation in his or her disclosure. In no event shall the notice of disqualification be made after a hearing of any contested issue of fact relating the merits of the claim. Nothing in this section shall limit the right of a party to vacate an award or to disqualify an arbitrator pursuant to subdivision (e) of Section 1282, Section 1286.2, or any other law or statute.

(e) For purposes of this section, "lawyer for a party" includes any lawyer or law firm associated in the practice of law with the lawyer hired to represent a party.

(f) For purposes of this section, "prior cases" means cases in which an arbitration award was rendered within one of the following time periods:

(1) Three years prior to the date of the proposed nomination or appointment if the proposed nomination or appointment occurs on or between January 1, 1995, and December 31, 1995.

(2) Four years prior to the date of the proposed nomination or appointment if the proposed nomination or appointment occurs on or between January 1, 1996, and December 31, 1996.

(3) Five years prior to the date of the proposed nomination or appointment if the proposed nomination or appointment occurs on or after January 1, 1997.

(g) For purposes of this section, "claim for damages" does not include a grievance or other claim brought pursuant to the terms of a public or private sector collective bargaining agreement, even where the object of the grievance or other claim is a monetary award.

CHAPTER 1203

An act to amend Section 6712 of the Labor Code, relating to employment.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 6712 of the Labor Code is amended to read:

6712. (a) The standards board shall, no later than December 1, 1991, adopt an occupational safety and health standard for field sanitation. The standard shall comply with all of the following:

(1) The standard shall be at least as effective as the federal field sanitation standard contained in Section 1928.110 of Title 29 of the Code of Federal Regulations.

(2) The standard shall be at least as effective as California field sanitation requirements in effect as of July 1, 1990, pursuant to Chapter 6.5 (commencing with Section 5474.20) of Part 3 of Division 5 of the Health and Safety Code, Chapter 1 (commencing with Section 3700) of Part 1 of Division 5 of the Health and Safety Code, and Section 2441 of this code.

(3) The standard shall apply to all agricultural places of employment.

(4) The standard shall require that toilets are serviced and maintained in a clean, sanitary condition and kept in good repair at all times, including written records of that service and maintenance.

(b) Consistent with its mandatory investigation and reinspection duties under Sections 6309, 6313, and 6320, the division shall develop and implement a special emphasis program for enforcement of the standard for at least two years following its adoption. Not later than March 15, 1995, the division shall also develop a written plan to coordinate its enforcement program with other state and local agencies. The division shall be the lead enforcement agency. Other state and local agencies shall cooperate with the division in the development and implementation of the plan. The division shall report to the Legislature, not later than January 1, 1994, on its enforcement program. The plan shall provide for coordination between the division and local officials in counties where the field sanitation facilities required by the standard adopted pursuant to subdivision (a) are registered by the county health officer or other appropriate official of the county where the facilities are located. The division shall establish guidelines to assist counties that choose to register sanitation facilities pursuant to this section, for developing service charges, fees, or assessments to defray the costs of registering the facilities, taking into consideration the differences between small and large employers.

(c) (1) Past violations by a fixed-site or nonfixed-site employer,

occurring anywhere in the state within the previous five years, of one or more field sanitation regulations established pursuant to this section, or of Section 1928.110 of Title 29 of the Code of Federal Regulations, shall be considered for purposes of establishing whether a current violation is a repeat violation under Section 6429.

(2) Past violations by a fixed-site or nonfixed-site employer, occurring anywhere in the state within the previous five years, of one or more field sanitation regulations established pursuant to this section, Chapter 6.5 (commencing with Section 5474.20) of Part 3 of Division 5 of the Health and Safety Code, Chapter 1 (commencing with Section 3700) of Part 1 of Division 5 of the Health and Safety Code, or Section 2441 of this code, or of Section 1928.110 of Title 29 of the Code of Federal Regulations, shall constitute evidence of willfulness for purposes of Section 6429.

(d) (1) Notwithstanding Sections 6317 and 6434, any employer who fails to provide the facilities required by the field sanitation standard shall be assessed a civil penalty under the appropriate provisions of Sections 6427 to 6430, inclusive, except that in no case shall the penalty be less than seven hundred fifty dollars (\$750) for each violation.

(2) Abatement periods fixed by the division pursuant to Section 6317 for violations shall be limited to one working day. However, the division may, pursuant to Section 6319.5, modify the period in cases where a good faith effort to comply with the abatement requirement is shown. The filing of an appeal with the appeals board pursuant to Sections 6319 and 6600 shall not stay the abatement period.

(3) An employer cited pursuant to paragraph (1) of this subdivision shall be required to annually complete a field sanitation compliance form which shall list the estimated peak number of employees, the toilets, washing, and drinking water facilities to be provided by the employer, any rental and maintenance agreements, and any other information considered relevant by the division for a period of five years following the citation. The employer shall be required to annually submit the completed form, subscribed under penalty of perjury, to the division, or to an agency designated by the division.

(e) The division shall notify the State Department of Health Services and the appropriate local health officers whenever a violation of the standard adopted pursuant to this section may result in the adulteration of food with harmful bacteria or other deleterious substances within the meaning of Article 3 (commencing with Section 26520) of Chapter 5 of Division 21 of the Health and Safety Code.

(f) Pending final adoption and approval of the standard required by subdivision (a), the division may enforce the field sanitation standards prescribed by Section 1928.110 of Title 29 of the Code of Federal Regulations, except subdivision (a) of Section 1928.110, in the same manner as other standards contained in this division.

CHAPTER 1204

An act to add Section 2856 to the Civil Code, relating to guarantors.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 2856 is added to the Civil Code, to read:

2856. (a) Any guarantor, including a guarantor of an obligation secured by real property or any interest therein, may waive the guarantor's rights of subrogation and reimbursement and any other rights and defenses available to the guarantor by reason of Sections 2787 to 2855, inclusive, including, without limitation, (1) any defenses the guarantor may have to the guaranty obligation by reason of an election of remedies by the creditor and (2) any rights or defenses the guarantor may have by reason of protection afforded to the principal with respect to the obligation so guaranteed pursuant to the antideficiency or other laws of this state limiting or discharging the principal's indebtedness, including, without limitation, Section 580a, 580b, 580d, or 726 of the Code of Civil Procedure.

(b) Any language that expressly sets forth a waiver of suretyship rights or defenses described in subdivision (a), or any of them, shall be effective whether or not it contains references to statutory provisions or judicial decisions. The following language shall be an effective waiver of the guarantor's defense to a recovery by the creditor by reason of the creditor's election of remedies:

Guarantor waives all rights and defenses arising out of an election of remedies by the creditor, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed the guarantor's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the Code of Civil Procedure or otherwise.

(c) Subdivision (b) shall not apply to a guaranty of a loan to an individual primarily for personal, family, or household purposes, secured by a deed of trust or mortgage on a dwelling for not more than four families when the dwelling is occupied, entirely or in part, by the borrower.

SEC. 2. Subdivisions (a) and (b) of Section 2856 of the Civil Code do not represent a change in, but are merely declarative of, existing law. The Legislature, by enacting subdivision (b) of Section 2856 of the Civil Code, does not address the legal requirements for waivers in a guaranty in connection with the types of transactions described in subdivision (c) of Section 2856 of the Civil Code. No inference of any kind should be drawn from the exclusion of these transactions from the application of subdivision (b) of Section 2856 of the Civil

Code.

CHAPTER 1205

An act to amend Section 25658 of the Business and Professions Code, relating to alcoholic beverages, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 25658 of the Business and Professions Code is amended to read:

25658. (a) Every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor.

(b) Any person under the age of 21 years who purchases any alcoholic beverage, or any person under the age of 21 years who consumes any alcoholic beverage in any on-sale premises, is guilty of a misdemeanor.

(c) Any on-sale licensee who knowingly permits a person under the age of 21 years to consume any alcoholic beverage in the on-sale premises, whether or not the licensee has knowledge that the person is under the age of 21 years, is guilty of a misdemeanor.

(d) Any person who violates this section shall be punished by a fine of not less than two hundred fifty dollars (\$250), no part of which shall be suspended, or the person shall be required to perform not less than 24 hours or more than 32 hours of community service during hours when the person is not employed and is not attending school, or a combination of fine and community service as determined by the court.

(e) Persons under the age of 21 years may be used by peace officers in the enforcement of this section to apprehend licensees, or employees or agents of licensees, who sell alcoholic beverages to minors. Notwithstanding subdivision (b), any person under the age of 21 years who purchases or attempts to purchase any alcoholic beverage while under the direction of a peace officer is immune from prosecution for that purchase or attempt to purchase an alcoholic beverage. Guidelines with respect to the use of persons under the age of 21 years as decoys shall be adopted and published by the department in accordance with the rulemaking portion of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). Law enforcement-initiated minor decoy programs in operation prior to the effective date of regulatory guidelines adopted by the department shall be authorized as long as the minor decoy

displays to the seller of alcoholic beverages the appearance of a person under the age of 21 years. This subdivision shall not be construed to prevent the department from taking disciplinary action against a licensee who sells alcoholic beverages to a minor decoy prior to the department's final adoption of regulatory guidelines.

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

In order to permit immediate proper implementation of a recent Supreme Court decision, it is necessary for this act to take effect immediately.

CHAPTER 1206

An act to amend Sections 119, 125, 125.7, 652, 652.5, 656, 801, 803.1, 803.2, 803.5, 804, 2013, 2015, 2021, 2230, 2236, 2313, 2337, 2475.3, and 2484 of, to add Section 2236.1 to, and to repeal Chapter 1.6 (commencing with Section 920) of Division 2 of, the Business and Professions Code, to amend Section 43.96 of the Civil Code, to amend Sections 11371, 11510, and 11523 of the Government Code, and to amend Section 1795.10 of the Health and Safety Code, relating to disciplinary actions.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 119 of the Business and Professions Code is amended to read:

119. Any person who does any of the following is guilty of a misdemeanor:

(a) Displays or causes or permits to be displayed or has in his or her possession either of the following:

(1) A canceled, revoked, suspended, or fraudulently altered license.

(2) A fictitious license or any document simulating a license or purporting to be or have been issued as a license.

(b) Lends his or her license to any other person or knowingly permits the use thereof by another.

(c) Displays or represents any license not issued to him or her as being his or her license.

(d) Fails or refuses to surrender to the issuing authority upon its lawful written demand any license, registration, permit, or certificate which has been suspended, revoked, or canceled.

(e) Knowingly permits any unlawful use of a license issued to him or her.

(f) Photographs, photostats, duplicates, or in any way reproduces any license or facsimile thereof in a manner that it could be mistaken for a valid license, or displays or has in his or her possession any such photograph, photostat, duplicate, reproduction, or facsimile unless authorized by this code.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration" or any other indicia giving authorization to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

SEC. 2. Section 125 of the Business and Professions Code is amended to read:

125. Any person, licensed under Division 1 (commencing with Section 100), Division 2 (commencing with Section 500), or Division 3 (commencing with Section 5000) is guilty of a misdemeanor and subject to the disciplinary provisions of this code applicable to him or her, who conspires with a person not so licensed to violate any provision of this code, or who, with intent to aid or assist that person in violating those provisions does either of the following:

- (a) Allows his or her license to be used by that person.
- (b) Acts as his or her agent or partner.

SEC. 3. Section 125.7 of the Business and Professions Code is amended to read:

125.7. In addition to the remedy provided for in Section 125.5, the superior court for the county in which any licensee licensed under Division 2 (commencing with Section 500), or any initiative act referred to in that division, has engaged or is about to engage in any act which constitutes a violation of a chapter of this code administered or enforced by a board referred to in Division 2, may, upon a petition filed by the board and accompanied by an affidavit or affidavits in support thereof and a memorandum of points and authorities, issue a temporary restraining order or other appropriate order restraining the licensee from engaging in the business or profession for which the person is licensed or from any part thereof, in accordance with the provisions of this section.

(a) If the affidavits in support of the petition show that the licensee has engaged or is about to engage in acts or omissions constituting a violation of a chapter of this code and if the court is satisfied that permitting the licensee to continue to engage in the business or profession for which the license was issued will endanger the public health, safety, or welfare, the court may issue an order temporarily restraining the licensee from engaging in the profession for which he or she is licensed.

(b) The order may not be issued without notice to the licensee unless it appears from facts shown by the affidavits that serious injury would result to the public before the matter can be heard on notice.

(c) Except as otherwise specifically provided by this section, proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

(d) When a restraining order is issued pursuant to this section, or within a time to be allowed by the superior court, but in any case not more than 30 days after the restraining order is issued, an accusation shall be filed with the board pursuant to Section 11503 of the Government Code. The accusation shall be served upon the licensee as provided by Section 11505 of the Government Code. The licensee shall have all of the rights and privileges available as specified in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code; however, if the licensee requests a hearing on the accusation, the board shall provide the licensee with a hearing within 30 days of the request and a decision within 15 days of the date of the conclusion of the hearing, or the court may nullify the restraining order previously issued. Any restraining order issued pursuant to this section shall be dissolved by operation of law at the time the board's decision is subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

(e) The remedy provided for in this section shall be in addition to, and not a limitation upon, the authority provided by any other provision of this code.

SEC. 5. Section 652 of the Business and Professions Code is amended to read:

652. Violation of this article in the case of a licensed person constitutes unprofessional conduct and grounds for suspension or revocation of his or her license by the board by whom he or she is licensed, or if a license has been issued in connection with a place of business, then for the suspension or revocation of the place of business in connection with which the violation occurs. The proceedings for suspension or revocation shall be conducted in accordance with the Administrative Procedure Act, Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code, and each board shall have all the powers granted therein. In addition, any violation constitutes a misdemeanor as to any and all persons offering, delivering, receiving, accepting, or participating in any rebate, refund, commission, preference, patronage dividend, unearned discount, or consideration, whether or not licensed under this division, and is punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both the imprisonment and fine.

SEC. 6. Section 652.5 of the Business and Professions Code is amended to read:

652.5. Except as otherwise provided in this article, any violation of this article constitutes a misdemeanor as to any and all persons, whether or not licensed under this division, and is punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both the imprisonment and fine.

SEC. 7. Section 656 of the Business and Professions Code is amended to read:

656. Whenever any person has engaged, or is about to engage, in

any acts or practices that constitute, or will constitute, a violation of this article, the superior court in and for the county wherein the acts or practices take place, or are about to take place, may issue an injunction, or other appropriate order, restraining the conduct on application of the State Board of Optometry, the Medical Board of California, the Osteopathic Medical Board of California, the Attorney General, or the district attorney of the county.

The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

The remedy provided for in this section shall be in addition to, and not a limitation upon, the authority provided by any other provision of this code.

SEC. 8. Section 801 of the Business and Professions Code is amended to read:

801. (a) Every insurer providing professional liability insurance to a person who holds a license, certificate or similar authority from or under any agency mentioned in subdivision (a) of Section 800 (except a person licensed pursuant to Chapter 3 (commencing with Section 1200) or Chapter 5 (commencing with Section 2000) of Division 2 or the Osteopathic Initiative Act) shall send a complete report to that agency as to any settlement or arbitration award over three thousand dollars (\$3,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(b) Every insurer providing professional liability insurance to a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 or the Osteopathic Initiative Act shall send a complete report to the Medical Board of California or the Osteopathic Medical Board of California, as appropriate, as to any settlement or arbitration award over thirty thousand dollars (\$30,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(c) Every insurer providing professional liability insurance to a person licensed pursuant to Chapter 13 (commencing with Section 4980) or Chapter 14 (commencing with Section 4990) shall send a complete report to the Board of Behavioral Science Examiners as to any settlement or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be

sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(d) Notwithstanding any other provision of law, no insurer shall enter into such a settlement without the written consent of the insured, except that this prohibition shall not void any settlement entered into without that written consent. The requirement of written consent shall only be waived by both the insured and the insurer. This section shall only apply to a settlement on a policy of insurance executed or renewed on or after January 1, 1971.

SEC. 9. Section 803.1 of the Business and Professions Code, as added by Section 4.3 of Chapter 1267 of the Statutes of 1993, is amended to read:

803.1. (a) The Medical Board of California and the Board of Podiatric Medicine may each adopt regulations governing disclosure of information to an inquiring member of the public regarding the status of the license of a licensee and enforcement actions taken against a licensee by either board or by another state or jurisdiction, including, but not limited to, all of the following:

- (1) Temporary restraining orders issued.
- (2) Interim suspension orders issued.
- (3) Limitations on practice ordered by the board.
- (4) Public letters of reprimand issued.
- (5) Infractions, citations, or fines imposed.

(b) Except as provided in this subdivision, this section shall remain in effect until July 1, 1995. If the Division of Licensing and the Board of Podiatric Medicine each adopt regulations in accordance with this section by July 1, 1995, this section shall remain in effect after July 1, 1995. If the Division of Licensing and the Board of Podiatric Medicine do not adopt those regulations, this section shall become inoperative on July 1, 1995, and, as of January 1, 1996, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1996, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 10. Section 803.1 of the Business and Professions Code, as added by Section 4.5 of Chapter 1267 of the Statutes of 1993, is amended to read:

803.1. (a) Notwithstanding any other provision of law, the Medical Board of California and the Board of Podiatric Medicine shall disclose to an inquiring member of the public information regarding the status of the license of a licensee and any enforcement actions taken against a licensee by either board or by another state or jurisdiction, including, but not limited to, all of the following:

- (1) Temporary restraining orders issued.
- (2) Interim suspension orders issued.
- (3) Limitations on practice ordered by the board.
- (4) Public letters of reprimand issued.
- (5) Infractions, citations, or fines imposed.

(b) The Division of Licensing and the Board of Podiatric

Medicine may formulate appropriate disclaimers or explanatory statements to be included with any information released, and may, by regulation, establish categories of information that need not be disclosed to the public because that information is unreliable or not sufficiently related to the licensee's professional practice.

(c) This section shall become operative on July 1, 1995, only if the board and the Board of Podiatric Medicine do not adopt regulations regarding disclosure of the information described in subdivision (a) to inquiring members of the public by July 1, 1995.

SEC. 11. Section 803.2 of the Business and Professions Code is amended to read:

803.2. Every entry of judgment, settlement agreement, or arbitration award over thirty thousand dollars (\$30,000) of a claim or action for damages for death or personal injury caused by the negligence, error, or omission in practice, or the unauthorized rendering of professional services, by a physician and surgeon or doctor of podiatric medicine licensed pursuant to Chapter 5 (commencing with Section 2000) or the Osteopathic Initiative Act, when that judgment, settlement agreement, or arbitration award is entered against, or paid by, the employer of that licensee and not the licensee himself or herself, shall be reported to the appropriate board by the entity required to report the information in accordance with Sections 801, 802, and 803 as an entry of judgment, settlement, or arbitration award against the negligent licensee.

"Employer" as used in this section means a professional corporation, a group practice, a health care facility or clinic licensed or exempt from licensure under the Health and Safety Code, a licensed health care service plan, a medical care foundation, an educational institution, a professional institution, a professional school or college, a general law corporation, or a nonprofit organization that employs, retains, or contracts with a licensee referred to in this section. Nothing in this section shall be construed to authorize the employment of, or contracting with, any licensee in violation of Section 2400.

SEC. 12. Section 803.5 of the Business and Professions Code is amended to read:

803.5. (a) The district attorney, city attorney, or other prosecuting agency shall notify the Medical Board of California, the California Board of Podiatric Medicine, or other appropriate allied health board of any filings against a licensee of that board charging a felony immediately upon obtaining information that the defendant is a licensee of the board. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license from one of the boards described above.

(b) The clerk of the court in which a licensee of one of the boards is convicted of a crime shall, within 48 hours after the conviction,

transmit a certified copy of the record of conviction to the applicable board. Where the licensee is regulated by an allied health board, the record of conviction shall be transmitted to that allied health board and the Medical Board of California.

SEC. 13. Section 804 of the Business and Professions Code is amended to read:

804. (a) Any agency to whom reports are to be sent under Section 801, 802, or 803, may develop a prescribed form for the making of the reports, usage of which it may, but need not, by regulation, require in all cases.

(b) A report required to be made by Sections 801 and 802 shall be deemed complete only if it includes the following information: (1) the name and last known business and residential addresses of every plaintiff or claimant involved in the matter, whether or not each plaintiff or claimant recovered anything; (2) the name and last known business and residential addresses of every physician or provider of health care services who was claimed or alleged to have acted improperly, whether or not that person was a named defendant and whether or not any recovery or judgment was had against that person; (3) the name, address, and principal place of business of every insurer providing professional liability insurance as to any person named in (2), and the insured's policy number; (4) the name of the court in which the action or any part of the action was filed along with the date of filing and docket number of each action; (5) a brief description or summary of the facts upon which each claim, charge or judgment rested including the date of occurrence; (6) the names and last known business and residential addresses of every person who acted as counsel for any party in the litigation or negotiations, along with an identification of the party whom said person represented; (7) the date and amount of final judgment or settlement; and (8) any other information the agency to whom the reports are to be sent may, by regulation, require.

(c) Every person named in the report, who is notified by the board within 60 days of the filing of the report, shall maintain for the period of three years from the filing of the report any records he or she has as to the matter in question and shall make those available upon request to the agency with which the report was filed.

(d) Every professional liability insurer that makes a report under Section 801, and that has received a copy of any written patient medical records prepared by the treating physician or the staff of the treating physician or hospital, describing the medical condition, history, care, or treatment of the person whose death or injury is the subject of the claim prompting the Section 801 report, or a copy of any depositions in the matter that discuss the care, treatment, or medical condition of the person, shall make the records and depositions available for copying by the appropriate board upon written request, except when confidentiality is required by court order. The applicable board may, upon prior notification of the parties to the action, petition the appropriate court for modification

of any protective order to permit disclosure to the board. A professional liability insurer shall maintain the records and depositions referred to in this subdivision for at least one year from the date of the Section 801 report.

SEC. 13.5. Chapter 1.6 (commencing with Section 920) of Division 2 of the Business and Professions Code is repealed.

SEC. 14. Section 2013 of the Business and Professions Code is amended to read:

2013. (a) The board and each division may convene from time to time as deemed necessary by the board or a division.

(b) Seven members of the Division of Medical Quality, and four members of the Division of Licensing shall constitute a quorum for the transaction of business at any division meeting. Four members of a panel of the Division of Medical Quality shall constitute a quorum for the transaction of business at any meeting of the panel. Ten members shall constitute a quorum for the transaction of business at any board meeting.

(c) It shall require the affirmative vote of a majority of those members present at a division, panel, or board meeting, those members constituting at least a quorum, to pass any motion, resolution, or measure. A decision by a panel of the Division of Medical Quality to discipline a physician and surgeon shall require an affirmative vote, at a meeting or by mail, of a majority of the members of that panel; except that a decision to revoke the certificate of a physician and surgeon shall require the affirmative vote of four members of that panel.

SEC. 15. Section 2015 of the Business and Professions Code, as added by Section 16 of Chapter 1267 of the Statutes of 1993, is amended to read:

2015. (a) The president of the board and each division may call meetings of any duly appointed and created committee of the board or division at a specified time and place.

(b) The board shall create a Committee on Affiliated Healing Arts Professions of the board. The committee may advise the board and divisions on issues pertaining to the regulation of any healing arts profession under the jurisdiction of the board or its divisions, or located within the board. Among other duties that the board may delegate to it, the committee may also advise the board on issues pertaining to other healing arts professions. All references to the Division of Allied Health Professions shall be deemed references to the board.

SEC. 16. Section 2021 of the Business and Professions Code is amended to read:

2021. (a) If the board publishes a directory pursuant to Section 112, it may require persons licensed pursuant to this chapter to furnish any information as it may deem necessary to enable it to compile the directory.

(b) Each licensee shall report immediately to the board each and every change of address, giving both the old and new address. If an

address reported to the board at the time of application for licensure or subsequently is a post office box, the applicant shall also provide the board with a street address. If another address is the licensee's address of record, he or she may request that the second address not be disclosed to the public.

SEC. 18.5. Section 2230 of the Business and Professions Code is amended to read:

2230. (a) All proceedings against a licensee for unprofessional conduct, or against an applicant for licensure for unprofessional conduct or cause, shall be conducted in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) except as provided in this chapter, and shall be prosecuted by the Senior Assistant Attorney General of the Health Quality Enforcement Section.

(b) For the purpose of exercising its disciplinary authority against a physician and surgeon pursuant to this chapter and the Administrative Procedure Act, the Division of Medical Quality shall organize itself as two panels of six members. Two members of each panel shall be public members. For purposes of this article, "agency itself," as used in the Administrative Procedure Act, means a panel of the division as described in this subdivision. The decision or order of a panel imposing any disciplinary action pursuant to this chapter and the Administrative Procedure Act shall be final.

SEC. 19. Section 2236 of the Business and Professions Code is amended to read:

2236. (a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

(b) The district attorney, city attorney, or other prosecuting agency shall notify the Division of Medical Quality of the pendency of an action against a licensee charging a felony or misdemeanor immediately upon obtaining information that the defendant is a licensee. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license as a physician and surgeon.

(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the board. The division may inquire into the circumstances surrounding the commission of a crime in order to fix the degree of discipline or to determine if the conviction is of an offense substantially related to the qualifications, functions, or duties of a physician and surgeon.

(d) A plea or verdict of guilty or a conviction after a plea of nolo

contendere is deemed to be a conviction within the meaning of this section and Section 2236.1. The record of conviction shall be conclusive evidence of the fact that the conviction occurred.

SEC. 20. Section 2236.1 is added to the Business and Professions Code, to read:

2236.1. (a) A physician and surgeon's certificate shall be suspended automatically during any time that the holder of the certificate is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The Division of Medical Quality shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the certificate of the physician and surgeon has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The Division shall notify the physician and surgeon of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in this section.

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing it is determined therefrom that the felony of which the licensee was convicted was substantially related to the qualifications, functions, or duties of a physician and surgeon, the Division of Medical Quality shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the division. The issue of substantial relationship shall be heard by an administrative law judge from the Medical Quality Panel sitting alone or with a panel of the division, in the discretion of the division. A conviction of any crime referred to in Section 2237, or a conviction of Section 187, 261, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a physician and surgeon. Upon its own motion or for good cause shown, the division may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of and confidence in the medical profession.

(c) (1) Discipline may be ordered in accordance with Section 2227, or the Division of Licensing may order the denial of the license when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Medical Quality Panel sitting alone or with a panel of the division, in the discretion of the division. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal

Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in this section at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a physician and surgeon. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the division from pursuing disciplinary action based on any cause other than the overturned conviction.

(d) The record of the proceedings resulting in the conviction, including a transcript of the testimony therein, may be received in evidence.

(e) The other provisions of this article setting forth a procedure for the suspension or revocation of a physician and surgeon's certificate shall not apply to proceedings conducted pursuant to this section.

SEC. 21. Section 2313 of the Business and Professions Code is amended to read:

2313. The Division of Medical Quality shall report annually to the Legislature, no later than October 1 of each year, the following information:

(a) The total number of temporary restraining orders or interim suspension orders sought by the board or the division to enjoin licensees pursuant to Sections 125.7, 125.8 and 2311, the circumstances in each case that prompted the board or division to seek that injunctive relief, and whether a restraining order or interim suspension order was actually issued.

(b) The total number and types of actions for unprofessional conduct taken by the board or a division against licensees, the number and types of actions taken against licensees for unprofessional conduct related to prescribing drugs, narcotics, or other controlled substances.

(c) Information relative to the performance of the division, including the following: number of consumer calls received; number of consumer calls or letters designated as discipline-related complaints; number of calls resulting in complaint forms being sent to complainants and number of forms returned; number of Section 805 reports by type; number of Section 801 and Section 803 reports; coroner reports received; number of convictions reported to the division; number of criminal filings reported to the division; number of complaints and referrals closed, referred out, or resolved without discipline, respectively, prior to accusation; number of accusations filed and final disposition of accusations through the division and court review, respectively; final physician discipline by category; number of citations issued with fines and without fines, and number of public reprimands issued; number of cases in process more than

six months from receipt by the division of information concerning the relevant acts to the filing of an accusation; average and median time in processing complaints from original receipt of complaint by the division for all cases at each stage of discipline and court review, respectively; number of persons in diversion, and number successfully completing diversion programs and failing to do so, respectively; probation violation reports and probation revocation filings and dispositions; number of petitions for reinstatement and their dispositions; and caseloads of investigators for original cases and for probation cases, respectively.

“Action,” for purposes of this section, includes proceedings brought by, or on behalf of, the division against licensees for unprofessional conduct which have not been finally adjudicated, as well as disciplinary actions taken against licensees.

SEC. 22. The first Section 2337 of the Business and Professions Code, as added by Section 32 of Chapter 1267 of the Statutes of 1993, is amended to read:

2337. Notwithstanding any other provision of law, superior court review of a decision revoking, suspending, or restricting a license shall take preference over all other civil actions in the matter of setting the case for hearing or trial. The hearing or trial shall be set no later than 180 days from the filing of the action. Further continuance shall be granted only on a showing of good cause.

This section shall remain operative until January 1, 1996, shall be inoperative from January 1, 1996, to January 1, 1999, and shall become operative again on January 1, 1999.

SEC. 23. The second Section 2337 of the Business and Professions Code, as added by Section 32 of Chapter 1267 of the Statutes of 1993, is amended to read:

2337. Notwithstanding any other provision of law, review of final decisions of an administrative law judge of the Medical Quality Hearing Panel, or the Division of Medical Quality or the Board of Podiatric Medicine in the event a review is ordered pursuant to Section 2335, shall be by writ of mandamus pursuant to Section 1094.5 of the Code of Civil Procedure before a district court of appeal. The court of appeal shall exercise its independent judgment in review of the proceedings below, and, where the court finds that there is relevant evidence that, in the exercise of reasonable diligence, could not have been produced, or that was improperly excluded at the hearing, it may admit the evidence without remanding the case.

The Judicial Council may adopt rules to allocate these cases to a particular panel or panels within each district for consistent and efficient consideration. Review shall be entitled to calendar priority, and the hearing shall be set no later than 180 days from the filing of the action.

This section shall become operative on January 1, 1996, and shall be repealed as of January 1, 1999, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

SEC. 24. Section 2475.3 of the Business and Professions Code is

amended to read:

2475.3. The board shall approve podiatric residency programs, as defined in Section 2475.2, in the field of podiatric medicine, for persons who are applicants for or have been issued a certificate to the practice of podiatric medicine pursuant to this article.

On and after January 1, 1998, the board shall approve only those podiatric residencies at the entry level that are approved by the Council on Podiatric Medical Education or other organization designated by the board, provided that the organization requires entry-level podiatric residencies to include podiatric surgical training.

SEC. 25. Section 2484 of the Business and Professions Code is amended to read:

2484. In addition to any other requirements of this chapter, before a certificate to practice podiatric medicine may be issued, each applicant shall show by evidence satisfactory to the board that he or she has satisfactorily completed one year of approved postgraduate podiatric medical and podiatric surgical training in a general acute care hospital.

SEC. 26. Section 43.96 of the Civil Code is amended to read:

43.96. (a) Any medical or podiatric society, health facility licensed or certified under Division 2 (commencing with Section 1200) of the Health and Safety Code, state agency as defined in Section 11000 of the Government Code, or local government agency that receives written complaints or other adverse information related to the professional competence or professional conduct of a physician and surgeon or doctor of podiatric medicine from the public shall inform the complainant that the Medical Board of California or the Board of Podiatric Medicine, as the case may be, is the only authority in the state that may take disciplinary action against the license of the named licensee, and shall provide to the complainant the address and toll-free telephone number of the applicable state board.

(b) The immunity provided in Section 2318 of the Business and Professions Code and in Section 47 shall apply to complaints and information made or provided to a board pursuant to this section.

SEC. 27. Section 11371 of the Government Code is amended to read:

11371. (a) There is within the Office of Administrative Hearings a Medical Quality Hearing Panel, consisting of no fewer than five full-time administrative law judges. The administrative law judges shall have medical training as recommended by the Division of Medical Quality of the Medical Board of California and approved by the Director of the Office of Administrative Hearings.

(b) The director shall determine the qualifications of panel members, supervise their training, and coordinate the publication of a reporter of decisions pursuant to this section. The panel shall include only those persons specifically qualified and shall at no time constitute more than 25 percent of the total number of

administrative law judges within the Office of Administrative Hearings. If the members of the panel do not have a full workload, they may be assigned work by the Director of the Office of Administrative Hearings. When the medically related case workload exceeds the capacity of the members of the panel, additional judges shall be requested to be added to the panels as appropriate. When this workload overflow occurs on a temporary basis, the Director of the Office of Administrative Hearings shall supply judges from the Office of Administrative Hearings to adjudicate the cases.

(c) The decisions of the administrative law judges of the panel, together with any court decisions reviewing those decisions, shall be published in a quarterly "Medical Discipline Report," to be funded from the Contingent Fund of the Medical Board of California.

(d) The administrative law judges of the panel shall have panels of experts available. The panels of experts shall be appointed by the Director of the Office of Administrative Hearings, with the advice of the Medical Board of California. These panels of experts may be called as witnesses by the administrative law judges of the panel to testify on the record about any matter relevant to a proceeding and subject to cross-examination by all parties. The administrative law judge may award reasonable expert witness fees to any person or persons serving on a panel of experts, which shall be paid from the Contingent Fund of the Medical Board of California.

(e) On or before April 1, 1997, the Medical Board of California shall prepare, in consultation with the Office of Administrative Hearings, an analysis and report that evaluates the effectiveness of the Medical Quality Hearing Panel since its creation. Among other things, the report shall analyze whether administrative adjudications against physicians have been expedited, the aging of cases at the office, whether administrative decisions and penalties ordered in the discipline of physicians have become more consistent, and whether the panels of the Division of Medical Quality have adopted more proposed decisions than prior to the creation of the panel. The board shall send a copy of its report to the Chairpersons of the Senate Committee on Business and Professions and the Assembly Committee on Health, to the Office of Administrative Hearings, and to the Director of Consumer Affairs.

(f) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

SEC. 28. Section 11510 of the Government Code is amended to read:

11510. (a) Before the hearing has commenced, the agency or the assigned administrative law judge shall issue subpoenas and subpoenas duces tecum at the request of any party for attendance or production of documents. Subpoenas and subpoenas duces tecum shall be issued in accordance with Sections 1985, 1985.1, 1985.2, and 1985.3 of the Code of Civil Procedure. After the hearing has commenced, the agency itself hearing a case or an administrative law

judge sitting alone may issue subpoenas and subpoenas duces tecum.

(b) The process issued pursuant to subdivision (a) shall be extended to all parts of the state and may be served in person in accordance with Sections 1987 and 1988 of the Code of Civil Procedure. A subpoena or subpoena duces tecum may also be delivered by certified mail return receipt requested or by messenger. Service by messenger shall be effected when the witness acknowledges receipt of the subpoena to the sender, by telephone, by mail, or in person, and identifies himself or herself either by reference to his or her date of birth and his or her driver's license number or Department of Motor Vehicles identification number, or, the sender may verify receipt of the subpoena by obtaining other identifying information from the recipient. The sender shall make a written notation of the acknowledgment. A subpoena issued and acknowledged pursuant to this section shall have the same force and effect as a subpoena personally served. Failure to comply with a subpoena issued and acknowledged pursuant to this section may be punished as a contempt and the subpoena may so state. A party requesting a continuance based upon the failure of a witness to appear in court at the time and place required for his or her appearance or testimony pursuant to a subpoena, shall prove to the court that the party has complied with this section. The continuance shall only be granted for a period of time that would allow personal service of the subpoena and in no event longer than that allowed by law. No witness shall be obliged to attend unless the witness is a resident of the state at the time of service.

(c) All witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the state or any political subdivision thereof, shall receive fees, and all witnesses appearing pursuant to subpoena, except the parties, shall receive mileage in the same amount and under the same circumstances as prescribed by law for witnesses in civil actions in a superior court. Witnesses appearing pursuant to subpoena, except the parties, who attend hearings at points so far removed from their residences as to prohibit return thereto from day to day, shall be entitled, in addition to fees and mileage, to a per diem compensation of three dollars (\$3) for expenses of subsistence for each day of actual attendance and for each day necessarily occupied in traveling to and from the hearing. Fees, mileage, and expenses of subsistence shall be paid by the party at whose request the witness is subpoenaed.

SEC. 29. Section 11523 of the Government Code is amended to read:

11523. Judicial review may be had by filing a petition for a writ of mandate in accordance with the provisions of the Code of Civil Procedure, subject, however, to the statutes relating to the particular agency. Except as otherwise provided in this section, the petition shall be filed within 30 days after the last day on which reconsideration can be ordered. The right to petition shall not be affected by the failure to seek reconsideration before the agency.

The complete record of the proceedings, or the parts thereof as are designated by the petitioner, shall be prepared by the Office of Administrative Hearings or the agency and shall be delivered to petitioner, within 30 days, which time shall be extended for good cause shown, after a request therefor by him or her, upon the payment of the fee specified in Section 69950 as now or hereinafter amended for the transcript, the cost of preparation of other portions of the record and for certification thereof. Thereafter, the remaining balance of any costs or charges for the preparation of the record shall be assessed against the petitioner whenever the agency prevails on judicial review following trial of the cause. These costs or charges constitute a debt of the petitioner which is collectible by the agency in the same manner as in the case of an obligation under a contract, and no license shall be renewed or reinstated where the petitioner has failed to pay all of these costs or charges. The complete record includes the pleadings, all notices and orders issued by the agency, any proposed decision by an administrative law judge, the final decision, a transcript of all proceedings, the exhibits admitted or rejected, the written evidence and any other papers in the case. Where petitioner, within 10 days after the last day on which reconsideration can be ordered, requests the agency to prepare all or any part of the record the time within which a petition may be filed shall be extended until 30 days after its delivery to him or her. The agency may file with the court the original of any document in the record in lieu of a copy thereof. In the event that the petitioner prevails in overturning the administrative decision following judicial review, the agency shall reimburse the petitioner for all costs of transcript preparation, compilation of the record, and certification.

SEC. 30. Section 1795.10 of the Health and Safety Code is amended to read:

1795.10. As used in this division:

- (a) "Health care provider" means any of the following:
 - (1) A health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2.
 - (2) A clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2.
 - (3) A home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2.
 - (4) A physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code or pursuant to the Osteopathic Act.
 - (5) A podiatrist licensed pursuant to Article 22 (commencing with Section 2460) of Chapter 5 of Division 2 of the Business and Professions Code.
 - (6) A dentist licensed pursuant to Chapter 4 (commencing with Section 1600) of Division 2 of the Business and Professions Code.
 - (7) A psychologist licensed pursuant to Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.
 - (8) An optometrist licensed pursuant to Chapter 7 (commencing

with Section 3000) of Division 2 of the Business and Professions Code.

(9) A chiropractor licensed pursuant to the Chiropractic Initiative Act.

(10) A marriage, family, and child counselor licensed pursuant to Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(11) A clinical social worker licensed pursuant to Chapter 14 (commencing with Section 4990) of Division 2 of the Business and Professions Code.

(b) "Mental health records" means patient records, or discrete portions thereof, specifically relating to evaluation or treatment of a mental disorder. "Mental health records" includes, but is not limited to, all alcohol and drug abuse records.

(c) "Patient" means a patient or former patient of a health care provider.

(d) "Patient records" means records in any form or medium maintained by, or in the custody or control of, a health care provider relating to the health history, diagnosis, or condition of a patient, or relating to treatment provided or proposed to be provided to the patient. "Patient records" includes only records pertaining to the patient requesting the records or whose representative requests the records. "Patient records" does not include information given in confidence to a health care provider by a person other than another health care provider or the patient, and that material may be removed from any records prior to inspection or copying under Section 1795.12 or 1795.14. "Patient records" does not include information contained in aggregate form, such as indices, registers, or logs.

(e) "Patient's representative" or "representative" means a parent or the guardian of a minor who is a patient, or the guardian or conservator of the person of an adult patient, or the beneficiary or personal representative of a deceased patient.

(f) "Alcohol and drug abuse records" means patient records, or discrete portions thereof, specifically relating to evaluation and treatment of alcoholism or drug abuse.

SEC. 31. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution as a result of costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

Moreover, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

In addition, notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1207

An act to add Sections 18110 and 29208 to, to repeal Sections 511.5, 606, 2166, and 2186 of, and to repeal and add Sections 615 and 2194 of, the Elections Code, and to repeal and add Section 6254.4 of the Government Code, relating to voters.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 511.5 of the Elections Code is repealed.

SEC. 2. Section 606 of the Elections Code is repealed.

SEC. 3. Section 615 of the Elections Code is repealed.

SEC. 4. Section 615 is added to the Elections Code, to read:

615. (a) The voter registration card information identified in subdivision (a) of Section 6254.4 of the Government Code:

(1) Shall be confidential and shall not appear on any computer terminal, list, affidavit, duplicate affidavit, or other medium routinely available to the public at the county elections official's office.

(2) Shall be provided with respect to any voter, subject to the provisions of Section 608, to any candidate for federal, state, or local office, to any committee for or against any initiative or referendum measure for which legal publication is made, and to any person for election, scholarly, journalistic, or political purposes, or for governmental purposes, as determined by the Secretary of State.

(b) The home address of any voter shall be released whenever the person's vote is challenged pursuant to Sections 1403, 1405 to 1408, inclusive, or 14216 to 14229, inclusive. The address shall be released only to the challenger, to elections officials, and to other persons as necessary to make, defend against, or adjudicate the challenge.

(c) A governmental entity, or officer or employee thereof, may not be held civilly liable as a result of disclosure of the information referred to in this section, unless by a showing of gross negligence or willfulness.

SEC. 5. Section 2166 of the Elections Code, as added by SB 1547 of the 1993-94 Regular Session, is repealed.

SEC. 6. Section 2186 of the Elections Code, as added by SB 1547 of the 1993-94 Regular Session, is repealed.

SEC. 7. Section 2194 of the Elections Code, as added by SB 1547 of the 1993-94 Regular Session, is repealed.

SEC. 8. Section 2194 is added to the Elections Code, to read:

2194. (a) The voter registration card information identified in subdivision (a) of Section 6254.4 of the Government Code:

(1) Shall be confidential and shall not appear on any computer terminal, list, affidavit, duplicate affidavit, or other medium routinely available to the public at the county elections official's office.

(2) Shall be provided with respect to any voter, subject to the provisions of Section 2188, to any candidate for federal, state, or local office, to any committee for or against any initiative or referendum measure for which legal publication is made, and to any person for election, scholarly, journalistic, or political purposes, or for governmental purposes, as determined by the Secretary of State.

(b) The home address of any voter shall be released whenever the person's vote is challenged pursuant to Sections 15003, 15005 to 15007, inclusive, or 14240 to 14253, inclusive. The address shall be released only to the challenger, to elections officials, and to other persons as necessary to make, defend against, or adjudicate the challenge.

(c) A governmental entity, or officer or employee thereof, may not be held civilly liable as a result of disclosure of the information referred to in this section, unless by a showing of gross negligence or willfulness.

SEC. 9. Section 18110 is added to the Elections Code, to read:

18110. (a) For purposes of this section, "home address" means only street address and does not include an individual's city or post office address.

(b) Any person or public entity who, in violation of Section 2194, discloses the home address or telephone number listed on a voter registration card of any of the following individuals is guilty of a misdemeanor:

(1) An active or retired peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code.

(2) An employee of a city police department or a county sheriff's office.

(3) The spouse or children of the individuals specified in paragraphs (1) and (2) who live with those individuals.

(c) Any person or public entity, who in violation of Section 2194, discloses the home address or telephone number listed on a voter registration card of any individual specified in paragraph (1), (2), or (3) of subdivision (b), and that violation results in bodily injury to any of those individuals, is guilty of a felony.

SEC. 10. Section 29208 is added to the Elections Code, to read:

29208. (a) For purposes of this section, "home address" means only street address and does not include an individual's city or post office address.

(b) Any person or public entity who, in violation of Section 615, discloses the home address or telephone number listed on a voter registration card of any of the following individuals is guilty of a misdemeanor:

(1) An active or retired peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code.

(2) An employee of a city police department or county sheriff's office.

(3) The spouse or children of the individuals specified in paragraphs (1) and (2) who live with those individuals.

(c) Any person or public entity who, in violation of Section 615, discloses the home address or telephone number listed on a voter registration card of any individual specified in paragraph (1), (2), or (3) of subdivision (b), and that violation results in bodily injury to any of those individuals, is guilty of a felony.

SEC. 11. Section 6254.4 of the Government Code is repealed.

SEC. 12. Section 6254.4 is added to the Government Code, to read:

6254.4. (a) The home address, telephone number, occupation, precinct number, and prior registration information shown on the voter registration card for all registered voters is confidential, and shall not be disclosed to any person, except pursuant to Section 615 of the Elections Code.

(b) For purposes of this section, "home address" means street address only, and does not include an individual's city or post office address.

SEC. 13. Sections 5, 6, and 7 of this bill shall become operative only if SB 1547 is chaptered.

SEC. 14. Section 8 of this bill shall become operative only if both this bill and SB 1547 are chaptered, in which case Section 4 of this bill shall not become operative.

SEC. 15. Section 9 of this bill shall become operative only if both this bill and SB 1547 are chaptered, in which case Section 10 of this bill shall not become operative.

CHAPTER 1208

An act to amend Sections 2772, 2774, and 2774.6 of the Public Resources Code, relating to surface mining.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 2772 of the Public Resources Code is amended to read:

2772. (a) The reclamation plan shall be filed with the lead agency, on a form provided by the lead agency, by any person who owns, leases, or otherwise controls or operates on all, or any portion of any, mined lands, and who plans to conduct surface mining operations on the lands.

(b) All documentation for the reclamation plan shall be submitted to the lead agency at one time.

(c) The reclamation plan shall include all of the following information and documents:

(1) The name and address of the surface mining operator and the names and addresses of any persons designated by the operator as an agent for the service of process.

(2) The anticipated quantity and type of minerals for which the surface mining operation is to be conducted.

(3) The proposed dates for the initiation and termination of surface mining operation.

(4) The maximum anticipated depth of the surface mining operation.

(5) The size and legal description of the lands that will be affected by the surface mining operation, a map that includes the boundaries and topographic details of the lands, a description of the general geology of the area, a detailed description of the geology of the area in which surface mining is to be conducted, the location of all streams, roads, railroads, and utility facilities within, or adjacent to, the lands, the location of all proposed access roads to be constructed in conducting the surface mining operation, and the names and addresses of the owners of all surface interests and mineral interests in the lands.

(6) A description of, and a plan for, the type of surface mining to be employed, and a time schedule that will provide for the completion of surface mining on each segment of the mined lands so that reclamation can be initiated at the earliest possible time on those portions of the mined lands that will not be subject to further disturbance by the surface mining operation.

(7) A description of the proposed use or potential uses of the mined lands after reclamation and evidence that all owners of a possessory interest in the land have been notified of the proposed use or potential uses.

(8) A description of the manner in which reclamation, adequate for the proposed use or potential uses will be accomplished, including both of the following:

(A) A description of the manner in which contaminants will be controlled, and mining waste will be disposed.

(B) A description of the manner in which affected streambed channels and streambanks will be rehabilitated to a condition minimizing erosion and sedimentation will occur.

(9) An assessment of the effect of implementation of the reclamation plan on future mining in the area.

(10) A statement that the person submitting the reclamation plan accepts responsibility for reclaiming the mined lands in accordance with the reclamation plan.

(11) Any other information which the lead agency may require by ordinance.

(d) An item of information or a document required pursuant to

subdivision (c) that has already been prepared as part of a permit application for the surface mining operation, or as part of an environmental document prepared for the project pursuant to Division 13 (commencing with Section 21000), may be included in the reclamation plan by reference, if that item of information or that document is attached to the reclamation plan when the lead agency submits the reclamation plan to the director for review. To the extent that the information or document referenced in the reclamation plan is used to meet the requirements of subdivision (c), the information or document shall become part of the reclamation plan and shall be subject to all other requirements of this article.

(e) Nothing in this section is intended to limit or expand the department's authority or responsibility to review a document in accordance with Division 13 (commencing with Section 21000).

SEC. 2. Section 2774 of the Public Resources Code is amended to read:

2774. (a) Every lead agency shall adopt ordinances in accordance with state policy which establish procedures for the review and approval of reclamation plans and financial assurances and the issuance of a permit to conduct surface mining operations, except that any lead agency without an active surface mining operation in its jurisdiction may defer adopting an implementing ordinance until the filing of a permit application. The ordinances shall establish procedures requiring at least one public hearing and shall be periodically reviewed by the lead agency and revised, as necessary, to ensure that the ordinances continue to be in accordance with state policy.

(b) The lead agency shall conduct an inspection of a surface mining operation within six months of receipt by the lead agency of the surface mining operation's report submitted pursuant to Section 2207, solely to determine whether the surface mining operation is in compliance with this chapter. In no event shall a lead agency inspect a surface mining operation less than once in any calendar year. The lead agency may cause such an inspection to be conducted by a state-registered geologist, state-registered civil engineer, state-licensed landscape architect, or state-registered forester, who is experienced in land reclamation and who has not been employed by the surface mining operation in any capacity during the previous 12 months. All inspections shall be conducted using a form developed by the department and approved by the board. The operator shall be solely responsible for the reasonable cost of the inspection. The lead agency shall notify the director within 30 days of the date of completion of the inspection that the inspection has been conducted. The notice shall contain a statement regarding the surface mining operation's compliance with this chapter, shall include a copy of the completed inspection form, and shall specify which aspects of the surface mining operations, if any, are inconsistent with this chapter. If the surface mining operation has a review of its reclamation plan, financial assurances, or an interim management plan pending under

subdivision (b), (c), (d), or (h) of Section 2770, or an appeal pending before the board or lead agency governing body under subdivision (e) or (h) of Section 2770, the notice shall so indicate. The lead agency shall forward to the operator a copy of the notice, a copy of the completed inspection form, and any supporting documentation, including, but not limited to, any inspection report prepared by the geologist, civil engineer, landscape architect, or forester.

(c) Prior to approving a surface mining operation's reclamation plan, financial assurances, including existing financial assurances reviewed by the lead agency pursuant to subdivision (c) of Section 2770, or any amendments, the lead agency shall submit the plan, assurances, or amendments to the director for review. All documentation for that submission shall be submitted to the director at one time. When the lead agency submits a reclamation plan or plan amendments to the director for review, the lead agency shall also submit to the director, for use in reviewing the reclamation plan or plan amendments, information from any related document prepared, adopted, or certified pursuant to Division 13 (commencing with Section 21000), and shall submit any other pertinent information. The lead agency shall certify to the director that the reclamation plan is in compliance with the applicable requirements of Article 1 (commencing with Section 3500) of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations in effect at the time that the reclamation plan is submitted to the director for review.

(d) (1) The director shall have 30 days from the date of receipt of a reclamation plan or plan amendments submitted pursuant to subdivision (c), and 45 days from the date of receipt of financial assurances submitted pursuant to subdivision (c), to prepare written comments, if the director so chooses. The lead agency shall evaluate any written comments received from the director relating to the reclamation plan, plan amendments, or financial assurances within a reasonable amount of time.

(2) The lead agency shall prepare a written response to the director's comments describing the disposition of the major issues raised. In particular, if the lead agency's position is at variance with any of the recommendations made, or objections raised, in the director's comments, the written response shall address, in detail, why specific comments and suggestions were not accepted. Copies of any written comments received and responses prepared by the lead agency shall be forwarded to the operator.

(3) To the extent that there is a conflict between the comments of a trustee agency or a responsible agency that are based on the agency's statutory or regulatory authority and the comments of other commenting agencies which are received by the lead agency pursuant to Division 13 (commencing with Section 21000) regarding a reclamation plan or plan amendments, the lead agency shall consider only the comments of the trustee agency or responsible agency.

(e) Lead agencies shall notify the director of the filing of an application for a permit to conduct surface mining operations within 30 days of such an application being filed with the lead agency. By July 1, 1991, each lead agency shall submit to the director for every active or idle mining operation within its jurisdiction, a copy of the mining permit required pursuant to Section 2774, and any conditions or amendments to those permits. By July 1 of each subsequent year, the lead agency shall submit to the director for each active or idle mining operation a copy of any permit or reclamation plan amendments, as applicable, or a statement that there have been no changes during the previous year. Failure to file with the director the information required under this section shall be cause for action under Section 2774.4.

SEC. 3. Section 2774.6 of the Public Resources Code is amended to read:

2774.6. (a) On or before March 1, 1995, the department shall submit to the Governor and the Legislature a report, prepared by a qualified consultant, which may include an educational institution, which evaluates the effectiveness of lead agencies and the department in implementing this chapter and Section 2207, and in meeting the intent of the Legislature as set forth in Section 2712. The report shall be prepared to the extent that funds are appropriated by the Legislature for this purpose. Prior to encumbering any funds for preparation of the report, the board may conduct a public hearing to receive and respond to public comments concerning the scope of issues to be addressed.

(b) The report shall include, but is not limited to, an evaluation of all of the following:

(1) Compliance with this chapter and Section 2207 by operators of surface mines, lead agencies, the State Geologist, the department, and the board.

(2) Compliance with the reclamation requirements prescribed in Section 2773.

(3) The adequacy of resources needed to carry out this chapter and Section 2207.

(4) The adequacy of information available for purposes of preparing the report.

(5) Any recommended changes to administrative regulations or recommendations for further legislation.

CHAPTER 1209

An act to amend Section 14201 of, and to add Section 14200.1 to, the Government Code, relating to state agencies.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 14200.1 is added to the Government Code, to read:

14200.1. (a) The Legislature finds and declares the following:

(1) Telecommuting can be an important means to reduce air pollution and traffic congestion and to reduce the high costs of highway commuting.

(2) Telecommuting stimulates employee productivity while giving workers more flexibility and control over their lives.

(b) It is the intent of the Legislature to encourage state agencies to adopt policies that encourage telecommuting by state employees.

SEC. 2. Section 14201 of the Government Code is amended to read:

14201. Every state agency shall review its work operations to determine where in its organization telecommuting can be of practical benefit to the agency. On or before July 1, 1995, each agency shall develop and implement a telecommuting plan as part of its telecommuting program in work areas where telecommuting is identified as being both practical and beneficial to the organization.

Agencies that participated in the experimental studies described in Section 15276 may continue and expand those telecommuting programs in accordance with the policy, procedures, and guidelines developed by the Department of General Services in conjunction with those participating agencies. Those agencies not having participated in the initial experimental studies described in Section 15276 may comply with the policy, procedures, and guidelines developed by the Department of General Services in conjunction with a multiagency group that participated in those studies.

CHAPTER 1210

An act to add Section 249.5 to the Health and Safety Code, relating to children's services.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. The Legislature finds and declares that the California Children's Services program is a unique medical treatment and case management program for chronically and critically handicapped infants and children. The Legislature further finds and declares that the California Children's Services program can, as shown by a recent pilot project in Riverside County, be operated more efficiently and economically by utilizing a uniform and centralized billing system for this program. This billing system would relieve the counties of some of the administrative burdens, but would still preserve the program case management and oversight authority in the county California Children's Services program offices. Any costs that may be incurred by the counties from the transfer to a centralized billing process will be offset by the savings in administrative costs for the counties as a result of this change.

SEC. 2. Section 249.5 is added to the Health and Safety Code, to read:

249.5. All claims for services provided under this article shall be submitted to the state fiscal intermediary for payment no later than January 1, 1999. The State Department of Health Services shall work in cooperation with the counties to develop a timeline for implementing the centralized billing system. If a department review of those counties participating in the centralized billing system demonstrates that as of January 1, 2000, any county has incurred increased costs as a result of submitting claims for services to the state fiscal intermediary, that county may be exempt from this section.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the Legislature finds and declares that there are savings as well as costs in this act which, in the aggregate, do not result in additional net costs. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1211

An act to amend Section 10878 of, and to add Section 10879 to, the Revenue and Taxation Code, and to amend Sections 9801 and 9805 of the Vehicle Code, relating to vehicles, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 10878 of the Revenue and Taxation Code is amended to read:

10878. (a) Notwithstanding Sections 10877 and 10951, on and after July 1, 1993, the responsibility and authority for the collection of the following delinquent amounts and any interest, penalties, or service fees added thereto, shall be transferred from the department to the Franchise Tax Board, and any reference in this part to the department in connection with the duty to collect these amounts shall be deemed a reference to the Franchise Tax Board.

- (1) Registration fees.
- (2) Transfer fees.
- (3) License fees.
- (4) Use taxes.

(5) Penalties for offenses relating to the standing or parking of a vehicle for which a notice of parking violation has been served on the owner, and any administrative service fee added to the penalty.

(6) Any court-imposed fine or penalty assessment, and any administrative service fee added thereto, which is subject to collection by the department.

(b) The amounts collected under subdivision (a) may be collected in any manner authorized under the law as though they were a tax imposed under Part 10 (commencing with Section 17001) that is final, including, but not limited to, issuance of an order and levy under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure in the manner provided for earnings withholding order for taxes. Part 10 (commencing with Section 17001), 10.2 (commencing with Section 18401), or 10.7 (commencing with Section 21001), or any other applicable law shall apply for this purpose in the same manner and with the same force and effect as if the language of Part 10, 10.2, or 10.7, or the other applicable law is incorporated in full into this authority to collect these amounts, except to the extent that the provision is either inconsistent with the collection of these amounts or is not relevant to the collection of these amounts.

(c) Even though the amounts authorized by this section are collected as though they are taxes, amounts so received by the Franchise Tax Board shall be deposited into an appropriate fund or

account upon agreement between the Franchise Tax Board and the department. The amounts shall be distributed by the department from the appropriate fund or account in accordance with the laws providing for the deposits and distributions as though the moneys were received by the department.

(d) For any collection action under this section, the Franchise Tax Board may utilize the contract authorization, procedures, and mechanisms available either with respect to the collection of taxes, interest, additions to tax, and penalties pursuant to Section 18837 or 19376, or with respect to the collection of the delinquencies by the department immediately prior to the time this section takes effect.

(e) The Legislature finds that it is essential for fiscal purposes that the program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any standard, criteria, procedure, determination, rule, notice, or guideline established or issued by the Franchise Tax Board in implementing and administering the program required by this section.

(f) Any standard, criteria, procedure, determination, rule, notice, or guideline, that is not subject to the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code pursuant to subdivision (e), shall be approved by the Franchise Tax Board, itself.

(g) The Franchise Tax Board may enter into any agreements or contracts necessary to implement and administer the provisions of this section. The Franchise Tax Board in administering this section may delegate collection activities to the department. Any contracts may provide for payment of the contract on the basis of a percentage of the amount of revenue realized as a result of the contractor's services under that contract. However, the Franchise Tax Board, in administering this part, may not enter into contracts with private collection agencies as authorized under Section 19377.

SEC. 2. Section 10879 is added to the Revenue and Taxation Code, to read:

10879. In the case of leased vehicles, for purposes of Section 10877, this section, and Article 6 (commencing with Section 9800) of Chapter 6 of Division 3 of the Vehicle Code, the following shall apply:

(a) (1) Except as provided in subdivision (b), in the event the lessor designates the address of the lessee under subdivision (a) of Section 4453.5 of the Vehicle Code and provides the Department of Motor Vehicles with the address of the lessor, at a time and in the form and manner required by the department, the lessee shall be solely liable for the following, and any interest, penalties, or service fees added thereto:

(A) Penalties resulting from the delinquent registration of the leased vehicle.

(B) Penalties for offenses relating to the standing or parking of a vehicle for which a notice of parking violation has been served on the

owner.

(C) Any court-imposed fines or penalty assessments that are subject to collection by the department.

(2) Except as provided in paragraph (3), the lien described in Section 9800 of the Vehicle Code shall remain in full force and effect for all unpaid penalties, fines, and fees described in this subdivision, including related interest, if any.

(3) Upon a bona fide sale or transfer of the vehicle, the lien on the vehicle being sold or transferred shall be released if the lessor has paid the registration and license fees within 30 days after the lessor is issued notice and demand by the Franchise Tax Board in accordance with subdivision (b).

(4) Any amount that is owed by the lessee under paragraph (1) at the time the lien is released in accordance with paragraph (3) shall constitute a lessee liability enforceable under Section 9805 of the Vehicle Code and collectible in accordance with Section 10878 of this code.

(b) If, within 30 days after notice and demand is issued to the lessor by the Franchise Tax Board, the lessor fails to pay the registration and license fees required to register the vehicle, all of the following shall apply to the lessor:

(1) The lessor shall remain solely liable for those registration and license fees.

(2) The lessor shall be jointly and severally liable with the lessee for the amounts described in paragraph (1) of subdivision (a).

(3) The lessor shall not be subject to relief under Section 4760 or 9561 of the Vehicle Code or any other law.

SEC. 3. Section 9801 of the Vehicle Code is amended to read:

9801. (a) (1) When the payment required for the registration or transfer of a vehicle is delinquent pursuant to subdivision (a) of Section 9800, the department may collect the amount of the lien on the vehicle plus costs, not to exceed two hundred fifty dollars (\$250), by the filing of a certificate requesting judgment pursuant to Section 9805, or by appropriate civil action and by the seizure and sale of the vehicle or any other vehicle owned by the owner of the unregistered vehicle.

(2) In the case of a leased vehicle, the authority provided in paragraph (1) to seize and sell the vehicle or any other vehicle owned by the owner of that vehicle shall not apply to a lien for any delinquency for which only the lessee is liable pursuant to paragraph (1) of subdivision (a) of Section 10879 of the Revenue and Taxation Code.

(b) At least 10 days before the seizure, notice of the lien and of the intent to seize and sell the vehicle shall be given by the department to the registered and legal owners, and to any other person known to be claiming an interest in the vehicle, by registered mail addressed to those persons at the last known addresses appearing on the records of the department.

(c) Any person receiving the notice of the lien and the intent to

seize and sell the vehicle may request a hearing to contest the existence or amount of the lien. If no hearing is requested, the vehicle shall be seized and sold.

(d) If a hearing is requested, 10 days' notice shall be given of the time and place of the hearing, which shall be held within the county of residence of the person requesting the hearing or of the registered owner. The hearing shall be conducted by a referee who shall submit findings and recommendations to the director or his or her authorized representative, who shall decide the matter. The decision shall be effective on notice thereof to the interested parties. However, the director or his or her authorized representative may rescind the decision and reconsider the matter for good cause shown at any time within three years after the date the disputed fee or tax first became due, or within one year from the hearing, whichever is later.

(e) At any time before seizure or sale, any registered owner, legal owner, or person claiming an interest in the vehicle may pay the department the amount of the lien, plus costs. In that event, the seizure or sale shall not be held and the vehicle, if seized, shall be returned by the department to the person entitled to its possession. This payment shall not constitute a waiver of the right to a hearing.

(f) When the department or an authorized agent has reasonable cause to believe that the lien may be jeopardized within the 10-day notice-of-intent period, the vehicle may be seized without prior notice to the registered or legal owner, upon obtaining authorization for the seizure from the Registrar of Vehicles or authorized representative. In all those cases, a notice of the lien and the intent to sell the vehicle shall be given by the department to the legal and registered owner, and to any other person known to be claiming an interest in the vehicle, within 48 hours after seizure excluding Saturdays, Sundays, and holidays specified in Section 6700 of the Government Code. Any hearing to contest the lien and the seizure shall be requested within 10 days following transmittal of that notice.

(g) When a lien exists against one or more vehicles owned by the same person or persons, the department may seize and sell a sufficient number of the vehicles to pay the lien, plus costs, on one or more of the vehicles in accordance with subdivision (a).

(h) The Department of the California Highway Patrol shall assist with the seizure and impounding of the vehicle. Any municipality or county law enforcement agency may assist with the seizure and impounding of the vehicle.

(i) Any property found by the department in any vehicle seized under the provisions of this article shall be handled by the department in the same manner as is provided in Sections 2414 and 2415.

SEC. 4. Section 9805 of the Vehicle Code is amended to read:

9805. (a) The department may file in the office of the county clerk of Sacramento County, or any other county, a certificate specifying the amount of any fee, tax, penalty, and collection cost

due, the name and last known address of the individual, company, or corporation liable for the amount due, and the fact that the department has complied with all the provisions of this division in the computation of the amount due, and a request that judgment be entered against the individual, company, or corporation in the amount of the fee, tax, penalty, and collection cost set forth in the certificate if the fee, tax, penalty, or collection cost constitutes either of the following:

(1) A lien under this division on the vehicle on which it is due is not paid when due, and there is evidence that the vehicle has been operated in violation of this code or any regulations adopted pursuant to this code.

(2) A lessee liability as provided in Section 10879 of the Revenue and Taxation Code.

(b) Prior to the filing of the certificate, the department shall, by mail, notify the individual, company, or corporation of the amount which is due and of the opportunity for a hearing as provided in this subdivision. At the request of the individual, company, or corporation, the department shall conduct a hearing pursuant to Section 9801, at which it shall be determined whether the claimed fee, tax, penalty, or collection cost in the amount claimed by the department is due and constitutes a lien on the vehicle, and whether the individual, company, or corporation is liable therefor.

(c) If no hearing is requested within 15 days after mailing the notice required by subdivision (b), the certificate required by subdivision (b) may be filed.

SEC. 5. This act shall apply only to delinquencies arising on or after the effective date of this act.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to resolve, as soon as possible, possible inequities to lessors of vehicles with regard to the enforcement of liens on leased vehicles for delinquent vehicle registration fees, traffic citations, and court-imposed fines and penalty assessments, it is necessary that this act go into immediate effect.

CHAPTER 1212

An act relating to energy resources, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Any unencumbered funds appropriated from the Federal Trust Fund pursuant to subdivision (m) of Section 6 of Chapter 1159 of the Statutes of 1993 to the Office of Planning and Research for the small business energy assistance program is hereby reappropriated to the Office of Planning and Research for the small business energy assistance program, for the 1994-95 fiscal year.

SEC. 2. The sum of one million dollars (\$1,000,000), appropriated from the Federal Trust Fund pursuant to subdivision (l) of Section 6 of Chapter 1159 of the Statutes of 1993 to the State Energy Resources Conservation and Development Commission to provide funding for the San Diego ITER project, plus any interest earned on those funds since that appropriation, is hereby reappropriated to the State Energy Resources Conservation and Development Commission for the purpose of making awards under the commission's transportation energy technology advancement program.

SEC. 3. Notwithstanding any other provision of law, the State Energy Resources Conservation and Development Commission may make grants, for the 1994-95 fiscal year, from funds in the State Energy Conservation Assistance Account, to local government for the conversion of street lights to low pressure sodium vapor, not to exceed 1,000 street lights, to minimize the impact of city lights on an astronomical research facility affiliated with the University of California, and to thereby conserve energy.

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

In order to provide local government and small businesses in this state with projects to conserve energy, thereby reducing expenses and averting environmental damage, it is necessary that this act take effect immediately.

CHAPTER 1213

An act to amend Sections 19567, 19596.1, 19601, 19605, 19605.51, 19605.7, 19605.71, 19612.1, 19612.2, 19613, 19613.2, 19614.2, 19616, 19616.1, 19617.5, and 19617.8 of, to add Section 19617.9 to, and to repeal Sections 19533 and 19610.7 of, the Business and Professions Code, relating to horseracing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 19533 of the Business and Professions Code, as added by Chapter 251 of the Statutes of 1990, is repealed.

SEC. 2. Section 19567 of the Business and Professions Code is amended to read:

19567. (a) Since the purpose of this chapter is to encourage agriculture and the breeding of horses in this state, a sum equal to 10 percent of the first money of every purse won by a California-bred horse at a horserace meeting shall be paid by the licensee conducting the meeting to the breeder of the horse. This section applies to any California-bred standardbred horse that is foaled on or after November 1, 1977, for all races, except the California standardbred sires stakes races.

(b) Notwithstanding subdivision (a), a sum equal to 10 percent of the first and second place money of every purse won by a California-bred Appaloosa or Arabian horse for first or second place at a horserace meeting shall be paid by the licensee conducting the meeting to the breeder of the horse.

(c) Moneys from quarter horse racing derived pursuant to this section shall be deposited with the official registering agency pursuant to subdivision (b) of Section 19617.7 and shall thereafter be distributed in accordance with subdivisions (c), (d), and (e) of Section 19617.7.

(d) Moneys from Appaloosa horseracing derived pursuant to this section shall be deposited with the official registering agency pursuant to subdivision (b) of Section 19617.9 and shall thereafter be distributed in accordance with subdivisions (c), (d), and (e) of Section 19617.9.

(e) This section does not apply to thoroughbred horses or thoroughbred racing.

SEC. 3. Section 19596.1 of the Business and Professions Code is amended to read:

19596.1. Notwithstanding any other provision of law, the board may authorize an association conducting a race meeting to accept wagers on the results of out-of-state harness or quarter horse feature races or stake races and, with the board's approval and with the

concurrence of the horsemen's organization contracting with the association, other designated harness or quarter horse races during the period it is conducting the racing meeting, if all of the following conditions are met:

(a) The authorization complies with federal laws, including, but not limited to, Chapter 57 (commencing with Section 3001) of Title 15 of the United States Code.

(b) Wagering is offered only within the racing inclosure and only within 36 hours of the running of the out-of-state feature race.

(c) The association conducts at least seven live races, and imports not more than four races on those days during a racing meeting when live races are being run.

(d) On a day during a racing meeting on which live races are not being run, the out-of-state feature race has a gross purse of at least one hundred thousand dollars (\$100,000).

SEC. 4. Section 19601 of the Business and Professions Code, as added by Chapter 311 of the Statutes of 1994, is amended to read:

19601. (a) Notwithstanding any other provision of law, a licensed association or fair that is conducting a live meeting in any racing zone may accept wagers on any race conducted in this state, if all of the following requirements are met:

(1) The association or fair that conducts the race and the association or fair that accepts wagers on that race have executed an agreement providing for the conditions for transmission of the audiovisual signal of the race and the amount of compensation, if any, to be paid to the association or fair conducting the transmitted race.

(2) The association or fair that conducts the racing meeting and the organization that is responsible for negotiating purse agreements, satellite wagering agreements, and all other business agreements on behalf of the horsemen participating in that racing meeting consent to the acceptance of the wagers. However, if consent is withheld, any party may appeal the withholding of consent to the board, which may determine that consent is not required.

(3) The association or fair conducts not less than eight races on days when the association or fair is licensed to conduct racing, except that fewer than eight live races per day may be conducted by the mutual agreement of the association or fair and the organization that is responsible for negotiating purse agreements, satellite wagering agreements, and all other business agreements on behalf of the horsemen participating in the racing meeting.

(4) Wagering is offered only within the association's or fair's racing inclosure or within the satellite wagering facility and only within seven days of the commencement of the racing program with the transmitted race.

(5) All wagers are included in the appropriate parimutuel pool at the racetrack of the association or fair where the race is conducted, or, at the election of the parties to the agreement required by paragraph (1), in the appropriate parimutuel pool of the racetrack of the association or fair that accepts the transmitted race.

(6) The association or fair accepting wagers on an out-of-zone transmitted race distributes the audiovisual signal of the race to, and accepts wagers from, all eligible satellite wagering facilities.

(b) Any association or fair accepting wagers under subdivision (a) shall deduct from the total amount handled in each conventional and exotic parimutuel pool on the transmitted race, the same percentages deducted pursuant to Article 9.5 (commencing with Section 19610) for races at its own meeting. However, if the wagers are from a quarter horse race meeting, then the amounts deducted shall be the same as for a quarter horse race meeting. Amounts deducted under this section, including amounts deducted from wagers on out-of-zone races within the inclosure of the association or fair, shall be distributed as provided under Section 19605.7 with respect to wagers made within the northern zone, or Section 19605.71 with respect to wagers made within the central or southern zone, except that amounts distributed for purposes other than state license fees and fees payable to the Equine Research Laboratory, School of Veterinary Medicine, University of California at Davis, and the California Diagnostic Veterinary Lab System shall be proportionally reduced by the amount of any fees paid as compensation to the association or fair conducting the transmitted race pursuant to subdivision (c). The method used to calculate the reduction in proportionate share shall be approved by the board. For wagers on out-of-zone races made within the association's or fair's inclosure, the percentage amount normally distributed as a satellite wagering facility commission, less any pro rata reduction required by this subdivision, shall be distributed instead as additional commissions and purses pursuant to Section 19605.8. Additionally, for all wagers on out-of-zone races, the percentage amount normally distributed for promotion of the program at satellite wagering facilities, less any pro rata reduction required by this subdivision, shall be distributed instead as additional commissions and purses pursuant to Section 19605.8.

(c) Nothing in this section precludes an association or fair from charging a fee as a condition of transmitting its races to another zone, except that any fee shall be allocated among all associations, fairs, and satellite wagering facilities receiving the transmitted race in proportion to the amount wagered at each location, and the fee shall not exceed 2.5 percent of the total amount wagered on each out-of-zone race. Any fees received by the association or fair that conducts the transmitted race shall be divided equally between commissions to the association or fair conducting the out-of-zone race and purses to horsemen that participate in the association's or fair's racing meeting.

(d) All breakage and unclaimed tickets, including unclaimed refunds, on wagers on out-of-zone races shall be distributed equally between the association or fair that accepts wagers on the transmitted race, and the horsemen, in the form of purses, who participate in the racing meeting of the association or fair that

accepts wagers on the transmitted race.

(e) All wagers made pursuant to this section shall be considered to have been wagered at a satellite wagering facility and shall be excluded from total handle for the purposes of Section 19611.

(f) Notwithstanding Section 19530.5, satellite wagering facilities operated by a county fair, district agricultural association fair, or citrus fruit fair in the Counties of Kern, Fresno, or Tulare shall be considered northern zone facilities and shall receive their audiovisual signal from the association or fair conducting a racing meeting in the northern zone that is authorized to distribute the signal and accept wagers on central and southern zone races. Satellite wagering facilities operated by a county fair, district agricultural association, or citrus fruit fair in the Counties of Santa Barbara or Ventura shall be considered central-southern zone facilities and shall receive the audiovisual signal from the association or fair conducting a racing meeting in the central or southern zone that is authorized to distribute the signal and accept wagers on central and southern zone races.

(g) All purse moneys derived from wagering on out-of-zone races at fair racing meetings conducted shall be distributed to all breeds of horses participating in the fair meeting in direct proportion to the purse money generated by breed on live races conducted during the fair race meeting.

(h) During calendar periods when both a fair and a thoroughbred association conduct live racing, the thoroughbred association shall be the association authorized to distribute the signal and accept wagers on out-of-zone races. The amounts deducted under this section shall be distributed on any day of overlap as provided in Section 19607.5 subject to the agreements specified in paragraph (1) of subdivision (a), except that the applicable state license fee shall be at the rate or rates specified for nonfair meetings in subdivision (b) of Section 19605.7.

(i) During calendar periods when a thoroughbred association and any other breed association are conducting a racing meeting in the same zone, the thoroughbred association shall be the association authorized to distribute out-of-zone thoroughbred or fair races, except that the thoroughbred association may waive this right and allow the other breed racing association conducting a race meeting to distribute the signal and accept wagers on out-of-zone thoroughbred or fair races for any racing day or days. For the purposes of this subdivision, the combined central and southern zone shall be considered one zone.

(j) In order to encourage additional intrastate simulcasting, maximize state revenues, and further the purposes of this section, the board may adopt regulations to ensure that all horseracing programs conducted within the state are exposed to the maximum number of racing fans. The regulations may include, but are not limited to, the following:

- (1) Establishing a minimum number of out-of-zone races that

must be accepted by associations and fairs that contract to accept out-of-zone wagers pursuant to subdivision (a).

(2) Requiring associations, fairs, and satellite wagering facilities to present out-of-zone audiovisual signals to racing fans in substantially the same manner as in-zone signals are presented.

(3) Giving racing fans the opportunity to make wagers on out-of-zone racing programs at all parimutuel terminals where wagers on in-zone races are accepted.

SEC. 5. Section 19605 of the Business and Professions Code, as amended by Chapter 311 of the Statutes of 1994, is amended to read:

19605. (a) Notwithstanding any other provision of law, the board may authorize an association licensed to conduct a racing meeting in the northern zone to operate a satellite wagering facility for wagering on races conducted in the northern zone at its racetrack inclosure subject to all of the conditions specified in Section 19605.3, and may authorize an association licensed to conduct a racing meeting in the central or southern zone to operate a satellite wagering facility for wagering on races conducted in the central or southern zone at its racetrack inclosure subject to the conditions specified in subdivisions (a) to (e), inclusive, of Section 19605.3 and the conditions and limitations set forth in Section 19605.6.

(b) Notwithstanding any other provision of law, no satellite wagering facility, except a facility that is located at a track where live racing is conducted, shall be located within 20 miles of any existing satellite wagering facility or of any track where a racing association conducts a live racing meeting. However, in the northern zone, a racing association or any existing satellite wagering facility may waive the prohibition contained in this subdivision and may consent to the location of another satellite wagering facility within 20 miles of the facility or track. This subdivision does not apply to an association described in subdivision (g) of Section 19531.

(c) Notwithstanding subdivision (b), the Department of Food and Agriculture may approve not more than three satellite wagering facilities that are licensed jointly to the 1a District Agricultural Association and the 5th District Agricultural Association and that are located on the fairgrounds of the 1a District Agricultural Association or within the boundaries of the City and County of San Francisco. Before a satellite wagering facility may be licensed for the 1997 and subsequent calendar years under this subdivision, the department shall conduct a one-year test at the proposed site in order to determine the impact of the proposed facility on total state parimutuel revenues and on attendance and wagering at existing racetracks and fair satellite wagering facilities in the Counties of Alameda, San Mateo, Santa Clara, and Solano. Notwithstanding Section 19605.1, a satellite wagering facility may be located on property leased to one or both fairs. Notwithstanding any other provision of law, the fairs may contract for the operation and management of a satellite wagering facility with an individual racing association or a partnership, joint venture, or other affiliation of two

or more racing associations that are licensed to conduct thoroughbred meetings within the northern zone.

(d) Subdivision (b) shall not be construed to prohibit the location of satellite wagering facilities within 20 miles of any existing or proposed satellite facility established pursuant to subdivision (c).

SEC. 6. Section 19605.51 of the Business and Professions Code is amended to read:

19605.51. Notwithstanding subdivision (a) of Section 19605, and Section 19605.1, any county fair or district agricultural association in San Joaquin, Humboldt, or Fresno County may, with the approval of the Department of Food and Agriculture and the authorization of the board, subject to the conditions specified in Section 19605.3, operate a satellite wagering facility on leased premises within the boundaries of that fair or district agricultural association, but may only operate one such facility.

SEC. 6.5. Section 19605.7 of the Business and Professions Code is amended to read:

19605.7. The total percentage deducted from wagers at satellite wagering facilities in the northern zone shall be the same as the deductions for wagers at the racetrack where the racing meeting is being conducted and shall be distributed as set forth in this section. Amounts deducted under this section shall be distributed as follows:

(a) For thoroughbred meetings, 2.5 percent of the amount handled by the satellite wagering facility on conventional wagers and 4 percent on exotic wagers shall be distributed to the racing association for payment to the state as a license fee, 2 percent retained by the satellite wagering facility as a commission for the right to do business, as a franchise, and such commission is not for the use of any real property, 2.5 percent or the amount of actual operating expenses, as determined by the board, whichever is less, distributed to an organization described in Section 19608.2, and four-tenths of 1 percent deposited with the official registering agency pursuant to subdivision (a) of Section 19617.2 and shall thereafter be distributed in accordance with subdivisions (b) and (c) of Section 19617.2, and thirty-three hundredths of one-tenth of 1 percent distributed to the Equine Research Laboratory and sixty-seven hundredths of one-tenth of 1 percent distributed to the California Veterinary Diagnostic Laboratory System, School of Veterinary Medicine, University of California at Davis. It is the intent of the Legislature that the thirty-three hundredths of one-tenth of 1 percent of funds distributed to the Equine Research Laboratory shall supplement, and not supplant, other funding sources.

(b) For harness, quarter horse, Appaloosa, Arabian, or mixed breed meetings, 1 percent of the amount handled by the satellite wagering facility on conventional wagers and 1 percent on exotic wagers shall be distributed to the racing association for payment to the state as a license fee, for fair meetings, 1.5 percent of the amount handled by the satellite wagering facility on conventional wagers

and 3 percent on exotic wagers shall be distributed to the racing association for payment to the state as a license fee, 2 percent retained by the satellite wagering facility as a commission for the right to do business, as a franchise, and such commission is not for the use of any real property, and 6 percent of the amount handled by the satellite wagering facility or the amount of actual operating expenses, as determined by the board, whichever is less, distributed to an organization described in Section 19608.2. In addition, in the case of quarter horses, four-tenths of 1 percent shall be deposited with the official registering agency pursuant to subdivision (b) of Section 19617.7 and shall thereafter be distributed in accordance with subdivisions (c), (d), and (e) of Section 19617.7; in the case of Appaloosas, four-tenths of 1 percent shall be deposited with the official registering agency pursuant to subdivision (b) of Section 19617.9 and shall thereafter be distributed in accordance with subdivisions (c), (d), and (e) of Section 19617.9; in the case of Arabians, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of Arabians; in the case of standardbreds, four-tenths of 1 percent shall be distributed for the California Standardbred Sires Stakes Program pursuant to Section 19619; in the case of thoroughbreds, four-tenths of 1 percent shall be deposited with the official registering agency pursuant to subdivision (a) of Section 19617.2 and shall thereafter be distributed in accordance with subdivisions (b) and (c) of Section 19617.2; and thirty-three hundredths of one-tenth of 1 percent shall be distributed to the Equine Research Laboratory and sixty-seven hundredths of one-tenth of 1 percent distributed to the California Veterinary Diagnostic Laboratory System, School of Veterinary Medicine, University of California at Davis. It is the intent of the Legislature that the thirty-three hundredths of one-tenth of 1 percent of funds distributed to the Equine Research Laboratory shall supplement, and not supplant, other funding sources.

(c) In addition to the distributions specified in subdivision (a) or (b), for thoroughbred and fair meetings only, six-tenths of 1 percent of the total amount handled by each satellite wagering facility authorized pursuant to Section 19605.1 and one-half of 1 percent of the total amount handled at each other satellite wagering facility shall be allocated to the facility for promotion of that meeting's program. For harness and mixed breed meetings, 1 percent of the total amount handled by each satellite wagering facility shall be distributed to an organization described in Section 19608.2 for promotion of the program at satellite wagering facilities. For quarter horse meetings, one-half of 1 percent of the total amount handled by each satellite wagering facility shall be distributed to an organization described in Section 19608.2 for the promotion of the program at satellite wagering facilities, and one-half of 1 percent of the total amount handled by each satellite wagering facility shall be distributed according to a written agreement for each race meeting between the licensed racing association and the organization

representing the horsemen participating in the meeting.

(d) In addition to the distributions specified in subdivisions (a), (b), and (c), for thoroughbred meetings, four-tenths of 1 percent of the total amount handled at each satellite wagering facility authorized pursuant to Section 19605.1 and one-half of 1 percent of the total amount handled at each other satellite wagering facility shall be allocated to the association conducting the racing program to reimburse it for any costs of offsite stabling and vanning that are required pursuant to Section 19535. The amount of the reimbursement payable to an association for offsite stabling shall not exceed the actual cost to the association of maintaining stalls at its racetrack plus the actual costs incurred by the association to provide vanning and transportation of racehorses from offsite stabling facilities to its racetrack.

(e) In addition to the distributions specified in subdivisions (a), (b), and (c), for fair meetings, four-tenths of 1 percent of the total amount handled at each satellite wagering facility authorized pursuant to Section 19605.1 and one-half of 1 percent of the total amount handled at each other satellite wagering facility shall be allocated to the organization representing racing fairs to reimburse fairs for the actual cost of providing offsite stabling required by the board pursuant to Section 19535. If fairs contract with associations to provide offsite stabling during fair meetings, the cost incurred by fairs shall not exceed the actual cost to the association of maintaining the stalls or the amount of reimbursement funds made available pursuant to this subdivision, whichever is less. In the event of a disagreement between an association and the organization representing racing fairs or the organization representing the majority of horsemen participating at the meeting with respect to the actual cost of maintaining stalls, the board, at the request of the association or the organization representing racing fairs or the organization representing the majority of horsemen participating at the meeting, shall determine within 60 days the amount of actual costs incurred. For purposes of this subdivision, "actual cost" does not include fixed overhead or administrative expenses that would be incurred by the association in the absence of an agreement to provide offsite stabling during fair meetings.

(f) Any of the promotional funds distributed pursuant to subdivision (c) that are not expended in the year in which they are collected may be expended in the following year. If promotion funds expended in any year exceed the amount collected for that year, the funds expended in the following year shall be reduced by the excess amount.

(g) Any of the stabling and vanning reimbursement funds distributed pursuant to subdivision (d) that are not expended during the meeting at which they are collected shall be retained by the racing association to offset its costs, in excess of payments by the organization representing fairs, of maintaining the stalls contracted for by fairs pursuant to subdivision (e).

(h) Additionally, for thoroughbred, harness, quarter horse, mixed breed, and fair meetings, thirty-three hundredths of 1 percent of the total amount handled by each satellite wagering facility shall be paid to the city or county in which the satellite wagering facility is located pursuant to Section 19610.3 or 19610.4.

(i) Notwithstanding any other provision of law, a racing association is responsible for the payment of the state license fee as required by this section.

SEC. 7. Section 19605.71 of the Business and Professions Code is amended to read:

19605.71. The total percentage deducted from wagers at satellite wagering facilities in the central and southern zone shall be the same as the percentage deducted from wagers at the racetrack where the racing meeting is being conducted and shall be distributed as set forth in this section. Amounts deducted by a satellite wagering facility under this section shall be distributed as follows:

(a) For thoroughbred meetings, 2.5 percent of the amount handled by the satellite wagering facility on conventional wagers and 4 percent on exotic wagers shall be distributed to the racing association for payment to the state as a license fee, 2 percent retained by the satellite wagering facility as a commission for the right to do business, as a franchise, and such commission is not for the use of any real property, 2.5 percent or the amount of actual operating expenses, as determined by the board, whichever is less, distributed to an organization described in Section 19608.2, and four-tenths of 1 percent deposited with the official registering agency pursuant to subdivision (a) of Section 19617.2 and shall thereafter be distributed in accordance with subdivisions (b) and (c) of Section 19617.2, and thirty-three hundredths of one-tenth of 1 percent distributed to the Equine Research Laboratory and sixty-seven hundredths of one-tenth of 1 percent distributed to the California Veterinary Diagnostic Laboratory System, School of Veterinary Medicine, University of California at Davis. It is the intent of the Legislature that the thirty-three hundredths of one-tenth of 1 percent of funds distributed to the Equine Research Laboratory shall supplement, and not supplant, other funding sources.

(b) For harness, quarter horse, Appaloosa, Arabian, or mixed breed meetings, 1 percent of the amount handled by the satellite wagering facility on conventional wagers and 1 percent on exotic wagers shall be distributed to the racing association for payment to the state as a license fee, for fair meetings, 1.5 percent of the amount handled by the satellite wagering facility on conventional wagers and 3 percent on exotic wagers shall be distributed to the racing association for payment to the state as a license fee, 2 percent retained by the satellite wagering facility as a commission for the right to do business, as a franchise, and such commission is not for the use of any real property, and 6 percent of the amount handled by the satellite wagering facility or the amount of actual operating

expenses, as determined by the board, whichever is less, distributed to an organization described in Section 19608.2. In addition, in the case of quarter horses, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of quarter horses pursuant to Section 19617.6; in the case of Appaloosas, four-tenths of 1 percent shall be deposited with the official registering agency pursuant to subdivision (b) of Section 19617.9 and shall thereafter be distributed in accordance with subdivisions (c), (d), and (e) of Section 19617.9; in the case of Arabians, four-tenths of 1 percent shall be distributed as breeders' awards to breeders of Arabians; in the case of standardbreds, four-tenths of 1 percent shall be distributed for the California Standardbred Sires Stakes Program pursuant to Section 19619; in the case of thoroughbreds, four-tenths of 1 percent shall be deposited with the official registering agency pursuant to subdivision (a) of Section 19617.2 and shall thereafter be distributed in accordance with subdivisions (b) and (c) of Section 19617.2; and thirty-three hundredths of one-tenth of 1 percent shall be distributed to the Equine Research Laboratory and sixty-seven hundredths of one-tenth of 1 percent distributed to the California Veterinary Diagnostic Laboratory System, School of Veterinary Medicine, University of California at Davis. It is the intent of the Legislature that the thirty-three hundredths of one-tenth of 1 percent of funds distributed to the Equine Research Laboratory shall supplement, and not supplant, other funding sources.

(c) In addition, for thoroughbred meetings and harness, Appaloosa, mixed breed, or fair meetings, 1 percent shall be distributed to an organization described in Section 19608.2 for promotion of the program at satellite wagering facilities. Notwithstanding any other provision of law, on wagers made in the Counties of Orange and Los Angeles on thoroughbred races conducted in the County of Orange or Los Angeles, or both, excluding the 50th District Agricultural Association, the amount deducted for promotion of the satellite wagering program at satellite wagering facilities shall be one-half of 1 percent. Any of the promotion funds that are not distributed in the year in which they are collected may be distributed in the following year. If promotion funds distributed in any year exceed the amount collected for that year, the funds distributed in the following year shall be reduced by the excess amount. For quarter horse meetings, one-half of 1 percent of the total amount handled by each satellite wagering facility shall be distributed to an organization described in Section 19608.2 for the promotion of the program at satellite wagering facilities, and one-half of 1 percent of the total amount handled by each satellite wagering facility shall be distributed according to a written agreement for each race meeting between the licensed racing association and the organization representing the horsemen participating in the meeting. To the extent that funds representing a percentage greater than one-half of 1 percent of funds wagered on thoroughbred races conducted in the Counties of Orange and Los

Angeles have been distributed, prior to July 27, 1992, to an organization described in Section 19608.2 for promotion activities, but remain unused, those funds shall be redistributed, 50 percent as commissions to the association that conducts the racing meeting, and 50 percent as purses to the horsemen participating in the racing meeting. Additionally, thirty-three hundredths of 1 percent of the total amount handled by the satellite wagering facility shall be paid to the city or county in which the satellite wagering facility is located pursuant to Section 19610.3 or 19610.4.

(d) Notwithstanding any other provision of law, a racing association is responsible for the payment of the state license fee as required by this section.

SEC. 8. Section 19610.7 of the Business and Professions Code is repealed.

SEC. 9. Section 19612.1 of the Business and Professions Code is amended to read:

19612.1. (a) In addition to the amounts otherwise deducted pursuant to this chapter, every association with an average daily handle of more than seven hundred fifty thousand dollars (\$750,000) that conducts a harness, quarter, Arabian, or Appaloosa horse meeting may deduct from the total amount handled in daily double, quiniela, exacta, and other multiple wagering pools approved by the board up to 3 percent thereof to be distributed as additional commissions and purses in the following percentage ratio: to the association as additional commissions, not more than 59.5 percent; and to the horsemen as additional purses, not less than 40.5 percent, except that the association and the horsemen's organization may agree to a different distribution by percentage of these funds.

(b) From the amount deducted for quarter horse purses under subdivision (a), a sum equal to 25 percent thereof shall be deposited with the official registering agency pursuant to subdivision (b) of Section 19617.7 and shall thereafter be distributed in accordance with subdivisions (c), (d), and (e) of Section 19617.7.

The board shall designate the official registering agency representing quarter horse horsemen to administer this subdivision and to distribute premiums. The agency may, with the approval of the board, make a deduction for expenses not to exceed 10 percent of the total awards fund.

(c) From the amount deducted for Arabian horse purses under subdivision (a), a sum equal to 13.33 percent thereof shall be held by the association to be paid as owners' premiums for California-bred Arabian horses winning or placing at the meeting. The premiums shall be distributed within 30 days of the close of the meeting on a prorated percentage basis of first money earned to persons owning California-bred Arabian horses at the time of their wins or places in races having a total purse value in excess of the average purse value for races, other than stakes races, won by California-bred Arabian horses during the previous year. Except for fair meetings, the maximum award made to an owner in any one race shall not exceed

15 percent of the total awards fund. The board shall designate the officially recognized organization representing Arabian horsemen to administer this subdivision and to distribute premiums. The organization may, with the approval of the board, make a deduction for expenses not to exceed 5 percent of the total awards fund.

(d) From the amount deducted for Appaloosa purses under subdivision (a), a sum equal to 13.33 percent thereof shall be deposited with the official registering agency pursuant to subdivision (b) of Section 19617.9 and shall thereafter be distributed in accordance with subdivisions (c), (d), and (e) of Section 19617.9.

The board shall designate the official registering agency representing Appaloosa horsemen to administer this subdivision and to distribute premiums. The agency may, with the approval of the board, make a deduction for expenses of up to, but not to exceed, 10 percent of the total awards fund.

(e) At least 30 days prior to the commencement of its meeting, the association shall file with the board a statement of the additional deduction to be made pursuant to subdivision (a). Except with the consent of the board, the amount of the deduction shall not be changed during the course of the meeting.

(f) In addition to the amounts otherwise deducted pursuant to this section, every harness racing association shall deduct an additional 2 percent of its exotic parimutuel pools to be distributed equally as commissions and purses.

SEC. 10. Section 19612.2 of the Business and Professions Code is amended to read:

19612.2. (a) In addition to the amounts otherwise deducted pursuant to this chapter, every association with an average daily handle of seven hundred fifty thousand dollars (\$750,000) or less, except an association subject to Section 19614.2, which conducts a harness, quarter, Arabian, or Appaloosa horse meeting may deduct from the total amount handled in its daily exotic parimutuel pool up to 3 percent thereof to be distributed as additional commissions and purses as follows:

(1) For quarter horse meetings conducted other than pursuant to Section 19612.6 and for Appaloosa horse meetings, as agreed to by the association conducting the meeting and the organization representing the horsemen participating at the meeting.

(2) For harness and quarter horse meetings conducted pursuant to Section 19612.6, 50 percent as commissions and 50 percent as purses.

(b) From the amount deducted for quarter horse purses under subdivision (a), a sum equal to 25 percent thereof shall be deposited with the official registering agency pursuant to subdivision (b) of Section 19617.7 and shall thereafter be distributed in accordance with subdivisions (c), (d), and (e) of Section 19617.7.

The board shall designate the official registering agency representing quarter horse horsemen to administer this subdivision and to distribute premiums. The agency may, with the approval of

the board, make a deduction for expenses not to exceed 10 percent of the total awards fund.

(c) From the amount deducted for Arabian horse purses under subdivision (a), a sum equal to 13.33 percent thereof shall be held by the association to be paid as owners' premiums for California-bred Arabian horses winning or placing at the meeting. The premiums shall be distributed within 30 days of the close of the meeting on a prorated percentage basis of first money earned to persons owning California-bred Arabian horses at the time of their wins or places in races having a total purse value in excess of the average purse value for races, other than stakes races, won by California-bred Arabian horses during the previous year. Except for fair meetings, the maximum award made to an owner in any one race shall not exceed 15 percent of the total awards fund.

The board shall designate the officially recognized organization representing Arabian horsemen to administer this subdivision and to distribute premiums. The organization may, with the approval of the board, make a deduction for expenses not to exceed 5 percent of the total awards fund.

(d) From the amount deducted for Appaloosa purses under subdivision (a), a sum equal to 13.33 percent thereof shall be deposited with the official registering agency pursuant to subdivision (b) of Section 19617.9 and shall thereafter be distributed in accordance with subdivisions (c), (d), and (e) of Section 19617.9.

The board shall designate the official registering agency representing Appaloosa horsemen to administer this subdivision and to distribute premiums. The agency may, with the approval of the board, make a deduction for expenses not to exceed 10 percent of the total awards fund.

(e) At least 30 days prior to the commencement of its meeting, the association shall file with the board a statement of the additional deduction to be made pursuant to subdivision (a) and its distribution between commissions and purses. Except with the consent of the board, the amount of the deduction and its distribution shall not be changed during the course of the meeting.

(f) In addition to any deductions pursuant to this section, every harness racing association shall also deduct an additional 2 percent of its daily exotic parimutuel pool to be distributed equally as commissions and purses.

SEC. 11. Section 19613 of the Business and Professions Code is amended to read:

19613. (a) Except as provided in subdivisions (b), (c), (d), (e), and (f), the portion deducted for purses pursuant to this chapter shall be paid to or for the benefit of the horsemen at the racing meeting.

(b) Any association other than a fair that conducts a thoroughbred racing meeting shall pay to the horsemen's organization contracting with the association with respect to the conduct of racing meetings for administrative expenses and services rendered to horsemen an

amount equivalent to 1.5 percent of the portion, and for a pension plan for backstretch personnel to be administered by the horsemen's organization, an amount equivalent to an additional 1 percent of the portion. The remainder of the portion shall be distributed as purses.

(c) Any other association may pay to the horsemen's organization contracting with the association with respect to the conduct of racing meetings for administrative expenses and services rendered to horsemen an amount out of the portion as may be determined by the association by agreement or otherwise, but, in all events, shall include, relative to a thoroughbred horsemen's organization, 1 percent of the portion for a pension plan for backstretch personnel to be administered by the horsemen's organization. The remainder of the portion shall be distributed as purses.

(d) Notwithstanding subdivisions (b) and (c), any association conducting a fair racing meeting or conducting a mixed breed racing meeting shall pay to the horsemen's organizations contracting with the association with respect to the conduct of races for their respective breeds of horses at the meetings for administrative expenses and services rendered to their respective horsemen those amounts out of the portion as determined by the horsemen's organization for the respective breeds with the approval of the board.

Pursuant to this subdivision, amounts equivalent to 3 percent of the portion for the horsemen's organization shall be distributed to any thoroughbred horsemen's organizations contracting with an association for a fair racing meeting or participating in mixed breed racing meetings as follows: 1 percent for administrative expenses and services rendered to their respective horsemen, 1 percent for welfare funds, and 1 percent for a pension program for backstretch personnel, to be administered by the thoroughbred horsemen's organizations.

(e) Any association other than a fair that conducts a quarter horse racing meeting, except a mixed breed meeting, shall pay to the horsemen's organization contracting with the association with respect to the conduct of racing meetings for administrative expenses and services rendered to horsemen an amount equal to its expenses, but not to exceed 3 percent of the portion. The remainder of the portion shall be distributed as purses.

(f) For racing meetings other than thoroughbred meetings, if no contract has been signed between the association conducting the racing meeting and the organization representing the horsemen by the time the racing meeting commences, the distribution of purses shall be governed by the following:

(1) If the association conducted a racing meeting within the past 15 months and a contract was in existence for that meeting with the horsemen's organization and the association is conducting a subsequent meeting for the same breed or mixed breeds, the amounts payable to the horsemen's organization under subdivision (c) shall be computed under the provisions of the last signed contract

between the parties.

(2) This subdivision applies regardless of the cause of the failure to execute a contract, whether that failure is a result of inadvertence or otherwise.

(3) For racing meetings which do not come within paragraph (1), the board shall, within 20 days after the commencement of the racing meeting, determine the amounts payable to the horsemen's organization for administrative expenses and services, and provide for the direct payment of those amounts.

(g) Amounts distributed pursuant to this section are derived from owners' purses.

(h) This section shall remain in effect only until January 1, 1995, and as of that date is repealed, unless a later enacted statute which is enacted before January 1, 1995, deletes or extends that date.

SEC. 12. Section 19613 of the Business and Professions Code, as added by Chapter 62 of the Statutes of 1994, is amended to read:

19613. (a) Except as provided in subdivisions (b), (c), (d), (e), and (f), the portion deducted for purses pursuant to this chapter shall be paid to or for the benefit of the horsemen at the racing meeting.

(b) Any association other than a fair that conducts a thoroughbred racing meeting shall pay to the owners' organization contracting with the association with respect to the conduct of racing meetings for administrative expenses and services rendered to owners, an amount not to exceed two-thirds of 1 percent of the portion, and to a trainers' organization for administrative expenses and services rendered to trainers and backstretch employees an amount equivalent to one-third of 1 percent of the portion. That association shall also pay an amount for a pension plan for backstretch personnel to be administered by the trainers' organization equivalent to an additional 1 percent of the portion. The remainder of the portion shall be distributed as purses.

(c) Any other association may pay to the horsemen's organization contracting with the association with respect to the conduct of racing meetings for administrative expenses and services rendered to horsemen an amount out of the portion as may be determined by the association by agreement or otherwise, but, in all events, shall include, relative to a thoroughbred horsemen's organization racing, 1 percent of the portion for a pension plan for backstretch personnel to be administered by the trainers' organization. The remainder of the portion shall be distributed as purses.

(d) Notwithstanding subdivisions (b) and (c), any association conducting a fair racing meeting or conducting a mixed breed racing meeting shall pay to the horsemen's organizations contracting with the association with respect to the conduct of races for their respective breeds of horses at the meetings for administrative expenses and services rendered to their respective horsemen those amounts out of the portion as determined by the horsemen's organization for the respective breeds with the approval of the

board.

Pursuant to this subdivision, amounts not to exceed 3 percent of the portion for the owners' and trainers' organizations shall be distributed to any thoroughbred owners' and trainers' organizations contracting with an association for a fair racing meeting or participating in mixed breed racing meetings as follows: two-thirds of one percent to the owners' organization and one-third of 1 percent to the trainers' organization for administrative expenses and services rendered to both owners and trainers, 1 percent for welfare funds, and 1 percent for a pension program for backstretch personnel, to be administered by the thoroughbred trainers' organization.

(e) Any association other than a fair that conducts a quarter horse racing meeting, except a mixed breed meeting, shall pay to the horsemen's organization contracting with the association with respect to the conduct of racing meetings for administrative expenses and services rendered to horsemen an amount equal to its expenses, but not to exceed 3 percent of the portion. The remainder of the portion shall be distributed as purses.

(f) For racing meetings other than thoroughbred meetings, if no contract has been signed between the association conducting the racing meeting and the organization representing the horsemen by the time the racing meeting commences, the distribution of purses shall be governed by the following:

(1) If the association conducted a racing meeting within the past 15 months and a contract was in existence for that meeting with the horsemen's organization and the association is conducting a subsequent meeting for the same breed or mixed breeds, the amounts payable to the horsemen's organization under subdivision (c) shall be computed under the provisions of the last signed contract between the parties.

(2) This subdivision applies regardless of the cause of the failure to execute a contract, whether that failure is a result of inadvertence or otherwise.

(3) For racing meetings that do not come within paragraph (1), the board shall, within 15 days after the commencement of the racing meeting, determine the amounts payable to the horsemen's organization for administrative expenses and services, and provide for the direct payment of those amounts.

(g) Amounts distributed pursuant to this section are derived from owners' purses.

(h) For the purposes of this section, the following definitions shall apply:

(1) "Owner" means a person currently licensed by the board as an owner of a thoroughbred racehorse.

(2) "Trainer" means a person currently licensed by the board as an owner and trainer or as a trainer of a thoroughbred racehorse.

(i) This section shall become operative on January 1, 1995.

SEC. 12.5. Section 19613.2 of the Business and Professions Code is amended to read:

19613.2. (a) Any horsemen's organization or organization representing horsemen shall be incorporated under the laws of the State of California in order to receive a distribution or deduction under this chapter. Each corporation shall represent a majority of the horsemen in the state with respect to the breed of horses the corporation represents. The board shall initially determine the organization which represents California horsemen with respect to each breed. Any distribution or deduction received by any of those organizations shall be used only for the benefit of California horsemen.

(b) Notwithstanding subdivision (a), any organization incorporated in a state other than California is exempt from the requirements of subdivision (a) until January 1, 1991, if all of the following conditions exist:

(1) All of the members of the board of directors of the organization are legal residents of the State of California.

(2) No funds of the organization other than nominal dues or incidental amounts have been paid to an out-of-state organization during the previous five years.

(3) The organization has no obligation to any out-of-state organization requiring it to make payments of any kind other than voluntary payments.

(c) Upon recognition by the board of a successor horsemen's organization or organization representing horsemen, the board shall apportion those assets which were generated pursuant to Section 19613 for the benefit of the horsemen and the successor organization.

SEC. 12.6. Section 19613.2 of the Business and Professions Code is amended to read:

19613.2. (a) Any horsemen's owners', or trainers' organization or organization representing horsemen, owners, or trainers shall be incorporated under the laws of the State of California in order to receive a distribution or deduction under this chapter. Each corporation shall represent a majority of the horsemen, owners, or trainers in the state with respect to the breed of horses the corporation represents. The board shall initially determine the organization that represents California horsemen with respect to each breed. Any distribution or deduction received by any of those organizations shall be used only for the benefit of California horsemen.

(b) No portion of the amount distributed pursuant to Section 19613 to an owners', trainers', or horsemen's organization shall be used for the purpose of making contributions to candidates for public office, or to urge or oppose any measure on the ballot. The organizations representing owners, trainers, and horsemen may expend no more than the amount reasonably necessary to represent its members before the Legislature and the board with respect to issues that directly affect services rendered to owners, trainers, and horsemen. The board shall annually review the budgets of the organizations representing owners, trainers, and horsemen and shall

determine the appropriate amount to be expended for providing the representation authorized by this subdivision.

(c) If an owners', trainers', or horsemen's organization is conducting itself contrary to statute, regulation, or order of the board, the board may take disciplinary action against the organization, including ordering an association to withhold any distribution authorized pursuant to Section 19613.

(d) Upon recognition by the board of a successor horsemen's owners', or trainers' organization or organization representing horsemen, owners, or trainers, the board shall apportion those assets which were generated pursuant to Section 19613 for the benefit of the horsemen and the successor organization.

SEC. 13. Section 19614.2 of the Business and Professions Code is amended to read:

19614.2. (a) In addition to the amounts otherwise deducted pursuant to this chapter, the California Exposition and State Fair, or a district or county fair, or an association conducting its meeting pursuant to Section 19549.1, may deduct from the total amount handled in daily double, quiniela, exacta, and other multiple wagering pools approved by the board up to 3 percent thereof to be distributed as additional commissions and purses in the current year of the fair meet. Of the amount deducted, if any, 52 percent shall be distributed as additional purses and 48 percent shall be distributed as additional commissions. For racing meetings conducted pursuant to Section 19549.3, of the amounts deducted, if any, 50 percent shall be distributed as purses and 50 percent shall be distributed as commissions.

(b) At least 30 days prior to the commencement of its meeting, the association shall file with the board a statement of the additional deduction to be made pursuant to subdivision (a). Except with the consent of the board, the amount of the deduction shall not be changed during the course of the meeting.

(c) From the amount deducted for thoroughbred purses under subdivision (a), a sum equal to 13.33 percent thereof shall be held by the association to be deposited with the official registering agency pursuant to subdivision (a) of Section 19617.2, and shall thereafter be distributed in accordance with subdivisions (b) and (c) of Section 19617.2.

(d) From the amount deducted for quarter horse purses under subdivision (a), a sum equal to 25 percent thereof shall be paid as breeder premiums and owners' and stallion awards as provided in Section 19617.7, shall be deposited with the official registering agency pursuant to subdivision (b) of Section 19617.7, and shall thereafter be distributed in accordance with subdivisions (c), (d), and (e) of Section 19617.7.

(e) From the amount deducted for Arabian horse purses under subdivision (a), a sum equal to 13.33 percent thereof shall be held by the association to be paid as owners' premiums for California-breds winning or placing at the meeting. The premiums shall be

distributed within 30 days of the close of the meeting on a prorated percentage basis of first moneys earned to persons owning California-bred Arabian horses at the time of their wins or places in races having a total purse value in excess of the average purse value for races, other than stakes races, won by California-bred Arabian horses during the previous year. The board shall designate the officially recognized organization representing Arabian horsemen to administer this subdivision and to distribute premiums. The organization may, with the approval of the board, make a deduction for expenses of up to, but not to exceed, 10 percent of the total awards fund.

(f) From the amount deducted for Appaloosa horse purses under subdivision (a), a sum equal to 13.33 percent thereof shall be paid as breeder premiums and owners' and stallion awards as provided in Section 19617.9, and shall be deposited with the official registering agency pursuant to subdivision (b) of Section 19617.9, and shall thereafter be distributed in accordance with subdivisions (c), (d), and (e) of Section 19617.9.

(g) Amounts distributed pursuant to this section are derived from owners' purses.

SEC. 14. Section 19616 of the Business and Professions Code is amended to read:

19616. (a) Notwithstanding any other provision of law, wagers accepted on out-of-state feature races pursuant to Section 19596, but not included in the parimutuel pool or pools of the entity conducting the out-of-state racing, shall be placed in a separate parimutuel pool or pools and shall be distributed as provided by this section.

(b) Each association accepting wagers on an out-of-state feature race shall deduct a percentage of the amount handled in its conventional and exotic parimutuel pools that is equal to the percentage deducted from the amount handled by the association in its parimutuel pools at its racing meeting.

(c) Each association shall pay a state license fee at the rate or rates applicable to the races of the association's racing program for the day on which the out-of-state feature race is offered. If the association does not conduct a regular racing program on that day of the meeting, the state license fee shall be paid at the rate or rates applicable to the most immediate prior day of the racing program.

(d) Breakage and unclaimed tickets on out-of-state feature races shall be distributed 50 percent as commissions and 50 percent as purses.

(e) The amount remaining from the deduction under subdivision (b), after payment of the state license fee and the contractual payment to the out-of-state host racing association, shall be distributed 50 percent as commissions and 50 percent as purses.

(f) From the amount distributed under subdivision (e) for Appaloosa purses, a sum equal to 13.33 percent thereof shall be held by the association to be deposited with the official registering agency pursuant to subdivision (b) of Section 19617.9, and shall thereafter be

distributed in accordance with subdivisions (c), (d), and (e) of Section 19617.9.

(g) From the amount distributed for thoroughbred purses under subdivision (e), a sum equal to 13.33 percent thereof shall be held by the association to be deposited with the official registering agency pursuant to subdivision (a) of Section 19617.2, and shall thereafter be distributed in accordance with subdivisions (b) and (c) of Section 19617.2.

(h) From the amount distributed under subdivision (e) for quarter horse purses, a sum equal to 13.33 percent thereof shall be held by the association to be deposited with the official registering agency pursuant to subdivision (b) of Section 19617.7, and shall thereafter be distributed in accordance with subdivisions (c), (d), and (e) of Section 19617.7.

SEC. 15. Section 19616.1 of the Business and Professions Code, as amended by Chapter 60 of the Statutes of 1994, is amended to read:

19616.1. (a) Notwithstanding any other provision of law, wagers accepted on out-of-state feature races pursuant to Section 19596 or on any multiple race exotic wager involving races from out of state that is designated by the board as a national wager and included in the parimutuel pool or pools of the entity conducting the out-of-state racing shall be distributed as provided in this section.

(b) From the amount handled by the association and included in the parimutuel pool or pools of the entity conducting the out-of-state racing, each association may, with the permission of the board, deduct a percentage equal to the percentage deducted by the entity conducting the out-of-state racing.

(c) From the amount deducted pursuant to subdivision (b), if any, each association shall pay a state license fee at a pro rata rate applicable to the races of the association's racing program for the day on which the out-of-state feature is offered.

(d) Breakage and unclaimed tickets on out-of-state feature races shall be distributed 50 percent as commission and 50 percent as purses.

(e) The amount remaining from the deduction under subdivision (b), if any, after payment of the state license fee and the contractual payment to the out-of-state host racing association, shall be distributed 50 percent as commissions and 50 percent as purses.

(f) From the amount distributed under subdivision (e) for Appaloosa purses, a sum equal to 13.33 percent thereof shall be held by the association to be deposited with the official registering agency pursuant to subdivision (b) of Section 19617.9, and shall thereafter be distributed in accordance with subdivisions (c), (d), and (e) of Section 19617.9.

(g) From the amount distributed for thoroughbred purses under subdivision (e), a sum equal to 13.33 percent thereof shall be held by the association to be deposited with the official registering agency pursuant to subdivision (a) of Section 19617.2, and shall thereafter be distributed in accordance with subdivisions (b) and (c) of Section

19617.2.

(h) From the amount distributed under subdivision (e) for quarter horse purses, a sum equal to 13.33 percent thereof shall be held by the association to be deposited with the official registering agency pursuant to subdivision (b) of Section 19617.7, and shall thereafter be distributed in accordance with subdivisions (c), (d), and (e) of Section 19617.7.

(i) For the purposes of subdivisions (a) and (b), with respect to any multiple race exotic wager involving races from out of state that is designated by the board as a national wager, the out-of-state totalizator hub for the wager shall be considered the "entity conducting the out-of-state racing."

SEC. 16. Section 19617.5 of the Business and Professions Code is amended to read:

19617.5. (a) Any association conducting a quarter horse or harness racing meeting shall pay the sums required to be paid by Section 19567 out of the amounts deducted from the parimutuel pool for license fees, commissions, and purses in the same proportion as the distribution of the license fees, commissions, and purses.

Those sums deducted for quarter horse meetings shall be deposited with the official registering agency pursuant to subdivision (b) of Section 19617.7 and shall thereafter be distributed in accordance with subdivisions (c), (d), and (e) of Section 19617.7.

(b) Notwithstanding subdivision (a), any association conducting a fair racing meeting other than a harness meeting or conducting a mixed breed meeting shall deduct an additional 0.34 of 1 percent of the total amount handled in its daily conventional and exotic parimutuel pools for all races for payment of breeder and stallion awards provided for in this chapter. Following the close of the meeting, the respective official registering agency or officially recognized horsemen's organization shall distribute the amounts so deducted as follows:

(1) With respect to thoroughbred races, the amounts deducted shall be paid as breeder awards, owners' premiums, and stallion awards as provided in Section 19617.2.

(2) With respect to quarter horse races, the amounts deducted shall be paid as breeder premiums, and owners' and stallion awards, as provided in Section 19617.7.

(3) With respect to Arabian races, the amounts deducted shall be paid as breeder awards as provided in Section 19567 and the amount remaining shall be distributed as stallion awards as provided in Section 19617.8.

(4) With respect to Appaloosa races, the amounts deducted shall be paid as breeder premiums, and owners' and stallion awards, as provided in Section 19617.9.

SEC. 17. Section 19617.8 of the Business and Professions Code is amended to read:

19617.8. The board shall designate the officially recognized organization representing Arabian horsemen to administer Section

19617.5 and this section, and to distribute amounts deducted under Section 19617.5, with respect to Arabian races. The organization may, with the approval of the board, make a deduction for expenses not to exceed 5 percent of the total amount deducted.

After deduction of the expenses for administration the organization shall, within 30 days following the meeting where the amounts are deducted, distribute the funds pursuant to Section 19567 to the breeders of California-bred Arabian horses entitled thereto at the meeting. The amount remaining after payments shall be paid at the end of the year on a prorated percentage basis to owners of sires of Arabian horses who placed first in one or more races at a fair meeting or a mixed breed meeting.

Stallion awards shall not be made to the owner of a sire that has been out of the state for breeding purposes during the calendar year. Stallion awards may not be made for any race run outside the State of California.

If there are insufficient funds to make all of the distributions required by this section, there shall be no additional assessments made against any association to fund the deficiencies.

SEC. 18. Section 19617.9 is added to the Business and Professions Code, to read:

19617.9. (a) The following definitions govern the construction of this section:

(1) "Breeder" means a person who is registered as the owner of an Appaloosa dam at the time the mare foals.

(2) "Eligible earnings" means the following:

(A) In the case of breeder premiums, the annual amount earned by a California-bred Appaloosa horse for finishing first or second.

(B) In the case of owners' awards, the annual amount earned by a California-bred Appaloosa horse for finishing first or second in qualifying races.

(C) In the case of stallion awards, the annual amount earned by Appaloosa foals of an eligible Appaloosa sire for finishing first or second.

(D) In order for earnings from a qualifying race to be considered as eligible earnings, an Appaloosa horse shall be registered as such with the official registering agency before the date entries were taken by the association for the qualifying race in which that horse earned purse money.

(E) In determining the purse earned in any race that is a stakes race, the amount earned shall be based solely on the added money, with no consideration given to other sources of the purse, such as nomination, entry, or starting fees, bonuses, and sponsor contributions, or any combination thereof.

(F) On or before February 1 of any year, the stallion owner shall advise the official registering agency of any and all purses earned during the preceding year to be considered in determining the amount of the stallion award to which the owner is entitled.

(3) "Eligible Appaloosa sire" means an Appaloosa stallion that was

continuously present in this state from February 1 to July 15, inclusive, of the calendar year in which the qualifying race was conducted, and, if the sire left this state after July 15 of the calendar year in which the qualifying race was conducted, the sire returned to and was present in this state by February 1 of the following calendar year and thereafter remained until July 15 of that year. If a sire dies in this state and stood his last season at stud in this state, he shall thereafter continue to be considered an eligible Appaloosa sire. Notwithstanding any other provision of law, an Appaloosa stallion shall be considered an eligible Appaloosa sire only if its owner has registered the stallion with the official registering agency for stallion awards on or before February 1 of the calendar year immediately following the calendar year for which the awards are being distributed.

(4) "Official registering agency" means the officially recognized organization representing Appaloosa horsemen designated by the board.

(5) "Owner" means the person who is registered with the paymaster of purses on the date the race was conducted as the owner of the California-bred Appaloosa horse earning purse money in that race.

(6) "Qualifying race" means all Appaloosa horseraces in this state for breeders and stallions; for owners' awards, a qualifying race must be equal to or above four thousand dollars (\$4,000) claiming.

(7) "Stallion owner" means the person who is the owner of the eligible Appaloosa sire as of December 31 of the calendar year in which that sire's foals had eligible earnings or the person who owned the eligible quarter horse sire on the date that the sire died.

(b) Any association conducting a race meeting that includes Appaloosa horseracing shall deposit with the official registering agency 0.2 of 1 percent of the total amount handled ontrack, and 0.4 of 1 percent of the total amount handled offtrack, in daily conventional and exotic parimutuel pools and a sum equal to 13.33 percent of those funds specified for purses in Section 19612.1, and the sums specified in Sections 19567 and 19617.5, resulting from Appaloosa horseracing. The deposits shall be made at the following intervals:

(1) For any meeting of 20 racing days or less, the requisite deposit shall be made not later than seven days immediately following the last day of that meeting.

(2) For any meeting of more than 20 racing days, the initial deposit shall be made not later than 27 racing days after the commencement of that meeting and every 20 racing days thereafter, with a final deposit made not later than seven days following the last day of that meeting. The initial deposit for that meeting shall be based upon the applicable amount handled during the first 20 racing days of the meeting and deposits thereafter shall be based upon the applicable amount handled during the ensuing periods of 20 racing days with the last deposit based upon the applicable amount handled

from the end of the last 20-racing-day period for which a deposit has been made to the end of the meeting.

(c) After deducting a sum up to, but not to exceed, 10 percent of the total deposits made pursuant to subdivision (b) and the total deposits made pursuant to other provisions of this chapter, including Sections 19612.1 and 19612.2, to compensate the official registering agency for its administrative costs, the official registering agency shall distribute annually the balance of the deposits in the following manner:

(1) Sixty percent to the breeder fund from which breeder premiums are to be paid.

(2) Twenty-five percent to the owner fund from which owners' awards are to be paid.

(3) Fifteen percent to the stallion fund from which stallion awards are to be paid.

(d) The official registering agency shall make the following payments to the breeder, owner, and stallion owner to encourage agriculture and the breeding of high quality horses in this state:

(1) The breeder shall be paid a sum based on a prorated share of first and second place earnings.

(2) The owner shall be paid an owners' award, a sum based on a prorated share of first and second place earnings from qualified races by a California-bred Appaloosa horse.

(3) The stallion owner shall be paid a stallion award, a sum based on a prorated share of first and second place earnings from Appaloosa horses who placed first or second in one or more races at a fair meeting or a mixed breed meeting.

Stallion awards shall not be made to the owner of a sire that has been out of the state for breeding purposes during the calendar year. Stallion awards shall not be made for any race run outside the State of California.

(4) The breeder premium, and owners' and stallion awards shall be paid not later than March 31 of the calendar year immediately following the calendar year for which the awards or premiums were earned.

(e) The amount remaining for distribution under this section, if any, after the payments are made under subdivision (d) shall be paid at the end of the year on a prorated percentage basis to owners of sires of Appaloosa horses who placed first in one or more races at a fair meeting or a mixed breed meeting.

(f) If there are insufficient funds to make all of the distributions in this section, there shall be no assessments made against any association to fund the deficiencies.

SEC. 19. Section 8 of this bill, which repeals Section 19610.7 of the Business and Professions Code, does not constitute a change in existing law.

SEC. 20. Section 12.6 of this bill incorporates amendments to Section 19613.2 of the Business and Professions Code proposed by both this bill and AB 991. It shall only become operative if (1) both

bills are enacted and become effective on or before January 1, 1995, but this bill becomes operative first, (2) each bill amends Section 19613.2 of the Business and Professions Code, and (3) this bill is enacted after AB 991, in which case Section 19613.2 of the Business and Professions Code, as amended by Section 12.5 of this bill, shall remain operative only until the operative date of AB 991, at which time Section 12.6 of this bill shall become operative.

SEC. 21. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure viable Appaloosa horseracing meetings and to maintain and encourage the breeding and racing of Appaloosa horses in California during the 1994 racing season, it is necessary that this act take effect immediately.

CHAPTER 1214

An act to amend Sections 8670.25.5 and 51018 of, and to add Section 8589.7 to, the Government Code, to amend Sections 25270.8 and 25295 of the Health and Safety Code, to amend Sections 2453 and 23112.5 of the Vehicle Code, and to amend Sections 13271 and 13272 of the Water Code, relating to disasters.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. The Legislature hereby finds and declares that the development of a consolidated hazardous material spill notification and reporting process is necessary to reduce confusion, improve compliance, and simplify notification requirements.

SEC. 2. Section 8589.7 is added to the Government Code, to read: 8589.7. (a) In carrying out its responsibilities pursuant to subdivision (b) of Section 8574.17, the Office of Emergency Services shall serve as the central point in state government for the emergency reporting of spills, unauthorized releases, or other accidental releases of hazardous materials and shall coordinate the notification of the appropriate state and local administering agencies that may be required to respond to those spills, unauthorized releases, or other accidental releases. The Office of Emergency Services is the only state agency required to make the notification required by subdivision (b).

(b) Upon receipt of a report concerning a spill, unauthorized release, or other accidental release involving hazardous materials, as defined in Section 25501 of the Health and Safety Code, the Office of Emergency Services shall immediately inform the appropriate

state agencies concerning the spill, release, or accident, as follows:

(1) For an oil spill reportable pursuant to Section 8670.25.5, the Office of Emergency Services shall inform the administrator for oil spill response, the State Lands Commission, the California Coastal Commission, and the California regional water quality control board having jurisdiction over the location of the discharged oil.

(2) For a rupture, explosion, or fire involving a pipeline reportable pursuant to Section 51018, the Office of Emergency Services shall inform the State Fire Marshal.

(3) For a discharge in or on any waters of the state of a hazardous substance or sewage reportable pursuant to Section 13271 of the Water Code, the Office of Emergency Services shall inform the appropriate California regional water quality control board.

(c) This section does not relieve a person who is responsible for a spill, unauthorized release, or other accidental release of a hazardous material from the duty to make an emergency notification to a local agency, or the 911 emergency system, under any other statute or regulation.

(d) A person who is subject to Section 25507 of the Health and Safety Code shall immediately report all releases or threatened releases pursuant to that section to the appropriate local administering agency, each local administering agency shall notify the Office of Emergency Services and businesses in their jurisdiction of the appropriate emergency telephone number that can be used for emergency notification to an administering agency on a 24-hour basis. The administering agency shall notify other local agencies or departments of spills within their jurisdiction, as appropriate.

(e) No facility, owner, operator, or other person required to report a spill, unauthorized release, or accident to the Office of Emergency Services shall be liable for the Office of Emergency Services' failure to make notifications required by this section or failure to accurately transmit the information reported.

SEC. 3. Section 8670.25.5 of the Government Code is amended to read:

8670.25.5. (a) Without regard to intent or negligence, any party responsible for the discharge or threatened discharge of oil in marine waters shall report the discharge to the Office of Emergency Services pursuant to Section 25507 of the Health and Safety Code.

(b) Immediately upon receiving notification pursuant to subdivision (a), the Office of Emergency Services shall notify the administrator, the State Lands Commission, the California Coastal Commission, the regional water quality control board having jurisdiction over the location of the discharged oil, and as provided in subdivision (d) of Section 8589.7. If the spill has occurred within the jurisdiction of the San Francisco Bay Conservation and Development Commission, the Office of Emergency Services shall notify that commission. Each public agency specified in this subdivision shall adopt an internal protocol over communications regarding the discharge of oil and file the internal protocol with the

Office of Emergency Services.

(c) The 24-hour emergency telephone number of the Office of Emergency Services shall be posted at every terminal, at the area of control of every marine facility, and on the bridge of every tanker in marine waters.

(d) This section does not apply to discharges, or potential discharges, of less than one barrel (42 gallons) of oil unless a more restrictive reporting standard is adopted in the state oil spill contingency plan prepared pursuant to Section 8574.1.

(e) Except as otherwise provided in this section and Section 8589.7, a notification made pursuant to this section shall satisfy any immediate notification requirement contained in any permit issued by a permitting agency.

SEC. 4. Section 51018 of the Government Code is amended to read:

51018. (a) Every rupture, explosion, or fire involving a pipeline, including a pipeline system otherwise exempted by subdivision (a) of Section 51010.5, and including a pipeline undergoing testing, shall be immediately reported to the fire department having fire suppression responsibilities and to the Office of Emergency Services.

(b) (1) The Office of Emergency Services shall immediately notify the State Fire Marshal of the incident, who shall immediately dispatch his or her employees to the scene. The State Fire Marshal or his or her employees, upon arrival, shall provide technical expertise and advise the operator and all public agencies on activities needed to mitigate the hazard.

(2) For purposes of this subdivision, the Legislature does not intend to hinder or disrupt the workings of the "incident commander system," but does intend to establish a recognized element of expertise and direction for the incident command to consult and acknowledge as an authority on the subject of pipeline incident mitigation. Furthermore, it is expected that the State Fire Marshal will recognize the expertise of the pipeline operator and any other emergency agency personnel who may be familiar with the particular location of the incident and respect their knowledgeable input regarding the mitigation of the incident.

(c) For purposes of this section, "rupture" includes every unintentional liquid leak, except that a crude oil leak of less than five barrels from a pipeline or flow line in a rural area, or any crude oil or petroleum product leak in any in-plant piping system of less than five barrels, when no fire, explosion, or bodily injury results or no waterway is contaminated thereby, does not constitute a rupture for purposes of the reporting requirements of subdivision (a).

(d) This section does not preempt any other applicable federal or state reporting requirement.

(e) Except as otherwise provided in this section and Section 8589.7, a notification made pursuant to this section shall satisfy any immediate notification requirement contained in any permit issued by a permitting agency.

SEC. 4.5. Section 51018 of the Government Code is amended to read:

51018. (a) Every rupture, explosion, or fire involving a pipeline, including a pipeline system otherwise exempted by subdivision (a) of Section 51010.5, and including a pipeline undergoing testing, shall be immediately reported by the pipeline operator to the fire department having fire suppression responsibilities and to the Office of Emergency Services. In addition, the pipeline operator shall within 30 days of the rupture, explosion, or fire file a report with the State Fire Marshal containing all the information that the State Fire Marshal may reasonably require to prepare the report required pursuant to subdivision (d).

(b) (1) The Office of Emergency Services shall immediately notify the State Fire Marshal of the incident, who shall immediately dispatch his or her employees to the scene. The State Fire Marshal or his or her employees, upon arrival, shall provide technical expertise and advise the operator and all public agencies on activities needed to mitigate the hazard.

(2) For purposes of this subdivision, the Legislature does not intend to hinder or disrupt the workings of the "incident commander system," but does intend to establish a recognized element of expertise and direction for the incident command to consult and acknowledge as an authority on the subject of pipeline incident mitigation. Furthermore, it is expected that the State Fire Marshal will recognize the expertise of the pipeline operator and any other emergency agency personnel who may be familiar with the particular location of the incident and respect their knowledgeable input regarding the mitigation of the incident.

(c) For purposes of this section, "rupture" includes every unintentional liquid leak, including any leak that occurs during hydrostatic testing, except that a crude oil leak of less than five barrels from a pipeline or flow line in a rural area, or any crude oil or petroleum product leak in any in-plant piping system of less than five barrels, when no fire, explosion, or bodily injury results or no waterway is contaminated thereby, does not constitute a rupture for purposes of the reporting requirements of subdivision (a).

(d) The State Fire Marshal shall, every fifth year commencing in 1999, issue a report identifying pipeline leak incident rate trends, reviewing current regulatory effectiveness with regard to pipeline safety, and recommending any necessary changes to the Legislature. This report shall include all of the following: total length of regulated pipelines, total length of regulated piggable pipeline, total number of line sections, average length of each section, number of leaks during study period, average spill size, average damage per incident, average age of leak pipe, average diameter of leak pipe, injuries during study period, cause of the leak or spill, fatalities during study period, and other information as deemed appropriate by the State Fire Marshal.

(e) This section does not preempt any other applicable federal or

state reporting requirement.

(f) Except as otherwise provided in this section and Section 8589.7, a notification made pursuant to this section shall satisfy any immediate notification requirement contained in any permit issued by a permitting agency.

SEC. 5. Section 25270.8 of the Health and Safety Code is amended to read:

25270.8. Each owner or operator of a tank facility shall immediately, upon discovery, notify the Office of Emergency Services, and the local administering agency using the appropriate 24-hour emergency number or 911 number as established by the administering agency or the governing body of the administering agency, of the occurrence of a spill or other release of one barrel (42 gallons) or more of petroleum which is required to be reported pursuant to subdivision (a) of Section 13272 of the Water Code.

SEC. 6. Section 25295 of the Health and Safety Code is amended to read:

25295. (a) (1) Any unauthorized release which escapes from the secondary containment, or from the primary containment, if no secondary containment exists, increases the hazard of fire or explosion, or causes any deterioration of the secondary containment of the underground tank system shall be reported by the operator to the local agency designated pursuant to Section 25283 within 24 hours after the release has been detected or should have been detected. A full written report shall be transmitted by the owner or operator of the underground tank system to the local agency within five working days of the occurrence of the release. The report shall describe the nature and volume of the unauthorized release, any corrective or remedial actions undertaken, and any further corrective or remedial actions, including investigative actions, which will be needed to clean up the unauthorized release and abate the effects of the release and a time schedule for implementing these actions.

(2) The local agency shall review the permit whenever there has been an unauthorized release or when it determines that the underground tank system is unsafe. In determining whether to modify or terminate the permit, the local agency shall consider the age of the tank, the methods of containment, the methods of monitoring, the feasibility of any required repairs, the concentration of the hazardous substances stored in the tank, the severity of potential unauthorized releases, and the suitability of any other long-term preventive measures which would meet the requirements of this chapter.

(b) In cooperation with the Office of Emergency Services, the board shall submit an annual statewide report by county, to the Legislature, of all unauthorized releases, indicating for each unauthorized release the operator, the hazardous substance, the quantity of the unauthorized release, and the actions taken to abate the problem.

(c) The reporting requirements imposed by this section are in addition to any requirements which may be imposed by Sections 13271 and 13272 of the Water Code.

SEC. 7. Section 2453 of the Vehicle Code is amended to read:

2453. The California Highway Patrol shall serve as statewide information, assistance, and notification coordinator for all hazardous substances spill incidents occurring on highways within the State of California. The California Highway Patrol shall establish a single notification mechanism to serve as a central focus point for a hazardous substances spill response system. To assure timely notification of emergency personnel, the notification mechanism established pursuant to this section shall complement and not conflict with the system established pursuant to subdivision (b) of Section 8574.17 of the Government Code.

SEC. 8. Section 23112.5 of the Vehicle Code is amended to read:

23112.5. (a) Any person who dumps, spills, or causes the release of hazardous material, as defined by Section 353, or hazardous waste, as defined by Section 25117 of the Health and Safety Code, upon any highway shall notify the Department of the California Highway Patrol or the agency having traffic jurisdiction for that highway of the dump, spill, or release, as soon as the person has knowledge of the dump, spill, or release and notification is possible. Upon receiving notification pursuant to this section, the Department of the California Highway Patrol shall, as soon as possible, notify the Office of Emergency Services of the dump, spill, or release, except for petroleum spills of less than 42 gallons from vehicular fuel tanks.

(b) Any person who is convicted of a violation of this section shall be punished by a mandatory fine of not less than two thousand dollars (\$2,000).

SEC. 9. Section 13271 of the Water Code is amended to read:

13271. (a) Except as provided by subdivision (b), any person who, without regard to intent or negligence, causes or permits any hazardous substance or sewage to be discharged in or on any waters of the state, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the state, shall, as soon as (1) that person has knowledge of the discharge, (2) notification is possible, and (3) notification can be provided without substantially impeding cleanup or other emergency measures, immediately notify the Office of Emergency Services of the discharge in accordance with the spill reporting provision of the state toxic disaster contingency plan adopted pursuant to Article 3.7 (commencing with Section 8574.7) of Chapter 7 of Division 1 of Title 2 of the Government Code. The Office of Emergency Services shall immediately notify the appropriate regional board of the discharge. The regional board shall notify the state board as appropriate. The state board or the regional board shall list all notifications received by them pursuant to this section in the minutes of the next business meeting and shall provide a copy of the minutes to the appropriate local health officials.

(b) The notification required by this section shall not apply to a discharge in compliance with waste discharge requirements or other provisions of this division.

(c) Any person who fails to provide the notice required by this section is guilty of a misdemeanor and shall be punished by a fine of not more than twenty thousand dollars (\$20,000) or imprisonment for not more than one year, or both. Except where a discharge to the waters of this state would have occurred but for cleanup or emergency response by a public agency, this subdivision shall not apply to any discharge to land which does not result in a discharge to the waters of this state.

(d) Notification received pursuant to this section or information obtained by use of that notification shall not be used against any person providing the notification in any criminal case, except in a prosecution for perjury or giving a false statement.

(e) For substances listed as hazardous wastes or hazardous material pursuant to Section 25140 of the Health and Safety Code, the state board, in consultation with the Department of Toxic Substances Control, shall by regulation establish reportable quantities for purposes of this section. The regulations shall be based on what quantities should be reported because they may pose a risk to public health or the environment if discharged to ground or surface water. Regulations need not set reportable quantities on all listed substances at the same time. Regulations establishing reportable quantities shall not supersede waste discharge requirements or water quality objectives adopted pursuant to this division, and shall not supersede or affect in any way the list, criteria, and guidelines for the identification of hazardous wastes and extremely hazardous wastes adopted by the Department of Toxic Substances Control pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code. The regulations of the Environmental Protection Agency for reportable quantities of hazardous substances for purposes of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 and following) shall be in effect for purposes of the enforcement of this section until the time that the regulations required by this subdivision are adopted.

(f) The state board shall adopt regulations establishing reportable quantities of sewage for purposes of this section. The regulations shall be based on the quantities that should be reported because they may pose a risk to public health or the environment if discharged to ground or surface water. Regulations establishing reportable quantities shall not supersede waste discharge requirements or water quality objectives adopted pursuant to this division. For purposes of this section, "sewage" means the effluent of a municipal waste water treatment plant or a private utility waste water treatment plant, as those terms are defined in Section 13625.

(g) Except as otherwise provided in this section and Section 8589.7 of the Government Code, a notification made pursuant to this

section shall satisfy any immediate notification requirement contained in any permit issued by a permitting agency. When notifying the Office of Emergency Services, the person shall include all of the notification information required in the permit.

SEC. 10. Section 13272 of the Water Code is amended to read:

13272. (a) Except as provided by subdivision (b), any person who, without regard to intent or negligence, causes or permits any oil or petroleum product to be discharged in or on any waters of the state, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the state, shall, as soon as (1) that person has knowledge of the discharge, (2) notification is possible, and (3) notification can be provided without substantially impeding cleanup or other emergency measures, immediately notify the Office of Emergency Services of the discharge in accordance with the spill reporting provision of the state oil spill contingency plan adopted pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7 of Division 1 of Title 2 of the Government Code. This section shall not apply to spills of oil into marine waters as defined in subdivision (f) of Section 8670.3 of the Government Code.

(b) The notification required by this section shall not apply to a discharge in compliance with waste discharge requirements or other provisions of this division.

(c) Any person who fails to provide the notice required by this section is guilty of a misdemeanor and shall be punished by a fine of not less than five hundred dollars (\$500) or more than five thousand dollars (\$5,000) per day for each day of failure to notify, or imprisonment of not more than one year, or both. Except where a discharge to the waters of this state would have occurred but for cleanup or emergency response by a public agency, this subdivision shall not apply to any discharge to land which does not result in a discharge to the waters of this state. This subdivision shall not apply to any person who is fined by the federal government for a failure to report a discharge of oil.

(d) Notification received pursuant to this section or information obtained by use of that notification shall not be used against any person providing the notification in any criminal case, except in a prosecution for perjury or giving a false statement.

(e) Immediate notification to the appropriate regional board of the discharge, in accordance with reporting requirements set under Section 13267 or 13383, shall constitute compliance with the requirements of subdivision (a).

(f) The reportable quantity for oil or petroleum products shall be one barrel (42 gallons) or more, by direct discharge to the receiving waters, unless a more restrictive reporting standard for a particular body of water is adopted.

SEC. 11. Section 4.5 of this bill incorporates amendments to Section 51018 of the Government Code proposed by both this bill and AB 3521. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends

Section 51018 of the Government Code, and (3) this bill is enacted after AB 3521, in which case Section 4 of this bill shall not become operative.

CHAPTER 1215

An act to add Sections 12021 and 13006 to the Fish and Game Code, relating to penalties, and making an appropriation therefor.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 12021 is added to the Fish and Game Code, to read:

12021. (a) In addition to any assessment, fine, penalty, or forfeiture imposed pursuant to any other provision of law, an additional penalty of fifteen dollars (\$15) shall be added to any fine, penalty, or forfeiture imposed under this code for a violation of this code or a regulation adopted pursuant thereto. The revenue from this penalty shall be transferred to, and deposited in, the Fish and Game Preservation Fund and used exclusively for the purposes of Section 13006.

(b) Subdivision (a) does not apply to a violation punishable pursuant to subdivision (b) of Section 12002.1, subdivision (b) of Section 12002.2, or any regulation relating to the wearing or display of a fishing license.

SEC. 2. Section 13006 is added to the Fish and Game Code, to read:

13006. Notwithstanding Section 13001, the money collected from the penalties on fines, penalties, or forfeitures levied pursuant to Section 12021 shall be used only to pay the department's costs of support for the department's secret witness program. The purpose of the secret witness program is to facilitate the enforcement of this code and regulations adopted pursuant to this code. Contributions to the secret witness program may also be made pursuant to subdivision (k) of Section 13103.

CHAPTER 1216

An act to amend Sections 22451 and 40509 of, and to add Sections 210, 21362.5, and 40518 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. This act shall be known and may be cited as the "Rail Traffic Safety Enforcement Act."

SEC. 2. The Legislature hereby finds and declares the following:

(a) The expansion of rail transit systems in California increases the need for rail transit traffic safety programs.

(b) Most rail-related traffic accidents are caused by motorists ignoring crossing gates and other warning signals and driving into the path of oncoming trains. An analysis of accidents related to the metropolitan blue line in Los Angeles found that 79 percent of those accidents were caused by motorists driving around closed crossing gates or making illegal turns against warning lights in front of oncoming trains.

(c) Automated rail crossing enforcement systems that photographically record violations occurring at rail crossing signals and rail crossing gates are a significant deterrent to these violations where motorists are aware of the presence of the automated systems. Grade crossing violations were reduced 65 percent in a demonstration project in Los Angeles using these systems. Similar results have been seen in Europe and other parts of the United States.

SEC. 3. Section 210 is added to the Vehicle Code, to read:

210. An "automated rail crossing enforcement system" is any system operated by a governmental agency, in cooperation with a law enforcement agency, that photographically records a driver's responses to a rail or rail transit signal or crossing gate, or both, and is designed to obtain a clear photograph of a vehicle's license plate and the driver of the vehicle.

SEC. 4. Section 21362.5 is added to the Vehicle Code, to read:

21362.5. (a) Railroad and rail transit grade crossings may be equipped with an automated rail crossing enforcement system if the system is identified by signs clearly indicating the system's presence and visible to traffic approaching from each direction.

Only a governmental agency, in cooperation with a law enforcement agency, may operate an automated rail crossing enforcement system.

(b) Notwithstanding Section 6253 of the Government Code, or any other provision of law, photographic records made by an automated rail crossing enforcement system shall be confidential, and shall be made available only to governmental agencies and law

enforcement agencies for the purposes of this section.

SEC. 5. Section 22451 of the Vehicle Code is amended to read:

22451. (a) The driver of any vehicle approaching a railroad or rail transit grade crossing shall stop not less than 15 feet from the nearest rail and shall not proceed until he or she can do so safely, whenever the following conditions exist:

(1) A clearly visible electric or mechanical signal device or a flagman gives warning of the approach or passage of a train or car.

(2) An approaching train or car is plainly visible or is emitting an audible signal and, by reason of its speed or nearness, is an immediate hazard.

(b) No driver shall proceed through, around, or under any railroad or rail transit crossing gate while the gate is closed.

(c) Whenever a railroad or rail transit crossing is equipped with an automated rail crossing enforcement system, a notice of a violation of this section is subject to the procedures provided in Section 40518.

SEC. 6. Section 40509 of the Vehicle Code is amended to read:

40509. (a) If any person has for a period of 15 or more days violated a written promise to appear or a lawfully granted continuance of his or her promise to appear in court or before the person authorized to receive a deposit of bail, or violated an order to appear in court, including, but not limited to, a written notice to appear issued in accordance with Section 40518, the magistrate or clerk of the court may give notice of the failure to appear to the department for any violation of this code, or any violation that can be heard by a juvenile traffic hearing referee pursuant to Section 256 of the Welfare and Institutions Code, or any violation of any other statute relating to the safe operation of a vehicle, except violations not required to be reported pursuant to paragraphs (1), (2), (3), (6), (7), and (8) of subdivision (b) of Section 1803. The notice shall be given within 60 days of the failure to appear. If thereafter the case in which the promise was given is adjudicated or the person who has violated the court order appears in court or otherwise satisfies the order of the court, the magistrate or clerk of the court hearing the case shall sign and file with the department a certificate to that effect.

(b) If any person has, for a period of 15 or more days, willfully failed to pay a lawfully imposed fine within the time authorized by the court or to pay a fine pursuant to subdivision (a) of Section 42003, the magistrate or clerk of the court may give notice of the fact to the department for any violation, except violations not required to be reported pursuant to paragraphs (1), (2), (3), (6), (7), and (8) of subdivision (b) of Section 1803. If thereafter the fine is fully paid, the magistrate or clerk of the court shall issue and file with the department a certificate showing that the fine has been paid.

(c) (1) Notwithstanding subdivisions (a) and (b), the court may notify the department of the total amount of bail, fines, assessments, and fees authorized or required by this code, including Section

40508.5, which are unpaid by any person.

(2) Once a court has established the amount of a fine and any assessments, and notified the department, the court shall not further enhance or modify that amount.

(3) This subdivision applies only to violations of this code that do not require a mandatory court appearance, are not contested by the defendant, and do not require proof of correction certified by the court.

(d) Whenever any person has for a period of 15 or more days willfully failed to obey any court order concerning a violation of this code other than failure to appear or pay a fine, the department shall suspend the person's privilege to operate a motor vehicle until compliance with the court order is shown. The magistrate or clerk of the court may give notice of any noncompliance of a court order to the department. The suspension shall not become effective until 45 days after the giving of written notice by the department to the person or until the end of any stay of suspension. However, this subdivision does not apply to court orders concerning violations enumerated in paragraphs (1), (2), (3), (6), and (7) of subdivision (b) of Section 1803.

(e) With respect to a violation of this code, this section is applicable to any court which has not elected to be subject to the notice requirements of subdivision (b) of Section 40509.5.

(f) Any violation subject to Section 40001, which is the responsibility of the owner of the vehicle, shall not be reported under this section.

SEC. 7. Section 40518 is added to the Vehicle Code, to read:

40518. (a) Whenever a written notice to appear has been issued by a peace officer or by a qualified employee of a law enforcement agency on a form approved by the Judicial Council for an alleged violation of Section 22451, or, with respect to a rail crossing, of Section 21453 or 22101 based on an alleged violation recorded by an automated rail crossing enforcement system, and delivered by mail within 30 days of the alleged violation to the current address of the registered owner of the vehicle on file with the department, with a certificate of mailing obtained as evidence of service, an exact and legible duplicate copy of the notice when filed with the magistrate shall constitute a complaint to which the defendant may enter a plea. Preparation and delivery of a notice to appear pursuant to this section is not an arrest.

(b) A notice to appear shall contain the name and address of the person, the license plate number of the person's vehicle, the offense charged, and the time and place when, and where, the person may appear in court or before a person authorized to receive a deposit of bail. The time specified shall be at least 10 days after the notice to appear is delivered.

CHAPTER 1217

An act to amend Section 25191 of, and to add Sections 25110.8.5, 25117.6, 25117.9.1, and 25187.8 to, the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

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

(a) Hazardous waste laws must be enforced by qualified public officials to protect the health and safety of California workers and residents as well as the environment. Violations must receive enforcement attention and action quickly and in relation to the severity of the offense as measured by the danger to, or potential to endanger, public health and safety and the environment.

(b) The Department of Toxic Substances Control has authority to adopt regulations which allow the categorization of hazardous waste violations as either major or minor violations, which have been defined as "Class I" and "Class II" violations, as set forth in Title 22 of the California Code of Regulations. The definition of a Class I violation includes, but is not limited to, the requirement that the violation represent a significant threat to human health and safety or to the environment.

(c) Class II violations, by definition, do not represent a significant threat to human health and safety or to the environment and are not indicative of chronic violations or of violations that are committed by a recalcitrant violator.

(d) It is the intent of the Legislature, in enacting this act, to provide a more resource-efficient enforcement mechanism, faster compliance times, and creation of a productive and cooperative working relationship between the department and the regulated community.

(e) It is the intent of the Legislature, in enacting this act, to establish a program with compliance as its goal.

SEC. 2. Section 25110.8.5 is added to the Health and Safety Code, to read:

25110.8.5. "Class I violation" means any of the following:

(a) A deviation from the requirements of this chapter, or any regulation, standard, requirement, or permit or interim status document condition adopted pursuant to this chapter, that is any of the following:

(1) The deviation represents a significant threat to human health or safety or the environment because of one or more of the following:

(A) The volume of the waste.

(B) The relative hazardousness of the waste.

(C) The proximity of the population at risk.

(2) The deviation is significant enough that it could result in a failure to accomplish any of the following:

(A) Ensure that hazardous waste is destined for, and delivered to, an authorized hazardous waste facility.

(B) Prevent releases of hazardous waste or constituents to the environment during the active or postclosure period of facility operation.

(C) Ensure early detection of releases of hazardous waste or constituents.

(D) Ensure adequate financial resources in the case of releases of hazardous waste or constituents.

(E) Ensure adequate financial resources to pay for facility closure.

(F) Perform emergency cleanup operations of, or other corrective actions for, releases.

(b) The deviation is a Class II violation which is a chronic violation or committed by a recalcitrant violator. "Class II Violation" has the same meaning as defined in Section 66260.10 of Title 22 of the California Code of Regulations.

SEC. 3. Section 25117.6 is added to the Health and Safety Code, to read:

25117.6. (a) "Minor violation" means a deviation from the requirements of this chapter, or any regulation, standard, requirement, or permit or interim status document condition adopted pursuant to this chapter, that is not a Class I violation.

(b) (1) A minor violation does not include any of the following:

(A) Any knowing, willful, or intentional violation of this chapter.

(B) Any violation of this chapter that enables the violator to benefit economically from noncompliance, either by reduced costs or competitive advantage.

(C) Any Class II violation that is a chronic violation or that is committed by a recalcitrant violator.

(2) In determining whether a violation is chronic or a violator is recalcitrant, for purposes of subparagraph (C) of paragraph (1), the department shall consider whether there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to the requirements of this chapter.

SEC. 4. Section 25117.9.1 is added to the Health and Safety Code, to read:

25117.9.1. "Notice to comply" means a written method of alleging a minor violation which is in compliance with all of the following requirements:

(a) The notice to comply is written in the course of conducting an inspection of a facility by an authorized representative of the department or by an authorized local health officer or a local public officer designated by the director.

(b) A copy of the notice to comply is presented to a person who is an owner or employee of the facility being inspected at the time that the notice to comply is written.

(c) The notice to comply clearly states the nature of the alleged minor violation, a means by which compliance with the permit conditions, rule, regulation, standard, or other requirement cited by the department representative or the authorized or designated officer may be achieved, and a time limit in which to comply, which shall not exceed 30 days.

(d) The notice to comply shall contain the information specified in subdivision (h) of Section 25187.8 with regard to inspection of the facility.

SEC. 5. Section 25187.8 is added to the Health and Safety Code, to read:

25187.8. (a) An authorized representative of the department or an authorized local health officer or a local public officer designated by the director, who, in the course of conducting an inspection of a facility, detects a minor violation of any permit conditions, rule, regulation, standard, or other requirement, shall issue a notice to comply before leaving the site in which the minor violation is alleged to have occurred.

(b) A facility which receives a notice to comply pursuant to subdivision (a) shall have not more than 30 days from the date of receipt of the notice to comply in which to achieve compliance with the permit conditions, rule, regulation, standard, or other requirement cited on the notice to comply. Within five working days of achieving compliance, an appropriate person who is an owner or operator of, or an employee at, the facility shall sign the notice to comply and return it to the department representative or to the authorized or designated officer, as the case may be, which states that the facility has complied with the notice to comply. A false statement that compliance has been achieved is a violation of this chapter pursuant to Section 25191.

(c) A single notice to comply shall be issued for all minor violations cited during the same inspection and the notice to comply shall separately list each of the cited minor violations and the manner in which each of the minor violations may be brought into compliance.

(d) A notice to comply shall not be issued for any minor violation which is corrected immediately in the presence of the inspector. Immediate compliance in that manner may be noted in the inspection report, but the facility shall not be subject to any further action by the department representative or by the authorized or designated officer.

(e) Except as otherwise provided in subdivision (g), a notice to comply shall be the only means by which the department representative or the authorized or designated officer shall cite a minor violation. The department representative or the authorized or designated officer shall not take any other enforcement action specified in this chapter against a facility which has received a notice to comply if the facility complies with this section.

(f) If a facility that receives a notice to comply pursuant to

subdivision (a) disagrees with one or more of the alleged violations listed on the notice to comply, the owner shall give the person who issued the notice to comply written notice of disagreement. If the issuing agency takes administrative enforcement action on the basis of the disputed violation, that action may be appealed in the same manner as for other alleged violations under subdivisions (d) to (j), inclusive, of Section 25187.

(g) (1) Notwithstanding any other provision of this section, if a facility fails to comply with a notice to comply within the prescribed period, or if the department, or an authorized or designated officer, determines that the circumstances surrounding a particular minor violation are such that immediate enforcement is warranted to prevent harm to the public health or safety or to the environment, the department or officer may take any needed enforcement action authorized by this chapter.

(2) Notwithstanding any other provision of this section, if the department, or an authorized or designated officer, determines that the circumstances surrounding a particular minor violation are such that the assessment of a civil penalty pursuant to this chapter is warranted or is required by the federal act, in addition to issuance of a notice to comply, the department or officer shall assess that civil penalty in accordance with this chapter, if the department or officer makes written findings that set forth the basis for the department's or officer's determination.

(h) A notice to comply issued to a facility pursuant to this section shall contain an explicit statement that the facility may be subject to reinspection at any time by the department or officer that issued the notice to comply. Nothing in this section shall be construed as preventing the reinspection of a facility to ensure compliance with this chapter or to ensure that minor violations cited in a notice to comply have been corrected and that the facility is in compliance with this chapter.

(i) Until January 1, 1998, the department shall maintain a public record of all minor violations, which shall include information about the name and circumstance of each minor violation and shall list whether a notice to comply was issued or if additional enforcement action was taken.

(j) Nothing in this section shall be construed as preventing the department, on a case-by-case basis, from requiring a facility to submit reasonable and necessary documentation to support the facility's claim of compliance pursuant to subdivision (b).

SEC. 6. Section 25191 of the Health and Safety Code is amended to read:

25191. (a) (1) Any person who knowingly does any of the acts specified in subdivision (b) shall, upon conviction, be punished by a fine of not less than two thousand dollars (\$2,000) or more than twenty-five thousand dollars (\$25,000) for each day of violation, or by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment.

(2) If the conviction is for a second or subsequent violation of subdivision (b), the person shall be punished by imprisonment in the state prison for 16, 20, or 24 months, or in the county jail for not more than one year, or by a fine of not less than two thousand dollars (\$2,000) or more than fifty thousand dollars (\$50,000) for each day of violation, or by both that fine and imprisonment.

(3) Each day or partial day that a violation occurs is a separate violation.

(b) A person who does any of the following is subject to the punishment prescribed in subdivision (a):

(1) Makes any false statement or representation in any application, label, manifest, record, report, permit, notice to comply, or other document filed, maintained, or used for the purposes of compliance with this chapter.

(2) Has in his or her possession any record relating to the generation, storage, treatment, transportation, disposal, or handling of hazardous waste required to be maintained pursuant to this chapter, that has been altered or concealed, whether altered or concealed prior to January 1, 1982.

(3) Destroys, alters, or conceals any record relating to the generation, storage, treatment, transportation, disposal, or handling of hazardous waste required to be maintained pursuant to this chapter.

(4) Withholds information regarding a real and substantial danger to the public health or safety when that information has been requested by the department and is required to carry out the department's responsibilities pursuant to this chapter in response to a real and substantial danger.

(5) Except as otherwise provided in this chapter, engages in transportation of hazardous waste in violation of Section 25160 or 25161, or subdivision (a) or (e) of Section 25163, or in violation of any regulation adopted by the department pursuant to those sections, including, but not limited to, failing to complete or provide the manifest in the form and manner required by the department.

(6) Except as otherwise provided in this chapter, produces, receives, stores, or disposes of hazardous waste, or submits hazardous waste for transportation, in violation of Section 25160 or 25161 or any regulation adopted by the department pursuant to those sections, including, but not limited to, failing to complete, provide, or submit the manifest in the form and manner required by the department.

(7) Transports any waste, for which there is provided a manifest, if the transportation is in violation of this chapter or the regulations adopted by the department pursuant thereto.

(8) Violates Section 25162.

(c) (1) The penalties imposed pursuant to subdivision (a) on any person who commits any of the acts specified in paragraph (5), (7), or (8) of subdivision (b) shall be imposed only (A) on the owner or lessee of the vehicle in which the hazardous wastes are unlawfully transported, carried, or handled or (B) on the person who authorizes

or causes the transporting, carrying, or handling. These penalties shall not be imposed on the driver of the vehicle, unless the driver is also the owner or lessee of the vehicle or authorized or caused the transporting, carrying, or handling.

(2) If any person other than the person producing the hazardous waste prepares the manifest specified in Section 25160, that other person is also subject to the penalties imposed on a person who commits any of the acts specified in paragraph (6) of subdivision (b).

(d) Any person who knowingly does any of the following acts, each day or partial day that a violation occurs constituting a separate violation, shall, upon conviction, be punished by a fine of not more than five hundred dollars (\$500) for each day of violation, or by imprisonment in the county jail for not to exceed six months, or by both that fine and imprisonment:

(1) Transports, or authorizes the transportation of, hazardous waste in a truck, trailer, semitrailer, vacuum tank, cargo tank, or container which does not contain a current certificate of compliance, as specified in Section 25168.3.

(2) Carries or handles, or authorizes the carrying or handling of, a hazardous waste without having in the driver's possession the manifest specified in Section 25160.

(3) Transports, or authorizes the transportation of, hazardous waste without having in the driver's possession a valid registration issued by the department pursuant to Section 25163.

(e) Whenever any person is prosecuted for a violation pursuant to paragraph (5), (6), (7), or (8) of subdivision (b), subdivision (d), or subdivision (c) of Section 25189.5, the prosecuting attorney may take appropriate steps to make the owner or lessee of the vehicle in which the hazardous wastes are unlawfully transported, carried, or handled, the driver of the vehicle, or any other person who authorized or directed the loading, maintenance, or operation of the vehicle, who is reasonably believed to have violated these provisions, a codefendant. If a codefendant is held solely responsible and found guilty, the court may dismiss the charge against the person who was initially so charged.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for the following reasons:

(a) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

(b) The only other costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

CHAPTER 1218

An act to amend Sections 26000, 26001, 26002, 26003, 26004, 26009, 26031, and 26040 of, to amend the heading of Division 16 (commencing with Section 26000) of, to amend the heading of Chapter 1 (commencing with Section 26000) of Division 16 of, and to add Section 25004.3 to, the Public Resources Code, and to amend Section 6010.8 of the Revenue and Taxation Code, relating to energy resources.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 25004.3 is added to the Public Resources Code, to read:

25004.3. The Legislature further finds and declares all of the following:

(a) Advanced transportation technologies hold the promise of conserving energy, reducing pollution, lowering traffic congestion, and promoting economic development and jobs in California.

(b) There is a pressing need to provide business assistance to California companies engaged in producing and commercializing advanced transportation technologies.

(c) It is the policy of the state to provide financial assistance to California companies, particularly small businesses, that are engaged in commercial efforts in the field of advanced transportation technologies.

SEC. 2. The heading of Division 16 (commencing with Section 26000) of the Public Resources Code is amended to read:

**DIVISION 16. CALIFORNIA ALTERNATIVE ENERGY AND
ADVANCED TRANSPORTATION FINANCING AUTHORITY
ACT**

SEC. 3. The heading of Chapter 1 (commencing with Section 26000) of Division 16 of the Public Resources Code is amended to read:

**CHAPTER 1. CALIFORNIA ALTERNATIVE ENERGY AND
ADVANCED TRANSPORTATION FINANCING AUTHORITY**

SEC. 4. Section 26000 of the Public Resources Code is amended to read:

26000. This division shall be known, and may be cited, as the California Alternative Energy and Advanced Transportation Financing Authority Act.

SEC. 5. Section 26001 of the Public Resources Code is amended

to read:

26001. The Legislature hereby finds and declares all of the following:

(a) It is essential that the state, in cooperation with the federal government, use all practical and commercially feasible means to promote the prompt and efficient development of energy sources which are renewable or which more efficiently utilize and conserve scarce energy resources.

(b) The promotion of energy sources which reduce the degradation of the environment and which protect the health, welfare, and safety of the people of this state is in the public interest and serves a public purpose.

(c) It is essential that the state, in cooperation with the federal government, use all practical and commercially feasible means to promote the development and commercialization of advanced transportation technologies to conserve energy, reduce air pollution, promote economic development and jobs, and protect the health, welfare, and safety of the people of the state.

SEC. 6. Section 26002 of the Public Resources Code is amended to read:

26002. (a) It is the purpose of this division to carry out and make effective the findings of the Legislature pursuant to Sections 25004, 25004.2, 25004.3, 25007, and 26001, and to that end to provide industry within this state with an alternative method of financing in providing and promoting the establishment of both of the following:

(1) Facilities utilizing alternative methods and sources of energy.

(2) Facilities needed for the development and commercialization of advanced transportation technologies.

(b) The Legislature hereby finds and declares that the facilities specified in subdivision (a) are necessary to meet the energy and transportation needs of this state and to guarantee the health and welfare of the citizens of this state.

SEC. 7. Section 26003 of the Public Resources Code is amended to read:

26003. As used in this division, unless the context otherwise requires:

(a) "Authority" means the California Alternative Energy and Advanced Transportation Financing Authority established pursuant to Section 26004, and any board, commission, department, or officer succeeding to the functions of the authority, or to which the powers conferred upon the authority by this division shall be given.

(b) "Cost" as applied to a project or portion thereof financed under this division means all or any part of the cost of construction and acquisition of all lands, structures, real or personal property or an interest therein, rights, rights-of-way, franchises, easements, and interests acquired or used for a project; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which those buildings or structures may be moved; the cost of all machinery, equipment, and

furnishings, financing charges, interest prior to, during, and for a period after, completion of construction as determined by the authority; provisions for working capital; reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations, and improvements; the cost of architectural, engineering, financial, accounting, auditing and legal services, plans, specifications, estimates, administrative expenses, and other expenses necessary or incident to determining the feasibility of constructing any project or incident to the construction, acquisition, or financing of any project.

(c) "Participating party" means any city, county, person, company, corporation, partnership, firm, or other entity or group of entities engaged in operations within this state which require financing pursuant to the terms of this division to aid and assist in the promotion of alternative energy sources or advanced transportation technologies in the state.

(d) (1) "Alternative sources" means the application of cogeneration technology, as defined in Section 25134; the conservation of energy; or the use of solar, biomass, wind, geothermal, hydroelectricity under 30 megawatts, or any other source of energy, the efficient use of which will reduce the use of fossil and nuclear fuels.

(2) "Alternative sources" does not include any hydroelectric facility that does not meet state laws pertaining to the control, appropriation, use, and distribution of water, including, but not limited to, the obtaining of applicable licenses and permits.

(e) "Advanced transportation technologies" means emerging commercially competitive transportation-related technologies identified by the authority as capable of creating long-term, high value-added jobs for Californians while enhancing the state's commitment to energy conservation, pollution reduction, and transportation efficiency. Those technologies may include, but are not limited to, any of the following:

- (1) Intelligent vehicle highway systems.
- (2) Advanced telecommunications for transportation.
- (3) Command, control, and communications for public transit vehicles and systems.
- (4) Electric vehicles and ultra-low emission vehicles.
- (5) High-speed rail and magnetic levitation passenger systems.
- (6) Fuel cells.

(f) "Project" means any land, building, improvement thereto, rehabilitation, work, property, or structure, real or personal, stationary or mobile, including, but not limited to, machinery and equipment, whether or not in existence or under construction, that utilizes, or is designed to utilize, an alternative source, or that is utilized for the design, technology transfer, manufacture, production, assembly, distribution, or service of advanced transportation technologies.

(g) "Revenue" means all rents, receipts, purchase payments, loan

repayments, and all other income or receipts derived by the authority from the sale, lease, or other disposition of alternative source or advanced transportation technology facilities, or the making of loans to finance alternative source or advanced transportation technology facilities, and any income or revenue derived from the investment of any money in any fund or account of the authority.

(h) "Public agency" means any federal or state agency, board, or commission, or any county, city and county, city, regional agency, public district, or other political subdivision.

SEC. 8. Section 26004 of the Public Resources Code is amended to read:

26004. (a) There is in the state government the California Alternative Energy and Advanced Transportation Financing Authority. The authority constitutes a public instrumentality and the exercise by the authority of powers conferred by this division is the performance of an essential public function.

(b) The authority shall consist of five members, as follows:

(1) The Director of Finance.
(2) The Chairperson of the State Energy Resources Conservation and Development Commission.

(3) The President of the Public Utilities Commission.

(4) The Controller.

(5) The Treasurer, who shall serve as the chairperson of the authority.

(c) The members listed in paragraphs (1) to (5), inclusive, of subdivision (b) may each designate a deputy or clerk in his or her agency to act for and represent the member at all meetings of the authority.

(d) The first meeting of the authority shall be convened by the Treasurer.

SEC. 9. Section 26009 of the Public Resources Code is amended to read:

26009. (a) The authority shall, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, adopt all necessary rules and regulations to carry out this division.

(b) The authority may call upon any board or department of the state government for aid and assistance in the preparation of plans and specifications and in the development of technology necessary to effectively promote the development and utilization of alternative energy sources and the development and commercialization of advanced transportation technologies.

SEC. 10. Section 26031 of the Public Resources Code is amended to read:

26031. (a) The authority may, as lessor or lessee, enter into leases and agreements with any participating party relating to the acquisition, construction, and installation of any project, including real property, buildings, machinery, furnishings, equipment, and

alternative sources and advanced transportation technology facilities of any kind or character.

(b) The terms and conditions of those leases may be as mutually agreed upon. The lease may provide the means or methods by which title shall vest in a participating party upon the termination of the lease and shall contain any other terms and conditions as the authority may determine.

(c) The authority may fix, revise, charge, and collect rates, rents, fees, and charges for each project. Those rates, rents, fees, and charges shall be fixed and adjusted with respect to the aggregate of rates, rents, fees, and charges from all projects so as to provide funds sufficient with other revenues and moneys available therefor, if any, to do all of the following:

(1) Pay the principal of and the interest on outstanding bonds, notes, or other evidences of indebtedness of the authority issued with respect to the project as they shall become due and payable.

(2) Create and maintain reserves required or provided for in any resolution authorizing, or trust agreement securing, those bonds, notes, or other evidences of indebtedness. A sufficient amount of the revenues derived from a project may be set aside at regular intervals as may be provided in that resolution or trust agreement in a sinking or other similar fund which is hereby pledged to, and charged with, the payment of the principal of and interest on those bonds, notes, or other evidences of indebtedness as they shall become due, and the redemption price or the purchase price of bonds, notes, or other evidences of indebtedness retired by call or purchase as therein provided. That pledge shall be valid and binding from the time the pledge is made; the rates, rents, fees, and charges and other revenues or other moneys so pledged and thereafter received by the authority shall immediately be subject to the lien of that pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective of whether the parties have notice thereof. Neither the resolution nor any trust agreement nor any other agreement nor any lease by which a pledge is created need be filed or recorded except in the records of the authority. The use and disposition of money to the credit of a sinking or other similar fund shall be subject to the provisions of the resolution authorizing the issuance of those bonds or of that trust agreement. The sinking or other similar fund may be a fund for all bonds, notes, or other evidences of indebtedness of the authority issued to finance projects of a particular participating party without distinction or priority of one over another. However, the authority, in the resolution or trust agreement, may provide that the sinking or other similar fund shall be the fund for a particular project or projects and for the bonds issued to finance a particular project or projects and may, additionally, permit and provide for the issuance of bonds having a subordinate lien in respect of the security herein authorized to other bonds, notes, or other evidences of indebtedness

of the authority, and, in that case, the authority may create separate sinking or other similar funds in respect of those subordinate lien bonds, notes, or other evidences of indebtedness.

(3) Pay operating and administrative costs of the authority.

SEC. 11. Section 26040 of the Public Resources Code is amended to read:

26040. (a) The authority may receive and utilize grants or loans from the federal government, a public agency, or any other source for carrying out the purposes of this division.

(b) The authority may make a commitment to finance a project by a qualified participating party who requests financing from the authority prior to the participating party's efforts to secure federal matching funds available to promote the development of alternative sources of energy and advanced transportation technologies.

SEC. 12. Section 6010.8 of the Revenue and Taxation Code is amended to read:

6010.8. "Sale" and "purchase" do not include any transfer of title of tangible personal property constituting any project to the California Alternative Energy and Advanced Transportation Financing Authority by any participating party, nor any lease or transfer of title of tangible personal property constituting any project by the authority to any participating party, when the transfer or lease is made pursuant to Division 16 (commencing with Section 26000) of the Public Resources Code. The terms "project" and "participating party" as used in this section have the same meanings as in Section 26003 of the Public Resources Code.

SEC. 13. If both this bill and AB 1379 are both chaptered, this act shall not become operative, regardless of which bill is chaptered last.

CHAPTER 1219

An act to amend Section 18941.6 of, and to amend and renumber Section 17922.1 of, the Health and Safety Code, relating to earthquake safety.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 17922.1 of the Health and Safety Code, as amended by Chapter 1294 of the Statutes of 1993, is amended and renumbered to read:

17922.2. (a) Notwithstanding any other provisions of this part, ordinances and programs adopted on or before January 1, 1993, that contain standards to strengthen potentially hazardous buildings pursuant to subdivision (b) of Section 8875.2 of the Government Code, shall incorporate the building standards in Appendix Chapter

1 of the Uniform Code for Building Conservation of the International Conference of Building Officials published in the California Building Standards Code, except for standards found by local ordinance to be inapplicable based on local conditions, as defined in subdivision (b), or based on an approved study pursuant to subdivision (c), or both. Ordinances and programs shall be updated in a timely manner to reflect changes in the model code, and more frequently if deemed necessary by local jurisdictions.

(b) For the purpose of subdivision (a), and notwithstanding the meaning of "local conditions" as used elsewhere in this part and in Part 2.5 (commencing with Section 18901), the term "local conditions" shall be limited to those conditions that affect the implementation of seismic strengthening standards on the following only:

(1) The preservation of qualified historic structures as governed by the State Historical Building Code (Part 2.7 (commencing with Section 18950)).

(2) Historic preservation programs, including, but not limited to, the California Mainstreet Program.

(3) The preservation of affordable housing.

(c) Any ordinance or program adopted on or before January 1, 1993, may include exceptions for local conditions not defined in subdivision (b) if the jurisdiction has approved a study on or before January 1, 1993, describing the effects of the exceptions. The study shall include socioeconomic impacts, a seismic hazards assessment, seismic retrofit cost comparisons, and earthquake damage estimates for a major earthquake, including the differences in costs, deaths, and injuries between full compliance with Appendix Chapter 1 of the Uniform Code for Building Conservation or the Uniform Building Code and the ordinance or program. No study shall be required pursuant to this subdivision if the exceptions for local conditions not defined in subdivision (b) result in standards or requirements that are more stringent than those in Appendix Chapter 1 of the Uniform Code for Building Conservation.

(d) Ordinances and programs adopted pursuant to this section shall conclusively be presumed to comply with the requirements of Chapter 173 of the Statutes of 1991.

SEC. 2. Section 18941.6 of the Health and Safety Code is amended to read:

18941.6. (a) Notwithstanding any other provision of this part, ordinances and programs adopted on or before January 1, 1993, that contain standards to strengthen potentially hazardous buildings pursuant to subdivision (b) of Section 8875.2 of the Government Code, shall incorporate the building standards in Appendix Chapter 1 of the Uniform Code for Building Conservation of the International Conference of Building Officials published in the California Building Standards Code, except for standards found by local ordinance to be inapplicable based on local conditions, as defined in subdivision (b), or based on an approved study pursuant to subdivision (c), or both.

Ordinances and programs shall be updated in a timely manner to reflect changes in the model code, and more frequently if deemed necessary by local jurisdictions.

(b) For the purpose of subdivision (a), and notwithstanding the meaning of "local conditions" as used elsewhere in this part and Part 2.5 (commencing with Section 18901), the term "local conditions" shall be limited to those conditions that affect the implementation of seismic strengthening standards on the following only:

(1) The preservation of qualified historic structures as governed by the State Historical Building Code (Part 2.7 (commencing with Section 18950)).

(2) Historic preservation programs, including, but not limited to, the California Mainstreet Program.

(3) The preservation of affordable housing.

(c) Any ordinance or program adopted on or before January 1, 1993, may include exceptions for local conditions not defined in subdivision (b) if the jurisdiction has approved a study on or before January 1, 1993, describing the effects of the exceptions. The study shall include a seismic hazards assessment, seismic retrofit cost comparisons, and earthquake damage estimates for a major earthquake, including the differences in costs, deaths, and injuries between full compliance with Appendix Chapter 1 of the Uniform Code for Building Conservation and the ordinance or program. No study shall be required pursuant to this subdivision if the exceptions for local conditions not defined in subdivision (b) result in standards or requirements that are more stringent than those in Appendix Chapter 1 of the Uniform Code for Building Conservation.

(d) Ordinances and programs adopted pursuant to this section shall be conclusively presumed to comply with the requirements of Chapter 173 of the Statutes of 1991.

SEC. 3. Section 4 of Chapter 346 of the Statutes of 1992 shall apply for purposes of this act.

CHAPTER 1220

An act to amend Section 2982.2 of, and to add Section 3068.2 to, the Civil Code, to amend Sections 40084.5, 40088, and 40089 of the Education Code, to amend Section 29601 of, to amend and renumber Section 14035.6 of, to add and repeal Section 14529.11 of, and to repeal Section 14035.4 of, the Government Code, to amend Sections 43012, 44005, 44014.5, 44017, 44031.5, 44037, 44041, 44081, and 44081.6 of the Health and Safety Code, to amend Section 1463 of the Penal Code, to amend Section 20366 of the Public Contract Code, to amend Sections 99314.6 and 130242 of, to add Section 130051.23 to, and to repeal Section 30601 of, the Public Utilities Code, to amend Section 10856 of the Revenue and Taxation Code, to amend Sections 91.5, 190, 263.1, 263.3, 263.6, 304, 307, 315, 318, 326, 353, 360, 371, 391, 428, 475,

487, 515, 544, 547, and 555 of, to add Sections 73.1 and 311 to, and to repeal Sections 457, 471, 552, and 556 of, the Streets and Highways Code, and to amend Sections 440, 4000.6, 9250.18, 11516, 11705, 12804.9, 12810, 22356, 22651, 22651.3, 22651.7, 22658, 22850.3, 25950, 34505.9, and 35002 of, to add Sections 12954 and 24007.1 to, to repeal and add Section 1801 of, and to repeal Section 40517 of, the Vehicle Code, relating to transportation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. This act shall be known and may be cited as the Omnibus Transportation Act of 1994.

SEC. 2. Section 2982.2 of the Civil Code is amended to read:

2982.2. Any conditional sale contract executed after June 30, 1994, for the sale of a new motor vehicle shall contain a notification to the buyer of the availability of an exemption pursuant to subdivision (b) of Section 4000.6 of the Vehicle Code.

SEC. 2.5. Section 3068.2 is added to the Civil Code, to read:

3068.2. (a) A tow truck operator who has a lien on a vehicle pursuant to Section 3068.1 has a deficiency claim against the registered owner of the vehicle if the vehicle is not leased or leased with a driver for an amount equal to the towing and storage charges, not to exceed 120 days of storage, and the lien sale processing fee pursuant to Section 3074, less the amount received from the sale of the vehicle.

(b) A tow truck operator who has a lien on a vehicle pursuant to Section 3068.1 has a deficiency claim against the lessee of the vehicle if the vehicle is leased without a driver for an amount equal to the towing and storage charge, not to exceed 120 days of storage, and the lien sale processing fee described in Section 3074, less the amount received from the sale of the vehicle.

(c) Storage costs incurred after the sale shall not be included in calculating the amount received from the sale of the vehicle.

(d) A registered owner who has sold or transferred his or her vehicle prior to the vehicle's removal and who was not responsible for creating the circumstances leading to the removal of the vehicle is not liable for any deficiency under this section if that registered owner executes a notice pursuant to Section 5900 of the Vehicle Code and submits the notice to the Department of Motor Vehicles. The person identified as the transferee in the notice submitted to the Department of Motor Vehicles shall be liable for the amount of any deficiency only if that person received notice of the transfer and is responsible for the event leading to abandonment of the vehicle or requested the removal.

(e) Except as provided in Section 22524.5 of the Vehicle Code, if

the transferee is an insurer and the transferor is its insured or his or her agent or representative, the insurer shall not be liable for any deficiency, unless the insurer agrees at the time of the transfer, to assume liability for the deficiency.

SEC. 3. Section 40084.5 of the Education Code is amended to read:

40084.5. (a) All behind-the-wheel training required to obtain certificates pursuant to Sections 12517 and 12519 of the Vehicle Code shall be performed by a state-certified instructor or by a delegated behind-the-wheel trainer who has been certified or approved by the department to conduct the required training.

(b) A delegated behind-the-wheel trainer is a person selected to assist a state-certified instructor in the behind-the-wheel training of drivers. Selected persons shall be trained by state-certified instructors and approved by the department prior to conducting any behind-the-wheel training. The minimum standards for the selection of a delegated behind-the-wheel trainer are as follows:

(1) One year experience as a driver of the appropriate type and size vehicle immediately preceding the date of selection as a delegated behind-the-wheel trainer.

(2) Possession of the appropriate license, certificates, and endorsements needed to drive and train in a particular type and size vehicle.

(3) A high school diploma or general education development equivalent.

(4) A driving record with no chargeable accidents within the past three years immediately preceding the date of selection.

(5) Successful completion of all training in the latest edition of the Instructor's Behind-the-Wheel Training Guide for California's Bus Driver's Training Course given by, and in the presence of, a state-certified instructor of the appropriate class.

(6) Successful completion of a written assessment test on current laws, regulations, and policies given by, and in the presence of, a state-certified instructor of the appropriate class.

(7) Successful completion of a driving test and a behind-the-wheel training performance test on all phases of behind-the-wheel and vehicle inspection training. The test shall be given by, and in the presence of, a state-certified instructor of the appropriate class.

(c) The state-certified instructor shall train and document the qualifications and competence of each delegated behind-the-wheel trainer to be utilized in training. All training required by this section shall be documented on the State Department of Education Training Certificate T-01, and signed by a state-certified school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor of the appropriate class, and by the delegated behind-the-wheel trainer. The signatures shall certify that the instruction was given to, and received by, the delegated behind-the-wheel trainer and that the delegated behind-the-wheel trainer displayed a level of competency necessary to train drivers to

drive authorized vehicles in a safe and competent manner. The completed State Department of Education Training Certificate T-01 shall be submitted to the department in Sacramento, along with all other required documents, when requesting approval of a delegated behind-the-wheel trainer.

(d) The department may disapprove the eligibility of a delegated behind-the-wheel trainer for any of the following causes:

(1) The state-certified instructor authorizing the competency of the delegated behind-the-wheel trainer has requested disapproval.

(2) The employer of the delegated behind-the-wheel trainer has requested disapproval.

(3) The delegated behind-the-wheel trainer has voluntarily requested disapproval.

(4) The delegated behind-the-wheel trainer failed to comply with Section 40087.

(5) The delegated behind-the-wheel trainer failed to comply with Section 40084.5.

(6) The delegated behind-the-wheel trainer does not possess a valid driver's license, appropriate endorsements, or special driver's certificate of the appropriate class.

(7) The delegated behind-the-wheel trainer's driver's license or special driver's certificate has been suspended or revoked.

(e) A delegated behind-the-wheel trainer may be limited in behind-the-wheel training as determined by the department.

SEC. 4. Section 40088 of the Education Code is amended to read:

40088. (a) An applicant for a school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor certificate shall successfully complete the appropriate instructor course given or approved by the department.

(b) An applicant for the course shall possess:

(1) A valid driver's license and endorsement valid for driving the vehicles for which the driver instructor rating is sought.

(2) A certificate or endorsement valid for driving the vehicles for which the driver instructor rating is sought.

(3) Five years of experience as a driver in the appropriate vehicle category, or two years experience of that driving experience and three years equivalent experience driving vehicles that require a class A or B driver's license.

(4) A high school diploma or General Education Development (GED) equivalent.

(5) A driving record with no chargeable accidents within the past three years preceding the date of application for the instructor certificate.

The department may waive any or all of the requirements of this subdivision as it determines is necessary to ensure that there are an adequate number of state-certified instructors in the state.

(c) (1) A state-certified schoolbus driver instructor of the appropriate class may instruct all applicants for a schoolbus, school pupil activity bus (SPAB), transit bus, or farm labor vehicle driver's

certificate.

(2) A state-certified school pupil activity bus (SPAB) driver instructor of the appropriate class may instruct all applicants for a school pupil activity bus (SPAB), transit bus, or farm labor vehicle driver's certificate, but not a schoolbus certificate.

(3) A state-certified transit bus instructor of the appropriate class may instruct all applicants for a transit bus or farm labor driver's certificate, but not a school pupil activity bus (SPAB) or a schoolbus certificate.

(4) A state-certified farm labor vehicle driver instructor may instruct applicants only for a certificate to drive a farm labor vehicle.

(d) A school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor certificate shall be valid until suspended, revoked, or canceled if it is accompanied by a valid driver's license and a special driver's certificate or valid driver's license and endorsement of the appropriate class or is limited to classroom or in-service training only.

(e) The department may suspend or revoke a school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor certificate for any of the following causes:

(1) The certificate holder failed to comply with Section 40087.

(2) The certificate holder failed to comply with Section 40084.5.

(3) The certificate holder has committed an act listed in Section 13369 of the Vehicle Code or Section 13370 of that code.

(f) The department shall revoke a schoolbus, school pupil activity bus (SPAB), transit bus, or farm labor vehicle driver instructor certificate if the certificate holder falsified a State Department of Education Training Certificate T-01, T-02, or T-03.

(g) The department may cancel the driver instructor certificate for any of the following causes:

(1) The certificate holder has voluntarily requested cancellation.

(2) The certificate holder has his or her driving privilege suspended or revoked.

(3) The certificate holder has failed to meet the provisions required for retention of the driver instructor certificate. This includes failure to meet the instructor training requirements prescribed by Section 40089.

(4) The certificate holder does not possess a valid driver's license, endorsement, or special driver's certificate of the appropriate class.

(h) The department shall by regulation adopt an instructor certificate appeals procedure for subdivisions (e), (f), and (g).

(i) The Department of Motor Vehicles or the Department of the California Highway Patrol may disallow the driver training documentation provided pursuant to Section 40087 signed by any driver instructor certified pursuant to Section 40081 if either of those departments finds that the instructor's certificate would have been suspended, revoked, or canceled for any of the reasons designated in subdivision (e), (f), or (g).

SEC. 5. Section 40089 of the Education Code is amended to read:

40089. (a) A school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor with no instructional limitations shall conduct at least 20 hours of instruction each 12 months that includes at least 10 hours of behind-the-wheel and 10 hours of classroom training, which need not be given in a single session. A school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor limited to either classroom or behind-the-wheel training only shall conduct at least 10 hours of instruction each 12 months that includes at least 10 hours of behind-the-wheel or classroom training depending on the limitation. The training need not be given in a single session. A school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor limited to in-service training only shall conduct at least 10 hours of in-service training each 12 months. All school pupil activity bus (SPAB), transit bus, schoolbus, and farm labor vehicle driver instructor training conducted by department staff may be accepted in lieu of the requirements of this subdivision.

(b) A school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor may be limited to classroom instruction, behind-the-wheel training or in-service training only, and prohibited from recording, documenting, or signing for any training required by this article, as determined by the department.

(c) A school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor shall be limited to behind-the-wheel instruction in vehicles that the instructor is qualified to drive.

(d) All school pupil activity bus (SPAB), transit bus, schoolbus, or farm labor vehicle driver instructor training required by subdivision (a) shall be properly documented on a State Department of Education Training Certificate T-01, and signed by the state-certified instructor at the end of each 12-month training period. The signature certifies that the required instruction was conducted during the 12-month training period. Upon renewal of the instructor driver's license, endorsement, or certificate, the completed instructor training record, recorded on the State Department of Education Training Certificate, shall be submitted to the department in Sacramento.

SEC. 6. Section 14035.4 of the Government Code is repealed.

SEC. 7. Section 14035.6 of the Government Code, as added by Chapter 568 of the Statutes of 1980, is amended and renumbered to read:

14035.4. The department shall request the involvement and cooperation of affected local agencies and public and private passenger carriers in decisions relative to the acquisition, development, and operation of intermodal passenger facilities.

SEC. 8. Section 14529.11 is added to the Government Code, to read:

14529.11. The following conditions apply to projects in the state highway system which are financed, in whole or in part, from retail

transactions and use taxes as part of an identified expenditure plan.

(a) A local jurisdiction which chooses to provide its own financing for the construction or improvement of a state highway shall be responsible for determining the priority and delivery schedule of locally funded projects. The jurisdiction shall consult with the department in determining the schedules.

(b) The local jurisdiction shall request that the department, as the state agency responsible for determining the final concept and location of projects in the state highway system, prepare, or cause to be prepared, initial project reports in conjunction with the local jurisdiction. The request shall accompany or be predicated on a strategic plan developed by the local jurisdiction which includes information on the description, priority, and delivery schedule of all projects proposed by the local jurisdiction to be financed by retail transactions and use taxes. The department shall review the strategic plan to assess the department's long-term resource capabilities, and shall develop and submit a recommendation to the local jurisdiction for the management and conduct of all phases of the work to meet the priorities established by the local jurisdiction.

(c) The department shall use the initial project report prepared pursuant to subdivision (b) to determine and obtain initial agreements with the local jurisdiction on feasibility, concept, estimates, staging, limits, environmental considerations, and schedules. The department shall prepare the initial project report at state expense and within a timeframe established jointly by the local jurisdiction and the department. The local jurisdiction shall provide, at its expense, appropriate existing technical and financial information that may be needed to prepare the initial project report and may, at its option, provide other data to expedite preparation and approval, including draft initial project reports prepared with the approval of the department. After the department and the local jurisdiction have provided their initial approval, any change in project scope that causes any change in cost estimates or schedule shall be agreed upon by the local jurisdiction, the department and, where appropriate, the Federal Highway Administration.

(d) Upon completion of the initial project report, or at a time deemed appropriate by the local jurisdiction, the department shall respond within 30 days to a request from the local jurisdiction to prepare, or cause to be prepared, all project development work through environmental clearance for those projects financed by retail transactions and use taxes. The local jurisdiction's request shall include the local jurisdiction's final determination of the priority and delivery schedule of proposed projects. The determination may, but is not required to, match the initial agreements reached in the initial project report. If the department determines that it is able to comply with the request, the state shall pay for the project development work through environmental clearance. If the department and the local jurisdiction concur, the local jurisdiction may undertake project development work through environmental clearance at its own

expense, under the oversight of the department. The cost of oversight shall be borne by the department.

(e) A local jurisdiction which has determined to utilize its own retail transactions and use taxes and any other local resources to fund the construction or improvement of a state highway project may, if the department is unable to comply with the request specified in subdivision (d), request the department to furnish the local jurisdiction with all information and assistance necessary to enable the local jurisdiction to proceed with the planning, design, right-of-way acquisition, and construction of the project. A local jurisdiction which chooses to proceed with project development work through environmental clearance pursuant to this section, is responsible for all the costs associated with the work. The department, however, shall provide the required oversight at state expense.

Upon receiving sufficient assurances that adequate local funding for the project will be made available by the local jurisdiction, the department shall move expeditiously to furnish that information and assistance to the local jurisdiction within 90 days of the department's determination that it cannot comply with the request specified in subdivision (d). This information shall be made available only after the department has had the opportunity to determine whether it will be able to comply with the request specified in subdivision (d).

The project shall be designed, right-of-way acquired, and the environmental documents prepared in accordance with the department's practices for planning, design, right-of-way acquisition, and construction. The department shall prescribe these practices in policy and procedural memoranda within the 90-day period.

(f) The detailed application of the conditions prescribed by this section shall be set forth in an agreement between the department and the local jurisdiction.

(g) This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 9. Section 29601 of the Government Code is amended to read:

29601. The following expenses of the district attorney and the sheriff are county charges:

(a) Traveling and other personal expenses incurred in criminal cases arising in the county and in civil actions and proceedings in which the county is interested.

(b) All other expenses necessarily incurred by either of them:

(1) In the detection of crime. Except as to violations of Section 23152 of the Vehicle Code, this section does not apply to the detection of those crimes declared to be misdemeanors by the Vehicle Code.

(2) In the prosecution of criminal cases, and in civil actions and proceedings and all other matters in which the county is interested, or in which any officer or employee, or former officer or employee,

of the county is a defendant in an action for damages instituted for any act performed by him or her in good faith in furtherance of his or her duty while in the employ of the county and in which the district attorney is authorized to represent him or her.

SEC. 11. Section 43012 of the Health and Safety Code is amended to read:

43012. (a) For the purpose of enforcing or administering any federal, state, or local law, order, regulation, or rule relating to vehicular sources of emissions, the executive officer of the state board or an authorized representative of the executive officer, or a representative of the department, upon presentation of credentials or, if necessary under the circumstances, after obtaining an inspection warrant pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure, has the right of entry to any premises owned, operated, used, leased, or rented by any new or used car dealer, as defined in Sections 285, 286, and 426 of the Vehicle Code, for the purpose of inspecting any vehicle for which emissions standards have been enacted or adopted or for which emissions equipment is required and which is situated on the premises for the purpose of emission-related maintenance, repair, or service, or for the purpose of sale, lease, or rental, whether or not the vehicle is owned by the dealer. The inspection may extend to all emission-related parts and operations of the vehicle, and may require the on-premises operation of an engine or vehicle, the on-premises securing of samples of emissions from the vehicle, and the inspection of any records which relate to vehicular emissions required by the Environmental Protection Agency or by any state or local law, order, regulation, or rule to be maintained by the dealer in connection with the dealer's business.

(b) The right of entry for inspection under this section is limited to the hours during which the dealer is open to the public, except when the entry is made pursuant to warrant or whenever the executive officer or an authorized representative, or a representative of the department, has reasonable cause to believe that a violation of any federal, state, or local law, order, regulation, or rule has been committed in his or her presence. No vehicle shall be inspected pursuant to this section more than one time without an inspection warrant or without reasonable cause unless the vehicle undergoes a change of ownership or the inspection reveals that the vehicle has failed to comply with required emissions standards or equipment, in which case one additional inspection may be made to verify the violation or to verify that the violation has been corrected.

(c) With respect to vehicles not owned by the dealer, the state board or the department may not prosecute, without the owner's knowledge or consent, any violation by the owner of any law pertaining to vehicular emissions unless prior notice of the inspection has been given to the owner.

(d) If the executive officer or authorized representative, or a representative of the department, upon inspection, finds that a used

motor vehicle fails to comply with applicable emissions standards or equipment, the state board or the department shall issue a notice to correct and enter the appropriate vehicle information into the centralized computer data base created pursuant to Section 44037.1. Until all violations in the notice have been corrected and the dealer has sent proof of correction by certified mail to the state board or the department, whichever issued the notice, the motor vehicle shall prominently display the following disclosure affixed to the windshield in at least 18-point type:

NOT FOR SALE

THIS VEHICLE IS PRESENTLY NOT IN COMPLIANCE WITH THE CALIFORNIA VEHICLE POLLUTION CONTROL LAWS AND MAY NOT BE SOLD UNTIL A VALID CERTIFICATE OF COMPLIANCE HAS BEEN ISSUED.

Any dealer who sells a vehicle prohibited to be sold under this subdivision is subject to a civil penalty of not to exceed one thousand dollars (\$1,000). For purposes of this subdivision, "proof of correction" shall consist of a copy of a certificate of compliance or noncompliance issued following the issuance of a notice to correct by a licensed test station or licensed repair station not affiliated with or owned by the dealer or any other proof of repair satisfactory to the inspecting officer. The dealer shall send the copy of the certificate of compliance or noncompliance by certified mail to the state board or the department, whichever issued the notice, within three days of obtaining the certificate.

(e) Civil penalties may be assessed or recovered for one or more violations by a dealer involving the tampering with or disabling of a vehicle's air injection, exhaust gas recirculation, crankcase ventilation, fuel injection or carburetion systems, ignition timing or evaporative controls, fuel filler neck restrictor, oxygen sensor or electronic controls, or missing catalytic converter.

(f) No civil penalty or criminal penalty may be assessed for a violation by a dealer identified in a notice to correct as a result of an inspection under this section if the violation is related to lack of maintenance or customer tampering or vandalism, including, but not limited to, a missing gasoline filler cap and a disconnected or missing heated air intake tube or vacuum hose. However, if notices to correct are issued under this subdivision to more than 20 percent of the vehicles offered for sale on a dealer's premises during each of three consecutive inspections conducted 30 or more days apart during any one-year period, civil penalties may be assessed and recovered for each vehicle issued a notice to correct.

(g) If the executive officer or authorized representative, upon inspection, finds that a certificate of compliance or noncompliance was issued to a motor vehicle that fails to comply with applicable emissions standards or equipment, the state board shall immediately

refer these findings to the department for investigation under Chapter 5 (commencing with Section 44000). The state board may refer any other suspected violation to the department for appropriate action.

(h) Notwithstanding Section 17150 of the Vehicle Code, the state shall be liable for any injury or damage caused by the negligent or wrongful act or omission of the operator of any vehicle which is operated pursuant to this section.

(i) This section provides the exclusive authority for inspections of motor vehicles for the purposes specified in this section.

(j) As used in this section, the terms "tampering" and "disabling" mean an unauthorized modification, alteration, removal, or disconnection.

SEC. 12. Section 44005 of the Health and Safety Code is amended to read:

44005. (a) The Department of Motor Vehicles shall cooperate with the department in implementing any changes to enhance the program to achieve greater efficiency, cost-effectiveness, and convenience, or to reduce excess emissions in accordance with this chapter.

(b) The program shall provide for inspection of motor vehicles upon initial registration, biennially upon renewal of registration, upon transfer of ownership, upon the issuance of a notice of noncompliance to a gross polluter pursuant to Section 44081, and as otherwise provided in this chapter.

SEC. 13. Section 44014.5 of the Health and Safety Code is amended to read:

44014.5. (a) The enhanced program shall provide for the testing and retesting of vehicles in accordance with Section 44010.5 and this section.

(b) The repair of vehicles at test-only stations shall be prohibited, except that the minor repair of components damaged by station personnel during inspection at the station, any minor repair which is necessary for the safe operation of a vehicle while at a station, or other minor repairs, such as the reconnection of hoses or vacuum lines, may be undertaken at no charge to the vehicle owner or operator if authorized in advance in writing by the department.

(c) The department shall provide for the distribution to consumers by test-only stations of a list, compiled by region, of smog check stations licensed to make repairs of vehicular emission control systems. A test-only station shall not refer a vehicle owner to any particular provider of vehicle repair services.

(d) The department shall establish standards for training, equipment, performance, or data collection for test-only facilities.

(e) The department, by regulation, shall prohibit test-only stations from engaging in other business activities that represent a conflict of interest, as determined by the department.

(f) The test-only station may charge a fee, established by the department, sufficient to cover the station's cost to perform the tests

required by this chapter. In addition, the station shall charge and collect the certificate fee established pursuant to Section 44060. This subdivision shall apply only to stations contracted for pursuant to subdivision (e) of Section 44010.5.

(g) The department shall ensure that there is a sufficient number of test-only facilities to provide convenient testing for the following vehicles:

(1) All vehicles identified and confirmed as gross polluters pursuant to Section 44081 and Section 27156 of the Vehicle Code.

(2) All vehicles identified by a smog check station prior to repairs as gross polluters or as having been tampered with.

(3) All vehicles designated by the department pursuant to Sections 44014.7 and 44020.

(h) The department shall provide a sufficient number of test-only facilities authorized to perform referee functions to provide convenient testing for those vehicles that are required to report to, and receive a certificate of compliance from, a test-only station by this chapter, including all of the following:

(1) All vehicles seeking to utilize state-operated financial assistance or inclusion in authorized scrap programs.

(2) All vehicles unable to obtain a certificate of compliance from a licensed smog check station pursuant to subdivision (c) of Section 44015.

(3) Any other vehicles that may be designated by the department.

(i) (1) Gross polluters shall be referred to a test-only facility for a post-repair inspection and retest pursuant to subdivision (g). Simply passing the emissions test shall not be a sufficient condition for receiving a certificate of compliance. A certificate of compliance shall only be issued to a vehicle which does not have any defects with its emission control systems or any defects which could lead to damage of its emission control system, as provided in regulations adopted by the department.

(2) The department shall require all vehicles which are tested pursuant to this chapter and found to be gross polluters, or which are found to have been tampered with, to be tested annually at a test-only station for at least two, but not more than five, consecutive years, as the department determines to be necessary to ensure that the program will comply with Environmental Protection Agency performance standards.

SEC. 14. Section 44017 of the Health and Safety Code is amended to read:

44017. (a) Except as otherwise provided in this section, the cost limit for repairs under the program, including parts and labor, shall be a minimum of four hundred fifty dollars (\$450) in all areas where the program operates.

(b) The limit established pursuant to subdivision (a) shall not become operative until January 1, 1995, or until the repair subsidy program required pursuant to Section 44062.1 is implemented, whichever occurs first. Prior to that time, the following cost limits

shall remain in effect:

(1) For motor vehicles of 1971 and earlier model-years, fifty dollars (\$50).

(2) For motor vehicles of 1972 to 1974, inclusive, model-years, ninety dollars (\$90).

(3) For motor vehicles of 1975 to 1979, inclusive, model-years, one hundred twenty-five dollars (\$125).

(4) For motor vehicles of 1980 to 1989, inclusive, model-years, one hundred seventy-five dollars (\$175).

(5) For motor vehicles of 1990 and later model-years, three hundred dollars (\$300).

(c) The department shall periodically revise the cost limits specified in subdivisions (a) and (b) in accordance with changes in the Consumer Price Index, as published by the United States Bureau of Labor Statistics.

(d) No cost limit shall be imposed in those cases where emissions control equipment is missing or is partially or totally inoperative as a result of being tampered with or when the vehicle has been identified as a gross polluter pursuant to Section 44081 and verified as a gross polluter at a test-only station. The cost limits prescribed pursuant to this section, when implemented, shall not be imposed on vehicles identified as gross polluters prior to repairs at a smog check station. However, if there is no evidence of tampering and the vehicle owner has had repairs performed as necessary to bring the vehicle's emissions below the appropriate threshold established for gross polluters, the emission cost waiver provisions shall apply.

SEC. 15. Section 44031.5 of the Health and Safety Code is amended to read:

44031.5. (a) No smog check technician may perform tests or make repairs required by this chapter, for compensation, unless qualified by the department for the class and category of vehicle being tested or repaired. To qualify, smog check technicians shall pass a qualification test administered by the department, in addition to meeting prerequisite minimum experience and training criteria established by the department, pursuant to Section 44045.5. Passage of the qualification test shall, and training may, also be required upon each biennial renewal of the smog check technician's license.

(b) The department shall prescribe training and periodic retraining courses for licensed smog check technicians pursuant to Section 44045.6.

(c) Whenever the department determines, through investigation, that a previously qualified smog check technician may lack the skills to reliably and accurately perform the test or repair functions within the required qualification, the department may prescribe for the technician one or more retraining courses which have been certified by the department. The smog check technician may request and be granted a hearing, pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, on the department's determination. The request for a hearing shall be

submitted within 30 days of the department's notification of its determination. A failure to complete the prescribed retraining course within the time designated by the department, or to request a hearing within 30 days of the department's notification of its determination, shall result in loss of qualification. Upon a later completion of the prescribed department certified retraining course, the department may reinstate the smog check technician's qualification.

(d) Smog check technicians shall have the option to do hands-on work in lieu of written work in order to successfully complete the department certified training and retraining courses.

(e) The institution administering the department certified training or retraining courses shall issue a certificate of completion to each person who successfully completes the certified courses. The certificate shall be valid for one year.

(f) The department may, by regulation, establish procedures relating to the issuance and use of photo identification cards for licensed technicians.

SEC. 15.3. Section 44037 of the Health and Safety Code is amended to read:

44037. (a) The department shall compile and maintain records, using the sampling methodology necessary to ensure their scientific validity and reliability, of tests and repairs performed by qualified smog check technician at licensed smog check stations pursuant to this chapter on all of the following information:

(1) The motor vehicle identification information and the test data collected at the station.

(2) The number of maintenance and repair operations performed on motor vehicles which fail to pass a test conducted pursuant to this chapter.

(3) The correlation between maintenance and repairs recommended by the department pursuant to Section 44016 and maintenance and repairs performed.

(4) The charges assessed for the service and repairs and the correlation between the amount charged for repairs and the amount of emission reduction.

(5) Data received and compiled through the use of the centralized computer data base and computer network to be established pursuant to Section 44037.1, and any other information determined to be essential by the department for program enhancement to achieve greater efficiency, consumer protection, cost-effectiveness, convenience, or emission reductions.

(6) The frequency of specific smog check stations which issue a passing certificate for vehicles which have failed a previous inspection at other smog check stations within the preceding 30 days.

(b) A written summary of the information specified in subdivision (a) shall be available annually for the technicians and smog check stations in each district and to the public upon request.

SEC. 15.5. Section 44041 of the Health and Safety Code is

amended to read:

44041. In order to expedite emissions testing and to eliminate errors in the transcription of vehicle data, the department shall, in cooperation with the Department of Motor Vehicles, furnish bar code labels or bar coded documents to all vehicle owners at the time of their vehicle's annual registration renewal. The labels or documents shall contain vehicle identification numbers and other vehicle-specific information, to be determined by the department, which can be recorded by smog check station technicians utilizing the scanning devices required by Section 44036.

SEC. 15.7. Section 44081 of the Health and Safety Code is amended to read:

44081. (a) (1) The department, in cooperation with the state board, shall institute procedures for auditing the emissions of vehicles while actually being driven on the streets and highways of the state. The department may undertake those procedures itself or seek a qualified vendor of these services. The primary object of the procedures shall be the detection of gross polluters. The procedures shall consist of techniques and technologies determined to be effective for that purpose by the department, including, but not limited to, remote sensing. The procedures may include pullovers for roadside emissions testing and inspection. The department shall consider the recommendations of the review committee based on the outcome of the pilot demonstration program conducted pursuant to Section 44081.6.

(2) The department may additionally use other methods to identify gross polluting vehicles for out-of-cycle testing and repair.

(b) The department shall, by regulation, establish a program for the out-of-cycle testing and repair of vehicles found, through roadside auditing, to be emitting at levels that exceed specified standards. The program shall include all of the following elements:

(1) Emission standards, and test and inspection procedures and regulations, adopted in coordination with the state board, applicable to vehicles tested during roadside auditing. Emission standards for issuance of a notice of noncompliance to a gross polluter shall be designed to maximize the identification of vehicles with substantial excess emissions.

(2) Procedures for issuing notices of noncompliance to owners of gross polluters, either at the time of the roadside audit, or subsequently by certified mail, or by obtaining a certificate of mailing as evidence of service, using technologies for recording license plate numbers. The notice of noncompliance shall provide that, unless the vehicle is brought to a designated test-only station for emissions testing within 30 days, the owner will be required to pay an administrative fee of five hundred dollars (\$500) to be collected by the Department of Motor Vehicles at the next annual registration renewal or the next change of ownership of the vehicle, whichever occurs first. Commencing on the 31st day after issuance of the notice of noncompliance, the fee shall accrue at the rate of five dollars (\$5)

per day up to the five hundred dollars (\$500) maximum.

(3) Procedures for the testing of vehicles identified as gross polluters by a designated test-only facility to confirm that the vehicle exceeds the minimum emission standard for gross polluters set by the department.

(4) Procedures requiring owners of vehicles confirmed as gross polluters to have the vehicle repaired, resubmitted for testing, and obtain a certificate of compliance from a designated test-only facility within 30 days or be required to pay an administrative fee of not more than five hundred dollars (\$500), to be collected by the Department of Motor Vehicles at the next annual registration renewal or the next change of ownership, whichever occurs first. Commencing on the 31st day after issuance of the notice of noncompliance, the fee shall accrue at the rate of five dollars (\$5) per day up to the five hundred dollars (\$500) maximum. Regulations adopted by the department may authorize impoundment of a vehicle after the maximum penalty has accrued. The registration of a vehicle shall not be issued or renewed if that vehicle has been identified as a gross polluter and has not been issued a certificate of compliance. Except as provided in subdivision (b) of Section 9250.18 of the Vehicle Code, any revenues collected by the Department of Motor Vehicles pursuant to this subdivision and Section 9250.18 of the Vehicle Code shall be deposited in the Vehicle Inspection and Repair Fund. If the ownership of the vehicle is transferred, the administrative fee provided for in this subdivision shall be waived if the vehicle is brought into compliance.

(5) A procedure for notifying the Department of Motor Vehicles of notices of noncompliance issued, so that the Department of Motor Vehicles may provide effective collection of the administrative fee. The Department of Motor Vehicles shall cooperate with, and implement the requirements of, the department in that regard.

(6) The department may adopt any other regulations necessary for the effective implementation of this section, as determined by the department.

(c) Upon the request of the department, the Department of the California Highway Patrol shall provide assistance in conducting roadside auditing, to consist of (1) the stopping of vehicles and traffic management, and (2) the issuance of notices of noncompliance to gross polluters. The department shall reimburse the Department of the California Highway Patrol for its costs of providing those services. The Department of Transportation and affected local agencies shall provide necessary assistance and cooperation to the department in the operation of the program.

(d) There shall be no repair cost limit imposed pursuant to Section 44017 for any repairs that are required to be made under the roadside auditing program, except as provided in subdivision (d) of Section 44017.

SEC. 16. Section 44081.6 of the Health and Safety Code is amended to read:

44081.6. (a) The California Environmental Protection Agency, the state board, and the department, in cooperation with, and with the participation of, the Environmental Protection Agency, shall jointly undertake a pilot demonstration program to do all of the following:

(1) Determine the emission reduction effectiveness of alternative loaded mode emission tests compared to the IM240 test.

(2) Quantify the emission reductions, above and beyond those required by Environmental Protection Agency regulation or by the biennial test requirement, achievable from a remote sensing-based program that identifies gross polluting and other vehicles and requires the immediate repair and retest of those gross polluting vehicles at a test-only station established by this chapter.

(3) Determine if high polluting vehicles can be identified and directed to test-only stations using criteria other than, or in addition to, age and model year, and whether this reduces the number of vehicles which would otherwise be subject to inspection at test-only stations.

(4) Qualify emission reductions above and beyond those that are required by the regulations of the Environmental Protection Agency, achievable from other program enhancements pursuant to this chapter.

(5) Determine the extent to which the capacity of the test-only station network established pursuant to Section 44010.5 needs to be expanded to comply with Environmental Protection Agency performance standards.

(b) The California Environmental Protection Agency shall enter into a memorandum of agreement with the Environmental Protection Agency to establish the protocol for the pilot demonstration program. The memorandum of agreement shall ensure, to the extent possible, that the Environmental Protection Agency will accept the results of the pilot demonstration program as the findings of the Administrator of the Environmental Protection Agency. The pilot demonstration program shall be conducted pursuant to the memorandum of agreement.

(c) The review committee established pursuant to Section 44021 shall review the protocol for the pilot demonstration program, as established in the signed memorandum of agreement, and recommend any modification that the review committee finds to be appropriate for the pilot demonstration program. Any such modification shall become effective only upon the written agreement of the California Environmental Protection Agency and the Environmental Protection Agency.

(d) The department shall contract, on behalf of the committee, with an independent entity to ensure quality control in the collection of data pursuant to the pilot demonstration program. The department shall also contract, on behalf of the committee, for an independent analysis of the data produced by the pilot demonstration program.

(e) Any contract entered into pursuant to this section shall not be subject to any restrictions that are applicable to contracts in the Government Code or in the Public Contract Code. The department shall report to the Legislature any action that is taken in accordance with this subdivision.

(f) To the extent possible, the pilot demonstration program shall be conducted using equipment, facilities, and staff of the state board, the department, and the Environmental Protection Agency.

(g) The pilot demonstration program shall provide for, but not be limited to, all of the following:

(1) For the purposes of this section, any vehicle subject to the inspection and maintenance program may be selected to participate in the pilot demonstration program regardless of when last inspected pursuant to this chapter.

(2) Registered owners of vehicles selected to participate in the pilot demonstration program shall make the vehicle available for testing within a time period and at a testing facility designated by the department. If necessary, the department shall increase the capacity of the existing referee network in the area or areas where the pilot demonstration program will be operating, in order to accommodate the convenient testing of selected vehicles.

(3) If the department finds that a vehicle is emitting excessive emissions, the vehicle owner shall be required to make necessary repairs within the existing cost limits and return to a testing facility designated by the department. The vehicle owner shall have additional repairs made if the repairs are requested and funded by the department. The department shall also fund the cost of any necessary repairs if the owner of the vehicle has, within the last two years, already paid for emissions-related repairs to the same vehicle in an amount at least equal to the existing cost limits, in order to obtain a certificate of compliance or an emission cost waiver.

(4) Vehicle owners who fail to bring the vehicle in for inspection or fail to have repairs made pursuant to this section shall be issued notices of noncompliance. The notice shall provide that, unless the vehicle is brought to a designated testing facility for testing, or repair facility for repairs, within 15 days of notice of the requirement, the owner will be required to pay an administrative fee of not more than five dollars (\$5) a day, not to exceed two hundred fifty dollars (\$250), to be collected by the Department of Motor Vehicles at the next annual registration renewal or the next change of ownership of the vehicle, whichever occurs first. Commencing on the 31st day after issuance of the notice of noncompliance, the fee shall accrue at the rate of five dollars (\$5) per day up to the two hundred fifty dollars (\$250) maximum. Except as provided in subdivision (b) of Section 9250.18 of the Vehicle Code, any revenues collected by the Department of Motor Vehicles pursuant to this subdivision and Section 9250.18 of the Vehicle Code shall be deposited into the Vehicle Inspection and Repair Fund by the Department of Motor Vehicles.

(h) The Department of Motor Vehicles, the Department of Transportation, local agencies, and the state board shall provide necessary support for the program established pursuant to this section.

(i) As soon as possible after the effective date of this section, the department and the state board shall develop, implement, and revise as needed, emissions test procedures and emissions standards necessary to conduct the pilot demonstration program.

SEC. 17. Section 1463 of the Penal Code is amended to read:

1463. All fines and forfeitures imposed and collected for crimes shall be distributed in accordance with Section 1463.001. Penalties imposed and collected for parking offenses shall be distributed as provided in Section 1463.009.

The following definitions shall apply to terms used in this chapter:

(a) "Arrest" means any law enforcement action, including issuance of a notice to appear or notice of violation, which results in a criminal charge.

(b) "City" includes any city, city and county, district, authority or other local agency (other than a county) which employs persons authorized to make arrests or to issue notices to appear, or notices of violation which may be filed in court.

(c) "City arrest" means an arrest by an employee of a city, or by a California Highway Patrol officer within the limits of a city.

(d) "County" means the county in which the arrest took place.

(e) "County arrest" means an arrest by a California Highway Patrol officer outside the limits of a city, or any arrest by a county officer or by any other state officer.

(f) "Court" means the superior, municipal, or justice court or a juvenile forum established under Section 257 of the Welfare and Institutions Code, in which the case arising from the arrest is filed.

(g) "Division of moneys" means an allocation of base fine proceeds between agencies as required by statute including, but not limited to, Sections 1463.003, 1463.9, 1463.23, 1463.26, and Sections 13001, 13002, and 13003 of the Fish and Game Code, and Section 11502 of the Health and Safety Code.

(h) "Offense" means any infraction, misdemeanor, or felony, and any act by a juvenile leading to an order to pay a financial sanction by reason of the act being defined as an infraction, misdemeanor, or felony, whether defined in this or any other code, except any parking offense as defined in subdivision (i).

(i) "Parking offense" means any offense charged pursuant to Article 3 (commencing with Section 40200) of Chapter 1 of Division 17 of the Vehicle Code, including registration and equipment offenses included on a notice of parking violation.

(j) "Penalty allocation" means the deposit of a specified part of moneys to offset designated processing costs, as provided by Section 1463.16 and by Section 68090.8 of the Government Code.

(k) "Total parking penalty" means the total sum to be collected for a parking offense, whether as fine, forfeiture of bail, or payment

of penalty to the Department of Motor Vehicles. It may include the following components:

(1) The base parking penalty as established pursuant to Section 40203.5 of the Vehicle Code.

(2) The Department of Motor Vehicles (DMV) fees added upon the placement of a hold pursuant to Section 40220 of the Vehicle Code.

(3) The surcharges required by Section 76000 of the Government Code.

(4) The notice penalty added to the base parking penalty when a notice of delinquent parking violations is given.

(l) "Total fine or forfeiture" means the total sum to be collected upon a conviction, or the total amount of bail forfeited or deposited as cash bail subject to forfeiture. It may include, but is not limited to, the following components as specified for the particular offense:

(1) The "base fine" upon which the state penalty and additional county penalty is calculated.

(2) The "county penalty" required by Section 76000 of the Government Code.

(3) The "service charge" permitted by Section 853.7 of the Penal Code and Sections 40508.5 and 41103.5 of the Vehicle Code.

(4) The "special penalty" dedicated for blood alcohol analysis, alcohol program services, traumatic brain injury research, and similar purposes.

(5) The "state penalty" required by Section 1464.

SEC. 18. Section 20366 of the Public Contract Code is amended to read:

20366. Projects authorized by this article shall do all of the following:

(a) Provide an opportunity to utilize advanced rail transit technology.

(b) Retain for the commission the authority to establish fare rates.

(c) Require no funding from the transactions and use tax revenues of the commission or from state funds directly for construction of rail transit systems and related facilities during the construction period of the rail transit system. However, nothing in this subdivision precludes the use or commitment of funds in connection with any guaranty, insurance policy, letter of credit agreement, or other credit enhancement or liquidity arrangement issued by the commission for the payment of interest, principal, and premiums on any loan, lease, bond, certificate of participation or other obligation, or evidence of indebtedness incurred in connection with the construction of the rail transit system and related facilities.

(d) In the County of Los Angeles, include a system linking the Los Angeles International Airport with the Palmdale Regional Airport.

(e) Provide new service to commuters and an economic benefit to the public.

SEC. 19. Section 30601 of the Public Utilities Code is repealed.

SEC. 20. Section 99314.6 of the Public Utilities Code is amended

to read:

99314.6. Except as provided in Section 99314.7, the following eligibility standards apply:

(a) Except as provided in subdivision (b), funds shall not be allocated for operating purposes pursuant to Sections 99313 and 99314 to an operator unless the operator meets either of the following efficiency standards:

(1) The operator's total operating cost per revenue vehicle hour in the latest year for which audited data are available does not exceed the sum of the preceding year's total operating cost per revenue vehicle hour and an amount equal to the product of the percentage change in the Consumer Price Index for the same period multiplied by the preceding year's total operating cost per revenue vehicle hour.

(2) The operator's average total operating cost per revenue vehicle hour in the latest three years for which audited data are available does not exceed the sum of the average of the total operating cost per revenue vehicle hour in the three years preceding the latest year for which audited data are available and an amount equal to the product of the average percentage change in the Consumer Price Index for the same period multiplied by the average total operating cost per revenue vehicle hour in the same three years.

(b) The transportation planning agency, county transportation commission, or the San Diego Metropolitan Transit Development Board, as the case may be, may adjust the calculation of operating costs and revenue vehicle hours pursuant to subdivision (a) to account for either or both of the following factors as it deems appropriate to encourage progress in achieving the objectives of efficiency, effectiveness, and productivity pursuant to Section 99244:

(1) Exclusion of costs increases beyond the change in the Consumer Price Index for fuel, alternative fuel programs, insurance, or state or federal mandates.

(2) Exclusion of startup costs for new services for a period of not more than two years.

(c) Funds withheld from allocation to an operator pursuant to subdivision (a) shall be retained by the transportation planning agency, county transportation commission, or the San Diego Metropolitan Transit Development Board, as the case may be, for reallocation to that operator for two years following the year of ineligibility. In a year in which an operator's funds are allocated pursuant to subdivision (a), funds withheld from allocation during a preceding year shall also be allocated. Funds not allocated before the commencement of the third year following the year of ineligibility shall be reallocated to cost-effective high priority regional transit activities, as determined by the transportation planning agency, county transportation commission, or the San Diego Metropolitan Transit Development Board, as the case may be. If that agency or commission, or the board, determines that no cost-effective high

priority regional transit activity exists, the unallocated funds shall revert to the Controller for reallocation.

(d) As used in this section, the following terms have the following meanings:

(1) "Operating cost" means the total operating cost as reported by the operator under the Uniform System of Accounts and Records, pursuant to Section 99243 and subdivision (a) of Section 99247.

(2) "Revenue vehicle hours" has the same meaning as "vehicle service hours," as defined in subdivision (h) of Section 99247.

(3) "Consumer Price Index," as applied to an operator, is the regional Consumer Price Index for that operator's region, as published by the United States Bureau of Labor Statistics. If a regional index is not published, the index for the State of California applies.

(4) "New service" has the same meaning as "extension of public transportation services" as defined in Section 99268.8.

(e) The restrictions in this section do not apply to allocations made for capital purposes.

SEC. 21. Section 130051.23 is added to the Public Utilities Code, to read:

130051.23. Whenever the Los Angeles County Metropolitan Transportation Authority by resolution determines that any record, map, book, or paper in the possession of the authority or any officer or employee thereof is of no further value to the authority, the board may authorize its sale, destruction, or other disposition. Documents significant to the activities of the authority, including, but not limited to, board and committee agendas, incoming and outgoing correspondence, and contractual documents, shall be microfilmed or otherwise preserved prior to the sale, destruction, or other disposition of the original.

SEC. 22. Section 130242 of the Public Utilities Code is amended to read:

130242. (a) In addition to the other powers it possesses, the authority may enter into contracts with private entities, the scope of which may combine within a single contract all or some of the planning, design, permitting, development, joint development, construction, construction management, acquisition, leasing, installation, and warranty of all or components of (1) transit systems, including, without limitation, passenger loading or intermodal station facilities, and (2) facilities on real property owned or to be owned by the authority.

(b) The authority may award contracts pursuant to subdivision (a) after a finding, by a two-thirds vote of the members of the authority, that awarding the contract under this section will achieve for the authority, among other things, certain private sector efficiencies in the integration of design, project work, and components.

(c) A contract awarded pursuant to this section may include operation and maintenance elements, if the inclusion of those

elements (1) is necessary, in the reasonable judgment of the authority, to assess vendor representations and warranties, performance guarantees, or life cycle efficiencies, and (2) does not conflict with collective bargaining agreements to which the authority is a party.

(d) Any construction, alteration, demolition, repairs or other works of improvement performed under a contract awarded pursuant to this section shall be considered a public works project subject to Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code, and shall be enforced by the Department of Industrial Relations in the same way it carries out this responsibility under the Labor Code.

(e) A contract under this section shall be let to the lowest responsible bidder whose bid is responsive to the criteria set forth in the invitation for bids. Notice requesting bids shall be published at least once in a newspaper of general circulation. The publication shall be made at least 60 days before the receipt of the bids. The authority, at its discretion, may reject any and all bids, and may readvertise. All bids submitted pursuant to this section shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder security: (1) cash, (2) a cashier's check made payable to the authority, (3) a certified check made payable to the authority, or (4) a bidder's bond executed by an admitted surety insurer, made payable to the authority. Upon an award to the lowest responsible bidder, the security of each unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the authority beyond 60 days from the time the award is made.

SEC. 23. Section 10856 of the Revenue and Taxation Code is amended to read:

10856. (a) Upon receipt of the application for renewal of registration, the department shall collect the required fee for the current registration year. No penalty shall be imposed if the department receives the application prior to or on the date the vehicle is first operated, moved, or left standing upon any highway during its current registration year and the applicant has timely filed, pursuant to subdivision (a) of Section 4604 of the Vehicle Code, a certification that the vehicle will not be operated, moved, or left standing upon any highway during the current registration year without first making an application for registration of the vehicle, including full payment of fees.

(b) If an application for renewal of registration is accompanied by an application for transfer of title, that application may be made without incurring a penalty for delinquent payment of fees not later than 20 days after the date the vehicle is first operated, moved, or left standing on any highway if a certification pursuant to subdivision (a) of Section 4604 of the Vehicle Code was timely filed with the department.

(c) Upon receipt of an application for original registration, the

department shall collect the required fee for the current registration year. No penalty shall be imposed if the department receives the application and fee within 20 days after the fee becomes due.

SEC. 24. Section 73.1 is added to the Streets and Highways Code, to read:

73.1. The commission may relinquish any portion of State Route 275 that has been agreed to by a city in which it is located pursuant to those terms the commission finds to be in the best interest of the state. A relinquishment under this section shall become effective upon the first day of the next calendar or fiscal year, whichever occurs first, after the effective date of the commission's approval of the terms.

SEC. 25. Section 91.5 of the Streets and Highways Code is amended to read:

91.5. (a) The department may enter into an agreement to accept funds, materials, equipment, or services from any person for maintenance or roadside enhancement of a section of a state highway. The department and the sponsoring person may specify in the agreement the level of maintenance that will be performed.

(b) The director may authorize a courtesy sign. These courtesy signs shall be consistent with existing code provisions and department rules and regulations concerning signs.

(c) Instead of a courtesy sign authorized pursuant to subdivision (b), the director may authorize a demonstration program providing for the placement of recognition on the sponsored materials, other than safety equipment, or the planting and maintenance by the sponsor of organizational logos created from live plant materials. The planting, materials, and equipment shall be consistent with federal and departmental rules and regulations. A demonstration program undertaken pursuant to this subdivision shall only be authorized in the County of Los Angeles.

SEC. 26. Section 190 of the Streets and Highways Code is amended to read:

190. Each annual proposed budget prepared pursuant to Section 165 shall include the sum of fifteen million dollars (\$15,000,000), which sum may include federal funds available for grade separation projects, for allocations to grade separation projects, in accordance with Chapter 10 (commencing with Section 2450) of Division 3. The funds included for such purposes pursuant to this section each fiscal year, or by any other provision of law, shall be available for allocation and expenditure without regard to fiscal years.

SEC. 27. Section 263.1 of the Streets and Highways Code is amended to read:

263.1. The state scenic highway system shall include:

Routes 28, 35, 38, 52, 53, 62, 74, 75, 76, 89, 96, 97, 127, 150, 151, 154, 156, 158, 161, 173, 197, 199, 203, 209, 221, 236, 239, 243, 247, 254, and 330 in their entirety.

SEC. 28. Section 263.3 of the Streets and Highways Code is amended to read:

263.3. The state scenic highway system shall also include:

Route 5 from:

(a) The international boundary near Tijuana to Route 75 near the south end of San Diego Bay.

(b) San Diego opposite Coronado to Route 74 near San Juan Capistrano.

(c) Route 210 near Tunnel Station to Route 126 near Castaic.

(d) Route 152 west of Los Banos to Route 580 near Vernalis.

(e) Route 44 near Redding to the Shasta Reservoir.

(f) Route 89 near Mt. Shasta to Route 97 near Weed.

(g) Route 3 near Yreka to the Oregon state line near Hilts.

Route 8 from Sunset Cliffs Boulevard in San Diego to Route 98 near Coyote Wells.

Route 9 from:

(a) Route 1 near Santa Cruz to Route 236 near Boulder Creek.

(b) Route 236 near Boulder Creek to Route 236 near Waterman Gap.

(c) Route 236 near Waterman Gap to Route 35.

(d) Saratoga to Route 17 near Los Gatos.

(e) Blaney Plaza in Saratoga to Route 35.

Route 10 from Route 38 near Redlands to Route 62 near Whitewater.

Route 12 from Route 101 near Santa Rosa to Route 121 near Sonoma.

Route 14 from Route 58 near Mojave to Route 395 near Little Lake.

Route 15 from:

(a) Route 76 near the San Luis Rey River to Route 91 near Corona.

(b) Route 58 near Barstow to Route 127 near Baker.

Route 16 from Route 20 to Capay.

Route 17 from Route 1 near Santa Cruz to Route 9 near Los Gatos.

Route 18 from Route 138 near Mt. Anderson to Route 247 near Lucerne Valley.

Route 20 from:

(a) Route 1 near Fort Bragg to Route 101 near Willits.

(b) Route 101 near Calpella to Route 16.

(c) Route 49 near Grass Valley to Route 80 near Emigrant Gap.

Route 24 from the Alameda-Contra Costa county line to Route 680 in Walnut Creek.

Route 25 from Route 198 to Route 156 near Hollister.

Route 27 from Route 1 to Mulholland Drive.

Route 29 from:

(a) Route 37 near Vallejo to Route 221 near Napa.

(b) The vicinity of Trancas Street in northwest Napa to Route 20 near Upper Lake.

Route 30 from Route 330 near Highland to Route 10 near Redlands.

Route 33 from:

(a) Route 101 near Ventura to Route 150.

(b) Route 150 to Route 166 in Cuyama Valley.

(c) Route 198 near Coalinga to Route 198 near Oilfields.

Route 36 from:

- (a) Route 101 near Alton to Route 3 near Peanut.
- (b) Route 89 near Morgan Summit to Route 89 near Deer Creek Pass.

SEC. 29. Section 263.6 of the Streets and Highways Code is amended to read:

263.6. The state scenic highway system shall also include:

Route 101 from:

(a) Route 27 (Topanga Canyon Road) to Route 46 near Paso Robles.

(b) Route 156 near Prunedale northeasterly to Route 156.

(c) A point in Marin County opposite San Francisco to Route 1 near Marin City.

(d) Route 37 near Ignacio to Route 37 near Novato.

(e) Route 20 near Calpella to Route 20 near Willits.

(f) Route 1 near Leggett to Route 199 near Crescent City.

(g) Route 197 near Fort Dick to the Oregon state line.

Route 108 from Route 49 near Sonora to Route 395.

Route 111 from:

(a) Bombay Beach in Salton Sea State Park to Route 195 near Mecca.

(b) Route 74 near Palm Desert to Route 10 near Whitewater.

Route 116 from Route 101 near Cotati to Route 1 near Jenner.

Route 118 from Route 23 to DeSoto Avenue near Browns Canyon.

Route 120 from:

(a) Route 49 near Chinese Camp to Route 49 near Moccasin.

(b) The east boundary of Yosemite National Park to Route 395 near Mono Lake.

Route 121 from:

(a) Route 37 near Sears Point to Route 12 near Sonoma.

(b) Route 221 near Napa State Hospital to near the vicinity of Trancas Street in northeast Napa.

Route 125 from Route 94 near Spring Valley to Route 8 near La Mesa.

Route 126 from Route 150 near Santa Paula to Route 5 near Castaic.

SEC. 30. Section 304 of the Streets and Highways Code is amended to read:

304. Route 4 is from:

(a) Route 80 in Hercules to Route 5 in Stockton via north of Concord and via Antioch.

(b) Route 5 to Route 99.

(c) Route 99 in Stockton to Route 49 at Altaville via the vicinity of Copperopolis.

(d) Route 49 in Angels Camp to Route 89 near Markleeville via Murphys, Calaveras Big Trees, Dorrington, and Bear Valley.

SEC. 31. Section 307 of the Streets and Highways Code is amended to read:

307. Route 7 is from the northerly boundary of the Federal Port of Entry near Calexico to Route 8 near El Centro.

SEC. 32. Section 311 is added to the Streets and Highways Code, to read:

311. Route 11 is from the northerly border of the new Federal Port of Entry and east of the Otay Mesa Port of Entry to near the junction of Route 125 and Route 905.

SEC. 33. Section 315 of the Streets and Highways Code is amended to read:

315. Route 15 is from:

(a) Route 5 in San Diego to Route 8.

(b) Route 8 to the Nevada state line near Stateline, Nevada via the vicinity of Temecula, Corona, Ontario, Victorville, and Barstow.

SEC. 34. Section 318 of the Streets and Highways Code is amended to read:

318. Route 18 is from:

(a) Route 10 near San Bernardino to Route 30.

(b) Route 10 near San Bernardino to Route 15 in Victorville via Big Bear Lake.

(c) Route 15 near Victorville to Route 138 near Pearblossom.

SEC. 35. Section 326 of the Streets and Highways Code is amended to read:

326. Route 26 is from:

(a) Route 99 in Stockton to Route 12 at Valley Springs.

(b) Route 12 to Route 88 near Pioneer Station via Mokelumne Hill and West Point.

SEC. 36. Section 353 of the Streets and Highways Code is amended to read:

353. Route 53 is from Route 29 to Route 20 via Clearlake.

SEC. 37. Section 360 of the Streets and Highways Code is amended to read:

360. Route 60 is from:

(a) Route 10 near the Los Angeles River in Los Angeles to Route 215 in Riverside via Pomona.

(b) Route 215 near Moreno Valley to Route 10 near Beaumont.

SEC. 38. Section 371 of the Streets and Highways Code is amended to read:

371. Route 71 is from Route 210 to Route 91 via Pomona and Chino Hills.

SEC. 39. Section 391 of the Streets and Highways Code is amended to read:

391. Route 91 is from Route 1 near Hermosa Beach to Route 215 in Riverside via Santa Ana Canyon.

SEC. 40. Section 428 of the Streets and Highways Code is amended to read:

428. Route 128 is from:

(a) Route 1 near the mouth of the Navarro River to Route 101 near Cloverdale.

(b) Route 101 to Route 29 in Calistoga.

(c) Route 29 near Rutherford to Route 113 near Davis via Sage Canyon.

SEC. 41. Section 457 of the Streets and Highways Code is repealed.

SEC. 42. Section 471 of the Streets and Highways Code is repealed.

SEC. 43. Section 475 of the Streets and Highways Code is amended to read:

475. Route 175 is from:

(a) Route 101 at Hopland to Route 29 near Lakeport.

(b) Route 29 near Kelseyville to Route 29 at Middletown.

SEC. 44. Section 487 of the Streets and Highways Code is amended to read:

487. Route 187 is from Lincoln Boulevard to Route 10 via Venice Boulevard; provided that, prior to the construction of any portion of this highway, the City of Los Angeles shall furnish to the State of California without charge all right-of-way necessary for that portion and the City of Los Angeles and the County of Los Angeles shall enter into a cooperative agreement with the department wherein the city and the county agree to pay one-half the cost of plans and construction.

SEC. 45. Section 515 of the Streets and Highways Code is amended to read:

515. Route 215 is from Route 15 near Temecula to Route 15 near Devore via Riverside and San Bernardino.

SEC. 46. Section 544 of the Streets and Highways Code is amended to read:

544. Route 244 is from Route 80 to Auburn Boulevard in Carmichael.

SEC. 47. Section 547 of the Streets and Highways Code is amended to read:

547. Route 247 is from:

(a) Route 62 near Yucca Valley to Route 18 near Lucerne Valley.

(b) Route 18 near Lucerne Valley to Route 15 in Barstow.

SEC. 48. Section 552 of the Streets and Highways Code is repealed.

SEC. 49. Section 555 of the Streets and Highways Code is amended to read:

555. Route 255 is from Route 101 in Eureka to Route 101 in Arcata via the Humboldt Bay Bridge and the Samoa Peninsula.

SEC. 50. Section 556 of the Streets and Highways Code is repealed.

SEC. 51. Section 440 of the Vehicle Code is amended to read:

440. An "official traffic control device" is any sign, signal, marking, or device, consistent with Section 21400, placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic, but does not include islands, curbs, traffic barriers, speed humps, speed bumps, or other roadway design features.

SEC. 52. Section 1801 of the Vehicle Code is repealed.

SEC. 53. Section 1801 is added to the Vehicle Code, to read:

1801. All records maintained by the department may be stored in any feasible manner, including, but not limited to, any electronic media or any other form of data compilation. Notwithstanding any other provision of law, the records shall be deemed original documents and shall be admissible in evidence in all administrative, quasi-judicial, and judicial proceedings.

SEC. 54. Section 4000.6 of the Vehicle Code is amended to read:

4000.6. (a) For purposes of subdivision (a) of Section 4000.3, for any vehicle which is registered for the first time in this state on or after January 1, 1994, the first certificate of compliance shall be required upon the second renewal of its registration.

(b) (1) At the time of application for the initial registration of a new motor vehicle which is subject to Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code, an additional payment may, at the option of the applicant, be made to the department. The Department of Consumer Affairs shall determine the amount of the additional payment, but the amount shall not exceed fifty dollars (\$50). The Legislature hereby finds and declares that the payment is in the nature of a donation for purposes of the high polluter repair or removal program established pursuant to Article 9 (commencing with Section 44090) of Chapter 5 of Part 5 of Division 26 of the Health and Safety Code.

(2) (A) On a monthly basis, the department shall transmit all payments received pursuant to paragraph (1), including any accrued interest, to the Treasurer for deposit in the High Polluter Repair or Removal Account created pursuant to subdivision (a) of Section 44091 of the Health and Safety Code, for expenditure, upon appropriation by the Legislature, by the Department of Consumer Affairs pursuant to Article 9 (commencing with Section 44090) of Chapter 5 of Part 5 of Division 26 of the Health and Safety Code.

(B) The department and the Department of Consumer Affairs shall, by interagency agreement, establish a procedure for the Department of Consumer Affairs to reimburse the department for its reasonable costs incurred in collecting the payments received pursuant to paragraph (1).

(3) (A) Upon receipt of a payment pursuant to paragraph (1), the department shall mark the record of the subject vehicle with an exemption from the requirements of subdivision (a) of Section 4000.3. The exemption shall be valid for the first biennial inspection due after the date of initial registration of the vehicle, and shall have the same force and effect as a certificate of compliance issued in accordance with Section 44015 of the Health and Safety Code. The exemption shall be void if the title to, or any interest in, the vehicle is transferred pursuant to Section 5600.

(B) The department shall collect a fee at the time of the payment pursuant to paragraph (1) for marking the record with an exemption which is equal to the fee that is charged for the issuance of a certificate of compliance. All fee revenue received pursuant to this subparagraph shall be deposited in the Vehicle Inspection and

Repair Fund and be available for purposes of administering and enforcing the vehicle inspection and maintenance program.

SEC. 54.2. Section 9250.18 of the Vehicle Code is amended to read:

9250.18. (a) The department shall collect the administrative fee established pursuant to Sections 44081 and 44081.6 of the Health and Safety Code upon the renewal of registration or transfer of ownership of any motor vehicle registered in the state.

(b) On a monthly basis, after deducting its reasonable costs, the department shall transmit all revenues, including accrued interest, received pursuant to this section, for deposit in the Vehicle Inspection and Repair Fund, for use by the Department of Consumer Affairs pursuant to Chapter 5 (commencing with Section 44000) of Part 5 of Division 26 of the Health and Safety Code. Alternatively, the department and the Department of Consumer Affairs may, by interagency agreement, establish a procedure for the Department of Consumer Affairs to reimburse the department for its reasonable costs incurred in collecting the administrative fees.

SEC. 55. Section 11516 of the Vehicle Code is amended to read:

11516. (a) Any automobile dismantler owning or controlling any vehicle of a type otherwise required to be registered under this code, may operate or move the vehicle upon the highways without subjecting the vehicle to registration or transfer, or both, solely for the purpose of moving the vehicle from its location to the established place of business of the automobile dismantler or to a scrap processor, if there are displayed on the vehicle special plates issued to the automobile dismantler as provided in this chapter, in addition to other license plates or permits already assigned and attached to the vehicle in the manner prescribed in Article 9 (commencing with Section 5200) of Chapter 1 of Division 3.

(b) The provisions of this section do not apply to work or service vehicles owned by an automobile dismantler.

(c) Every owner, upon receipt of a registration card issued for special plates, shall maintain the registration card or a facsimile copy of it with the vehicle bearing the special plates.

SEC. 56. Section 11705 of the Vehicle Code is amended to read:

11705. (a) The department, after notice and hearing, may suspend or revoke the license issued to a dealer, transporter, manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, or distributor branch upon determining that the person to whom the license was issued is not lawfully entitled thereto, or has done any of the following:

(1) Filed an application for the license using a false or fictitious name not registered with the proper authorities, or knowingly made any false statement or knowingly concealed any material fact, in the application for the license.

(2) Made, or knowingly or negligently permitted, any illegal use of the special plates issued to the licensee.

(3) Used a false or fictitious name, knowingly made any false

statement, or knowingly concealed any material fact, in any application for the registration of a vehicle, or otherwise committed a fraud in the application.

(4) Failed to deliver to a transferee lawfully entitled thereto a properly endorsed certificate of ownership.

(5) Knowingly purchased, sold, or otherwise acquired or disposed of a stolen motor vehicle.

(6) Failed to provide and maintain a clear physical division between the type of business licensed pursuant to this chapter and any other type of business conducted at the established place of business.

(7) Willfully violated Section 3064 or 3065 or any rule or regulation adopted pursuant thereto.

(8) Violated any provision of Division 3 (commencing with Section 4000) or any rule or regulation adopted pursuant thereto, or subdivision (a) of Section 38200.

(9) Violated any provision of Division 4 (commencing with Section 10500) or any rule or regulation adopted pursuant thereto.

(10) Violated any provision of Article 1 (commencing with Section 11700) of Chapter 4 of Division 5 or any rule or regulation adopted pursuant thereto.

(11) Violated any provision of Part 5 (commencing with Section 10701) of Division 2 of the Revenue and Taxation Code or any rule or regulation adopted pursuant thereto.

(12) Violated any provision of Chapter 2b (commencing with Section 2981) of Title 14 of Part 4 of Division 3 of the Civil Code or any rule or regulation adopted pursuant thereto.

(13) Submitted a check, draft, or money order to the department for any obligation or fee due the state which was dishonored or refused payment upon presentation.

(14) Has caused any person to suffer any loss or damage by reason of any fraud or deceit practiced on that person or fraudulent representations made to that person in the course of the licensed activity.

For purposes of this paragraph, "fraud" includes any act or omission which is included within the definition of either "actual fraud" or "constructive fraud" as defined in Sections 1572 and 1573 of the Civil Code, and "deceit" has the same meaning as defined in Section 1710 of the Civil Code. In addition, "fraud" and "deceit" include, but are not limited to, a misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact; a promise or representation not made honestly and in good faith; an intentional failure to disclose a material fact; and any act within Section 484 of the Penal Code.

For purposes of this paragraph, "person" also includes a governmental entity.

(15) Failed to meet the terms and conditions of an agreement entered into pursuant to Section 11707.

(16) Violated Section 43151, 43152, or 43153 of, or subdivision (b)

of Section 44072.10 of, the Health and Safety Code.

(b) Any of the causes specified in this chapter as a cause for refusal to issue a license to a transporter, manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, or dealer applicant is cause to suspend or revoke a license issued to a transporter, manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, or dealer.

(c) Except as provided in Section 11707, every hearing provided for in this section shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 57. Section 12804.9 of the Vehicle Code is amended to read:

12804.9. (a) (1) The examination shall include all of the following:

(A) A test of the applicant's knowledge and understanding of the provisions of this code governing the operation of vehicles upon the highways.

(B) A test of the applicant's ability to read and understand simple English used in highway traffic and directional signs.

(C) A test of the applicant's understanding of traffic signs and signals, including the bikeway signs, markers, and traffic control devices established by the Department of Transportation.

(D) An actual demonstration of the applicant's ability to exercise ordinary and reasonable control in operating a motor vehicle by driving it under the supervision of an examining officer. The applicant shall submit to an examination appropriate to the type of motor vehicle or combination of vehicles he or she desires a license to drive, except that the department may waive the driving test part of the examination of any applicant who holds a valid license issued by another state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico. The examining officer may request to see evidence of financial responsibility for the vehicle prior to supervising the demonstration of the applicant's ability to operate the vehicle. The examining officer may refuse to examine an applicant who is unable to provide proof of financial responsibility for the vehicle, unless proof of financial responsibility is not required by this code.

(E) A test of the hearing and eyesight of the applicant, and of other matters that may be necessary to determine the applicant's mental and physical fitness to operate a motor vehicle upon the highways, and whether any ground exists for refusal of a license under this code.

(2) The examination for a class A or class B license under subdivision (b) shall also include a report of a medical examination of the applicant given not more than two years prior to the date of the application by a health care professional. As used in this subdivision, "health care professional" means a person who is licensed, certified, or registered in accordance with applicable state

laws and regulations to perform physical examinations and includes, but is not limited to, doctors of medicine, doctors of osteopathy, physician assistants, advanced practice nurses, and doctors of chiropractic. The report shall be on a form approved by the department, the Federal Highway Administration, or the Federal Aviation Administration. In establishing the requirements, consideration may be given to the standards presently required of motor carrier drivers by the Federal Highway Administration.

(3) Any physical defect of the applicant, which, in the opinion of the department, is compensated for to ensure safe driving ability, shall not prevent the issuance of a license to the applicant.

(b) Beginning on January 1, 1989, in accordance with the following classifications, any applicant for a driver's license shall be required to submit to an examination appropriate to the type of motor vehicle or combination of vehicles the applicant desires a license to drive:

(1) Class A includes the following:

(A) Any combination of vehicles, if any vehicle being towed has a gross vehicle weight rating of more than 10,000 pounds.

(B) Any vehicle towing more than one vehicle.

(C) Any trailer bus.

(D) The operation of all vehicles under class B and class C.

(2) Class B includes the following:

(A) Any single vehicle with a gross vehicle weight rating of more than 26,000 pounds.

(B) Any single vehicle with three or more axles, except any three-axle vehicle weighing less than 6,000 pounds.

(C) Any bus except a trailer bus.

(D) Any farm labor vehicle.

(E) Any single vehicle with three or more axles or a gross vehicle weight rating of more than 26,000 pounds towing another vehicle with a gross vehicle weight rating of 10,000 pounds or less.

(F) The operation of all vehicles covered under class C.

(3) Class C includes the following:

(A) Any two-axle vehicle with a gross vehicle weight rating of 26,000 pounds or less, including when the vehicle is towing a trailer or semitrailer with a gross vehicle weight rating of 10,000 pounds or less.

(B) Notwithstanding subparagraph (A), any two-axle vehicle weighing 4,000 pounds or more unladen when towing a trailer coach not exceeding 9,000 pounds gross.

(C) Any housecar.

(D) Any three-axle vehicle weighing 6,000 pounds or less gross.

(E) Any housecar or vehicle towing another vehicle with a gross vehicle weight rating of 10,000 pounds or less, including when a tow dolly is used. No vehicle shall tow another vehicle in violation of Section 21715.

(F) (i) Any two-axle vehicle weighing 4,000 pounds or more unladen when towing either a trailer coach or a fifth-wheel travel

trailer not exceeding 10,000 pounds gross vehicle weight rating, when the towing of the trailer is not for compensation.

(ii) Any two-axle vehicle weighing 4,000 pounds or more unladen when towing a fifth-wheel travel trailer exceeding 10,000 pounds, but not exceeding 15,000 pounds, gross vehicle weight rating, when the towing of the trailer is not for compensation, and if the person has passed a specialized written examination provided by the department relating to the knowledge of this code and other safety aspects governing the towing of recreational vehicles upon the highway. The authority to operate combinations of vehicles under this subparagraph shall be granted by endorsement on a class C license upon completion of that written examination.

(G) Class C does not include any two-wheel motorcycle or any two-wheel motor-driven cycle.

(4) Class M1. Any two-wheel motorcycle. Authority to operate vehicles included in a class M1 license may be granted by endorsement on a class A, B, or C license upon completion of an appropriate examination.

(5) Class M2. Any two-wheel motor-driven cycle, including, but not limited to, a motorized bicycle or moped, or any bicycle with an attached motor. Authority to operate vehicles included in class M2 may be granted by endorsement on a class A, B, or C license upon completion of an appropriate examination. Persons holding a class M1 license or endorsement may operate vehicles included in class M2 without further examination.

(c) No driver's license or driver certificate shall be valid for operating any commercial motor vehicle, as defined in subdivision (b) of Section 15210, any other motor vehicle defined in paragraph (1) or (2) of subdivision (b), or any other vehicle requiring a driver to hold any driver certificate or any driver's license endorsement under Section 15275, unless a medical certificate approved by the department, the Federal Highway Administration, or the Federal Aviation Administration, which has been issued within two years of the date of the operation of that vehicle, is within the licensee's immediate possession, and a copy of the medical examination report from which the certificate was issued is on file with the department. Otherwise the license shall be valid only for operating class C vehicles which are not commercial vehicles, as defined in subdivision (b) of Section 15210, and for operating class M1 or M2 vehicles, if so endorsed, which are not commercial vehicles, as defined in subdivision (b) of Section 15210.

(d) A license or driver certificate issued prior to the enactment of Chapter 7 (commencing with Section 15200) shall be valid to operate the class or type of vehicles specified under the law in existence prior to that enactment until the license or certificate expires or is otherwise suspended, revoked, or canceled.

(e) The department may accept a certificate of driving skill that is issued by an employer, authorized by the department to issue a certificate under Section 15250, of the applicant, in lieu of a driving

test, on class A or B applications, if the applicant has first qualified for a class C license and has met the other examination requirements for the license for which he or she is applying. The certificate may be submitted as evidence of the applicant's skill in the operation of the types of equipment covered by the license for which he or she is applying.

(f) The department may accept a certificate of competence in lieu of a driving test on class M1 or M2 applications, when the certificate is issued by a law enforcement agency for its officers who operate class M1 or M2 vehicles in their duties, if the applicant has met the other examination requirements for the license for which he or she is applying.

(g) The department may accept a certificate of satisfactory completion of a novice motorcyclist training program approved by the commissioner pursuant to Section 2932 in lieu of a driving test on class M1 or M2 applications, if the applicant has met the other examination requirements for the license for which he or she is applying. The department shall review and approve the written and driving test used by a program to determine whether the program may issue a certificate of completion.

(h) Notwithstanding subdivision (b), any person holding a valid California driver's license of any class may operate a short-term rental motorized bicycle without taking any special examination for the operation of a motorized bicycle, and without having a class M2 endorsement on that license. As used in this paragraph, "short-term" means 48 hours or less.

(i) No person under the age of 21 years shall be issued a class M1 or M2 license or endorsement unless he or she provides evidence satisfactory to the department of completion of a motorcycle safety training program that is operated pursuant to Article 2 (commencing with Section 2930) of Chapter 5 of Division 2.

(j) Drivers of vanpool vehicles may operate with class C licenses but shall possess evidence of a medical examination required for a class B license when operating vanpool vehicles. In order to be eligible to drive the vanpool vehicle, the driver shall keep in the vanpool vehicle a statement, signed under penalty of perjury, that he or she has not been convicted of reckless driving, drunk driving, or a hit and run offense in the last five years.

(k) During the implementation of this section, from January 1, 1989, through December 31, 1992, provisions of this code pertaining to persons holding class 1, 2, 3, or 4 licenses pursuant to Section 12804, shall apply to persons holding class A, B, C, M1, or M2 licenses pursuant to this section, to the extent that class A, B, C, M1, or M2 vehicles under this section fall within the definition of class 1, 2, 3, or 4 vehicles under Section 12804.

(l) A class M license issued between January 1, 1989, and December 31, 1992, shall permit the holder to operate any motorcycle, motor-driven cycle, or motorized bicycle until the expiration of the license.

SEC. 58. Section 12810 of the Vehicle Code is amended to read: 12810. In determining the violation point count, the following shall apply:

(a) Any conviction of failure to stop in the event of an accident in violation of Section 20001 or 20002 shall be given a value of two points.

(b) Any conviction of a violation of Section 23152 or 23153 shall be given a value of two points.

(c) Any conviction of reckless driving shall be given a value of two points.

(d) (1) Any conviction of a violation of subdivision (c) of Section 192 of the Penal Code, or of Section 2800.2 or 2800.3, subdivision (b) of Section 21651, subdivision (b) of Section 22348, subdivision (a) of Section 23109, subdivision (c) of Section 23109, or Section 31602 of this code, shall be given a value of two points.

(2) Any conviction of a violation of subdivision (a) or (b) of Section 23140 shall be given a value of two points.

(e) Except as provided in subdivision (g), any other traffic conviction involving the safe operation of a motor vehicle upon the highway shall be given a value of one point.

(f) Any accident in which the operator is deemed by the department to be responsible shall be given a value of one point.

(g) (1) A violation of paragraph (1), (2), (3), or (5) of subdivision (b) of Section 40001 shall not result in a violation point count being given to the driver if the driver is not the owner of the vehicle.

(2) Any conviction of a violation of subdivision (a) of Section 21116, Section 21207.5, 21708, 21710, 21716, 23120, 24800, or 26707 shall not be given a violation point count.

(3) A violation of Section 23136 shall not result in a violation point count.

(h) A conviction for only one violation arising from one occasion of arrest or citation shall be counted in determining the violation point count for the purposes of this section.

(i) Any conviction of a violation of Section 14601, 14601.1, 14601.2, or 14601.3 shall be given a value of two points.

(j) Any conviction of a violation of Section 27360 within a 37-month period shall be given a value of one point.

SEC. 59. Section 12954 is added to the Vehicle Code, to read:

12954. Section 12951, subdivision (a) of Section 15250.5, and subdivision (a) of Section 15250.6 do not apply to a person who has been issued, but does not have in his or her immediate possession, a currently valid and appropriate class driver's license or restricted driver's license for the operation of firefighting equipment and who is operating that equipment wholly within this state under the conditions described in subdivisions (a) and (b) of Section 21055, or is returning from the scene of the emergency or other situation described in those subdivisions.

SEC. 59.5. Section 22356 of the Vehicle Code is amended to read: 22356. (a) Whenever the Department of Transportation, after

consultation with the Department of the California Highway Patrol, determines upon the basis of an engineering and traffic survey on existing highway segments, or upon the basis of appropriate design standards and projected traffic volumes in the case of newly constructed highway segments, that a speed greater than 55 miles per hour would facilitate the orderly movement of vehicular traffic and would be reasonable and safe upon any state highway, or portion thereof, that is otherwise subject to a maximum speed limit of 55 miles per hour, the Department of Transportation, with the approval of the Department of the California Highway Patrol, may declare a higher maximum speed of 60 or 65 miles per hour for vehicles not subject to Section 22406, and shall cause appropriate signs to be erected giving notice thereof. The Department of Transportation shall only make a determination under this section that is fully consistent with, and in full compliance with, federal law.

(b) No person shall drive a vehicle upon that highway at a speed greater than 60 or 65 miles per hour, as posted.

SEC. 60. Section 22651 of the Vehicle Code is amended to read:

22651. Any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code; or any regularly employed and salaried employee, who is engaged in directing traffic or enforcing parking laws and regulations, of a city or a county in which a vehicle is located, may remove a vehicle located within the territorial limits in which the officer or employee may act, under any of the following circumstances:

(a) When any vehicle is left unattended upon any bridge, viaduct, or causeway or in any tube or tunnel where the vehicle constitutes an obstruction to traffic.

(b) When any vehicle is parked or left standing upon a highway in a position so as to obstruct the normal movement of traffic or in a condition so as to create a hazard to other traffic upon the highway.

(c) When any vehicle is found upon a highway or any public lands and a report has previously been made that the vehicle has been stolen or a complaint has been filed and a warrant thereon issued charging that the vehicle has been embezzled.

(d) When any vehicle is illegally parked so as to block the entrance to a private driveway and it is impractical to move the vehicle from in front of the driveway to another point on the highway.

(e) When any vehicle is illegally parked so as to prevent access by firefighting equipment to a fire hydrant and it is impracticable to move the vehicle from in front of the fire hydrant to another point on the highway.

(f) When any vehicle, except any highway maintenance or construction equipment, is stopped, parked, or left standing for more than four hours upon the right-of-way of any freeway which has full control of access and no crossings at grade and the driver, if present, cannot move the vehicle under its own power.

(g) When the person or persons in charge of a vehicle upon a

highway or any public lands are, by reason of physical injuries or illness, incapacitated to an extent so as to be unable to provide for its custody or removal.

(h) (1) When an officer arrests any person driving or in control of a vehicle for an alleged offense and the officer is, by this code or other law, required or permitted to take, and does take, the person into custody.

(2) When an officer serves a notice of an order of suspension or revocation of a driver's license pursuant to Section 23137.

(i) (1) When any vehicle, other than a rented vehicle, is found upon a highway or any public lands, or is removed pursuant to this code, and it is known to have been issued five or more notices of parking violation, to which the owner or person in control of the vehicle has not responded within 21 calendar days of citation issuance or 14 calendar days of a notice of delinquent parking violation to the agency responsible for processing notices of parking violation or the registered owner of the vehicle is known to have been issued five or more notices for failure to pay or failure to appear in court for traffic violations for which no certificate has been issued by the magistrate or clerk of the court hearing the case showing that the case has been adjudicated or concerning which the registered owner's record has not been cleared pursuant to Chapter 6 (commencing with Section 41500) of Division 17, the vehicle may be impounded until that person furnishes to the impounding law enforcement agency all of the following:

(A) Evidence of his or her identity.

(B) An address within this state at which he or she can be located.

(C) Satisfactory evidence that all parking penalties due for the vehicle and any other vehicle registered to the registered owner of the impounded vehicle, and all traffic violations of the registered owner, have been cleared.

(2) The requirements in subparagraph (C) of paragraph (1) shall be fully enforced by the impounding law enforcement agency on and after the time that the Department of Motor Vehicles is able to provide access to the necessary records.

(3) A notice of parking violation issued for an unlawfully parked vehicle shall be accompanied by a warning that repeated violations may result in the impounding of the vehicle. In lieu of furnishing satisfactory evidence that the full amount of parking penalties or bail has been deposited, that person may demand to be taken without unnecessary delay before a magistrate, for traffic offenses, or a hearing examiner, for parking offenses, within the county in which the offenses charged are alleged to have been committed and who has jurisdiction of the offenses and is nearest or most accessible with reference to the place where the vehicle is impounded. Evidence of current registration shall be produced after a vehicle has been impounded. At the discretion of the impounding law enforcement agency, a notice to appear for violation of subdivision (a) of Section 4000 may be issued to that person, if the two days immediately

following the day of impoundment are weekend days or holidays.

(4) A vehicle shall be released to the legal owner, as defined in Section 370, if the legal owner does all of the following:

(A) Pays the cost of towing and storing the vehicle.

(B) Submits evidence of payment of fees as provided in Section 9561.

(C) Completes an affidavit in a form acceptable to the impounding law enforcement agency stating that the vehicle was not in the possession of the legal owner at the time of occurrence of the offenses relating to standing or parking. A vehicle released to a legal owner under this subdivision is a repossessed vehicle for purposes of disposition or sale. The impounding agency shall have a lien on any surplus that remains upon sale of the vehicle to which the registered owner is or may be entitled, as security for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5. The legal owner shall promptly remit to, and deposit with, the agency responsible for processing notices of parking violations from that surplus, on receipt thereof, full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5.

(5) The impounding agency that has a lien on the surplus that remains upon the sale of a vehicle to which a registered owner is entitled pursuant to paragraph (4) has a deficiency claim against the registered owner for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5, less the amount received from the sale of the vehicle.

(j) When any vehicle is found illegally parked and there are no license plates or other evidence of registration displayed, the vehicle may be impounded until the owner or person in control of the vehicle furnishes the impounding law enforcement agency evidence of his or her identity and an address within this state at which he or she can be located.

(k) When any vehicle is parked or left standing upon a highway for 72 or more consecutive hours in violation of a local ordinance authorizing removal.

(l) When any vehicle is illegally parked on a highway in violation of any local ordinance forbidding standing or parking and the use of a highway, or a portion thereof, is necessary for the cleaning, repair, or construction of the highway, or for the installation of underground utilities, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by local authorities pursuant to the ordinance.

(m) Wherever the use of the highway, or any portion thereof, is authorized by local authorities for a purpose other than the normal flow of traffic or for the movement of equipment, articles, or structures of unusual size, and the parking of any vehicle would

prohibit or interfere with that use or movement, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by local authorities pursuant to the ordinance.

(n) Whenever any vehicle is parked or left standing where local authorities, by resolution or ordinance, have prohibited parking and have authorized the removal of vehicles. No vehicle may be removed unless signs are posted giving notice of the removal.

(o) (1) When any vehicle is found upon a highway, any public lands, or an offstreet parking facility with a registration expiration date in excess of six months before the date it is found on the highway, public lands, or the offstreet parking facility. However, if the vehicle is occupied, only a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may remove the vehicle. For purposes of this subdivision, the vehicle shall be released to the owner or person in control of the vehicle only after the owner or person furnishes the storing law enforcement agency with proof of current registration and a currently valid driver's license to operate the vehicle.

(2) As used in this subdivision, "offstreet parking facility" means any offstreet facility held open for use by the public for parking vehicles and includes any publicly owned facilities for offstreet parking, and privately owned facilities for offstreet parking where no fee is charged for the privilege to park and which are held open for the common public use of retail customers.

(p) When the peace officer issues the driver of a vehicle a notice to appear for a violation of Section 12500, 14601, 14601.1, 14601.2, 14601.3, 14601.4, 14601.5, or 14604 and the vehicle has been impounded pursuant to Section 22655.5. Any vehicle so removed from the highway or any public lands, or from private property after having been on a highway or public lands, shall not be released to the registered owner or his or her agent, except upon presentation of the registered owner's or his or her agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court.

(q) Whenever any vehicle is parked for more than 24 hours on a portion of highway which is located within the boundaries of a common interest development, as defined in subdivision (c) of Section 1351 of the Civil Code, and signs, as required by Section 22658.2, have been posted on that portion of highway providing notice to drivers that vehicles parked thereon for more than 24 hours will be removed at the owner's expense, pursuant to a resolution or ordinance adopted by the local authority.

(r) When any vehicle is illegally parked and blocks the movement of a legally parked vehicle.

(s) (1) When any vehicle, except highway maintenance or construction equipment, an authorized emergency vehicle, or a vehicle which is properly permitted or otherwise authorized by the Department of Transportation, is stopped, parked, or left standing

for more than eight hours within a roadside rest area or viewpoint.

(2) For purposes of this subdivision, a roadside rest area or viewpoint is a publicly maintained vehicle parking area, adjacent to a highway, utilized for the convenient, safe stopping of a vehicle to enable motorists to rest or to view the scenery. If two or more roadside rest areas are located on opposite sides of the highway, or upon the center divider, within seven miles of each other, then that combination of rest areas is considered to be the same rest area.

SEC. 61. Section 22651.3 of the Vehicle Code is amended to read:

22651.3. (a) Any peace officer, as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or any regularly employed and salaried employee, who is engaged in directing traffic or enforcing parking laws and regulations, of a city or a county in which any vehicle, other than a rented vehicle, is located may remove the vehicle from an offstreet public parking facility located within the territorial limits in which the officer or employee may act when the vehicle is known to have been issued five or more notices of parking violation over a period of five or more days, to which the owner or person in control of the vehicle has not responded or when any vehicle is illegally parked so as to prevent the movement of a legally parked vehicle.

A notice of parking violation issued to a vehicle which is registered in a foreign jurisdiction or is without current California registration and is known to have been issued five or more notices of parking violation over a period of five or more days shall be accompanied by a warning that repeated violations may result in the impounding of the vehicle.

(b) The vehicle may be impounded until the owner or person in control of the vehicle furnishes to the impounding law enforcement agency evidence of his or her identity and an address within this state at which he or she can be located and furnishes satisfactory evidence that bail has been deposited for all notices of parking violation issued for the vehicle. In lieu of requiring satisfactory evidence that the bail has been deposited, the impounding law enforcement agency may, in its discretion, issue a notice to appear for the offenses charged, as provided in Article 2 (commencing with Section 40500) of Chapter 2 of Division 17. In lieu of either furnishing satisfactory evidence that the bail has been deposited or accepting the notice to appear, the owner or person in control of the vehicle may demand to be taken without unnecessary delay before a magistrate within the county in which the offenses charged are alleged to have been committed and who has jurisdiction of the offenses and is nearest or most accessible with reference to the place where the vehicle is impounded.

(c) Evidence of current registration shall be produced after a vehicle has been impounded. At the discretion of the impounding law enforcement agency, a notice to appear for violation of subdivision (a) of Section 4000 may be issued to the owner or person in control of the vehicle, if the two days immediately following the day of impoundment are weekend days or holidays.

SEC. 62. Section 22651.7 of the Vehicle Code is amended to read:

22651.7. In addition to, or as an alternative to, removal, any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or any regularly employed and salaried employee who is engaged in directing traffic or enforcing parking laws and regulations, of a jurisdiction in which a vehicle is located may immobilize the vehicle with a device designed and manufactured for the immobilization of vehicles, on a highway or any public lands located within the territorial limits in which the officer or employee may act if the vehicle is found upon a highway or any public lands and is known to have been issued five or more notices of parking violation which are delinquent because the owner or person in control of the vehicle has not responded to the agency responsible for processing notices of parking violation within 21 calendar days of citation issuance or 14 calendar days of a notice of delinquent parking violation, or the registered owner of the vehicle is known to have been issued five or more notices for failure to pay or failure to appear in court for traffic violations for which no certificate has been issued by the magistrate or clerk of the court hearing the case showing that the case has been adjudicated or concerning which the registered owner's record has not been cleared pursuant to Chapter 6 (commencing with Section 41500) of Division 17. The vehicle may be immobilized until that person furnishes to the immobilizing law enforcement agency all of the following:

- (a) Evidence of his or her identity.
- (b) An address within this state at which he or she can be located.
- (c) Satisfactory evidence that the full amount of parking penalties has been deposited for all notices of parking violation issued for the vehicle and any vehicles registered to the registered owner of the immobilized vehicle and that bail has been deposited for all traffic violations of the registered owner that have not been cleared. The requirements in subdivision (c) shall be fully enforced by the immobilizing law enforcement agency on and after the time that the Department of Motor Vehicles is able to provide access to the necessary records. A notice of parking violation issued to the vehicle shall be accompanied by a warning that repeated violations may result in the impounding or immobilization of the vehicle. In lieu of furnishing satisfactory evidence that the full amount of parking penalties or bail, or both, have been deposited that person may demand to be taken without unnecessary delay before a magistrate, for traffic offenses, or a hearing examiner, for parking offenses, within the county in which the offenses charged are alleged to have been committed and who has jurisdiction of the offenses and is nearest or most accessible with reference to the place where the vehicle is immobilized. Evidence of current registration shall be produced after a vehicle has been immobilized. At the discretion of the immobilizing law enforcement agency, a notice to appear for violation of subdivision (a) of Section 4000 may be issued to that

person, if the two days immediately following the day of impoundment are weekend days or holidays.

SEC. 63. Section 22658 of the Vehicle Code is amended to read:

22658. (a) Except as provided in Section 22658.2, the owner or person in lawful possession of any private property, subsequent to notifying, by telephone or, if impractical, by the most expeditious means available, the local traffic law enforcement agency may cause the removal of a vehicle parked on the property to the nearest public garage under any of the following circumstances:

(1) There is displayed, in plain view at all entrances to the property, a sign not less than 17 by 22 inches in size, with lettering not less than one inch in height, prohibiting public parking and indicating that vehicles will be removed at the owner's expense, and containing the telephone number of the local traffic law enforcement agency. The sign may also indicate that a citation may also be issued for the violation.

(2) The vehicle has been issued a notice of parking violation, and 96 hours have elapsed since the issuance of that notice.

(3) The vehicle is on private property and lacks an engine, transmission, wheels, tires, doors, windshield, or any other major part or equipment necessary to operate safely on the highways, the owner or person in lawful possession of the private property has notified the local traffic law enforcement agency, and 24 hours have elapsed since that notification.

(4) The lot or parcel upon which the vehicle is parked is improved with a single-family dwelling.

(b) The person causing removal of the vehicle, if the person knows or is able to ascertain from the registration records of the Department of Motor Vehicles the name and address of the registered and legal owner of the vehicle, shall immediately give, or cause to be given, notice in writing to the registered and legal owner of the fact of the removal, the grounds for the removal, and indicate the place to which the vehicle has been removed. If the vehicle is stored in a public garage, a copy of the notice shall be given to the proprietor of the garage. The notice provided for in this section shall include the amount of mileage on the vehicle at the time of removal. If the person does not know and is not able to ascertain the name of the owner or for any other reason is unable to give the notice to the owner as provided in this section, the person causing removal of the vehicle shall comply with the requirements of subdivision (c) of Section 22853 relating to notice in the same manner as applicable to an officer removing a vehicle from private property.

(c) This section does not limit or affect any right or remedy which the owner or person in lawful possession of private property may have by virtue of other provisions of law authorizing the removal of a vehicle parked upon private property.

(d) The owner of a vehicle removed from private property pursuant to subdivision (a) may recover for any damage to the vehicle resulting from any intentional or negligent act of any person

causing the removal of, or removing, the vehicle.

(e) Any owner or person in lawful possession of any private property, or an "association" pursuant to Section 22658.2, causing the removal of a vehicle parked on that property is liable for double the storage or towing charges whenever there has been a failure to comply with paragraph (1), (2), or (3) of subdivision (a) or to state the grounds for the removal of the vehicle if requested by the legal or registered owner of the vehicle as required by subdivision (f).

(f) Any owner or person in lawful possession of any private property, or an "association" pursuant to Section 22658.2, causing the removal of a vehicle parked on that property shall state the grounds for the removal of the vehicle if requested by the legal or registered owner of that vehicle. Any towing company that removes a vehicle from private property with the authorization of the property owner or the property owner's agent shall not be held responsible in any situation relating to the validity of the removal. Any towing company that removes the vehicle under this section shall be responsible for (1) any damage to the vehicle in the transit and subsequent storage of the vehicle and (2) the removal of a vehicle other than the vehicle specified by the owner or other person in lawful possession of the private property.

(g) Possession of any vehicle under this section shall be deemed to arise when a vehicle is removed from private property and is in transit.

(h) A towing company may impose a charge of not more than one-half of the regular towing charge for the towing of a vehicle at the request of the owner of private property or that owner's agent pursuant to this section if the owner of the vehicle or the owner's agent returns to the vehicle before it is removed from the private property. The regular towing charge may only be imposed after the vehicle has been removed from the property and is in transit.

(i) A charge for towing or storage, or both, of a vehicle under this section is excessive if the charge is greater than that which would have been charged for towing or storage, or both, made at the request of a law enforcement agency under an agreement between the law enforcement agency and a towing company in the city or county in which is located the private property from which the vehicle was, or was attempted to be, removed.

If a request to release a vehicle is made within 24 hours from the time the vehicle is brought into the storage facility, regardless of the calendar date, the storage charge shall be for only one day. Not more than one day's storage charge may be required for any vehicle released the same day that it is stored.

(j) Any person who charges a vehicle owner a towing, service, or storage charge at an excessive rate, as described in subdivision (i), is liable to the vehicle owner for four times the amount charged.

(k) Persons operating or in charge of any storage facility where vehicles are stored pursuant to this section shall accept a valid bank credit card or cash for payment of towing and storage by a registered

owner or the owner's agent claiming the vehicle. A person operating or in charge of any storage facility who refuses to accept a valid bank credit card is liable to the registered owner of the vehicle for four times the amount of the towing and storage charges, but not to exceed five hundred dollars (\$500). In addition, persons operating or in charge of the storage facility shall have sufficient moneys on the premises to accommodate, and make change in, a reasonable monetary transaction.

Credit charges for towing and storage services shall comply with Section 1748.1 of the Civil Code. Law enforcement agencies may include the costs of providing for payment by credit when making agreements with towing companies as described in subdivision (i).

(1) (1) A towing company shall not remove or commence the removal of a vehicle from private property without first obtaining written authorization from the property owner or lessee, or an employee or agent thereof, who shall be present at the time of removal. General authorization to remove or commence removal of a vehicle at the towing company's discretion shall not be delegated to a towing company or its affiliates except in the case of a vehicle unlawfully parked within 15 feet of a fire hydrant or in a fire lane, or in a manner which interferes with any entrance to, or exit from, the private property.

(2) If a towing company removes a vehicle without written authorization and that vehicle is unlawfully parked within 15 feet of a fire hydrant or in a fire lane, or in a manner which interferes with any entrance to, or exit from, the private property, the towing company shall take, prior to the removal of that vehicle, a photograph of the vehicle which clearly indicates that parking violation. The towing company shall keep one copy of the photograph taken pursuant to this paragraph, and shall present that photograph to the owner or an agent of the owner, when that person claims the vehicle.

(3) Any towing company, or any affiliate of a towing company, which removes, or commences removal of, a vehicle from private property without first obtaining written authorization from the property owner or lessee, or an employee or agent thereof, who is present at the time of removal or commencement of the removal, except as permitted by paragraph (1), is liable to the owner of the vehicle for four times the amount of the towing and storage charges, in addition to any applicable criminal penalty, for a violation of paragraph (1).

SEC. 64. Section 22850.3 of the Vehicle Code is amended to read:

22850.3. (a) A vehicle placed in storage pursuant to Section 22850 shall be released to the owner or person in control of the vehicle only if the owner or person furnishes, to the law enforcement agency or employee who placed the vehicle in storage, satisfactory proof of current vehicle registration. The agency which caused the vehicle to be stored may, in its discretion, issue a notice to appear for the registration violation, if the two days immediately following the

day of impoundment are weekend days or holidays.

(b) At every storage facility there shall be posted in a conspicuous place a notice to the effect that a vehicle placed in storage pursuant to Section 22850 may be released only on proof of current registration or, at the discretion of the impounding agency, upon the issuance of a notice to appear for the registration violation by the local agency which caused the vehicle to be stored, specifying the name and telephone number of that local agency.

SEC. 65. Section 24007.1 is added to the Vehicle Code, to read:

24007.1. (a) The manufacturer of equipment used in the assembly of an authorized emergency vehicle, as defined in Section 165, used by a local public fire service agency shall, upon request of the fire department, reimburse the agency for the cost of repairs to the vehicle if (1) the repair was made to correct a manufacturer's defect, and (2) the vehicle is placed on a safety-related recall to correct that defect.

(b) A final stage equipment manufacturer is deemed to be an original equipment manufacturer in the event of a warranty dispute with a local public fire service agency regarding the failure of component parts used in the assembly of the agency's authorized emergency vehicle. As used in this section, "final stage equipment manufacturer" means the manufacturer who assembles the authorized emergency vehicle from one or more components supplied by other manufacturers.

(c) The Legislature finds and declares that local public fire service agencies of this state are entitled to safe and efficient use of their equipment, and that defects in emergency equipment, especially emergency vehicles, endanger the firefighters of California and the public they serve. It is the intent of the Legislature to ensure that these defects are repaired as expeditiously as possible and with no expense to the local public fire service agencies.

SEC. 66. Section 25950 of the Vehicle Code is amended to read:

25950. This section applies to the color of lamps and to any reflector exhibiting or reflecting perceptible light of 0.05 candela or more per foot-candle of incident illumination. Unless provided otherwise, the color of lamps and reflectors upon a vehicle shall be as follows:

(a) The emitted light from all lamps and the reflected light from all reflectors, visible from in front of a vehicle, shall be white or yellow, except as follows:

(1) Rear side marker lamps required by Section 25100 may show red to the front.

(2) The color of foglamps described in Section 24403 may be in the color spectrum from white to yellow.

(b) The emitted light from all lamps and the reflected light from all reflectors, visible from the rear of a vehicle, shall be red except as follows:

(1) Stoplamps on vehicles manufactured before January 1, 1979, may show yellow to the rear.

- (2) Turn signal lamps may show yellow to the rear.
- (3) Front side marker lamps required by Section 25100 may show yellow to the rear.
- (4) Backup lamps shall show white to the rear.
- (5) The rearward facing portion of any front-mounted double-faced turn signal lamp may show amber to the rear while the headlamps or parking lamps are lighted, if the intensity of the light emitted is not greater than the parking lamps and the turn signal function is not impaired.

(c) All lamps and reflectors visible from the front, sides, or rear of a vehicle, except headlamps, may have any unlighted color, provided the emitted light from all lamps or reflected light from all reflectors complies with the required color. Except for backup lamps, the entire effective projected luminous area of lamps visible from the rear or mounted on the sides near the rear of a vehicle shall be covered by an inner lens of the required color when the unlighted color differs from the required emitted light color. Taillamps, stoplamps, and turn signal lamps that are visible to the rear may be white when unlighted on vehicles manufactured before January 1, 1974.

SEC. 67. Section 34505.9 of the Vehicle Code is amended to read:

34505.9. (a) As used in this section, the following terms have the following meanings:

(1) An "intermodal chassis" is a trailer designed for carrying intermodal freight containers.

(2) An "ocean marine terminal" is a terminal, as defined in Section 34515, located at a port facility that engages in the loading and unloading of the cargo of ocean-going vessels.

(b) An ocean marine terminal that receives and dispatches intermodal chassis may conduct the intermodal roadability inspection program, as described in this section, in lieu of the inspection required by Section 34505.5, if the terminal meets all of the following conditions:

(1) More than 1,000 chassis are based at the ocean marine terminal.

(2) The ocean marine terminal has, following the two most recent consecutive inspections required by Section 34501.12, received satisfactory compliance ratings.

(3) Each intermodal chassis exiting the ocean marine terminal shall have a current decal and supporting documentation in accordance with Section 396.17 of Title 49 of the Code of Federal Regulations.

(4) The ocean marine terminal's intermodal roadability inspection program consists of all of the following:

(A) Each time an intermodal chassis is released from the ocean marine terminal, the chassis shall be inspected. The inspection shall include, but not be limited to, brake adjustment, brake system components and leaks, suspension systems, tires and wheels, vehicle connecting devices, and lights and electrical system.

(B) Each inspection shall be recorded on a daily roadability inspection report, which shall include, but not be limited to, all of the following:

(i) Positive identification of the intermodal chassis, including company identification number.

(ii) Date and nature of each inspection.

(iii) Signature of the ocean marine terminal operator or an authorized representative.

(C) Records of each inspection conducted pursuant to subparagraph (A) shall be retained for 90 days at the ocean marine terminal at which each chassis is based and shall be made available upon request by any authorized employee of the department.

(D) Defects noted on any intermodal chassis shall be repaired, and the repairs shall be recorded on the intermodal chassis maintenance file, before the intermodal chassis is released from the control of the ocean marine terminal. No vehicle subject to this section shall be operated on the highway other than to a place of repair until all defects listed during the inspection conducted pursuant to subparagraph (A) have been corrected and attested to by the signature of the operator's authorized representative.

(E) Records of maintenance or repairs performed pursuant to the inspection in subparagraph (A) shall be maintained at the ocean marine terminal for two years and shall be made available upon request of the department. Repair records may be retained in a computer system if printouts of those records are provided to the department upon request.

(F) Individuals performing ocean marine terminal roadability inspections pursuant to this section shall, at a minimum, be qualified as set forth in Section 396.19 of Title 49 of the Code of Federal Regulations. Evidence of each inspector's qualification shall be retained by the ocean marine terminal operator for the period during which the inspector is performing intermodal roadability inspections.

(c) Following a terminal inspection in which the department determines an operator of an ocean marine terminal utilizing the intermodal roadability inspection program has failed to comply with the requirements of this section, the department shall conduct a reinspection within 120 days as specified in subdivision (h) of Section 34501.12. If the terminal fails the reinspection, the department shall direct the operator to comply with the requirements of Section 34505.5 until eligibility to utilize the inspection program described in this section is reestablished pursuant to subdivision (b). If any inspection results in an unsatisfactory rating due to conditions presenting an imminent danger to the public safety, as described in Section 34505.6 or 34506.7, the department immediately shall direct the operator to comply with the requirements of Section 34505.5 until eligibility to utilize the inspection program described in this section is reestablished pursuant to subdivision (b).

(d) This section shall remain in effect only until January 1, 1998,

and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 68. Section 35002 of the Vehicle Code is amended to read:

35002. (a) (1) This division does not apply to any authorized emergency vehicle owned or operated by a governmental agency while being used in responding to and returning from emergency fire calls, while being moved from place to place in anticipation of emergency fire calls, when used during training in any fire service application or during fire prevention activities, or when vehicles ordinarily used for those purposes are necessarily transported for vehicle maintenance, repair, or service. This subdivision only applies to vehicles purchased prior to January 1, 1994. Vehicles purchased on January 1, 1992, to and including December 31, 1993, shall meet the applicable requirements of Standards 1901 to 1904, inclusive, of the National Fire Protection Association, as those standards were in effect on December 31, 1991.

(2) All vehicles described in paragraph (1) first purchased on or after January 1, 1994, shall comply with the applicable permit requirements adopted by the Department of Transportation.

(3) For purposes of this section, "purchased" means the date that the operating agency enters into a contract to purchase the vehicle.

(b) All vehicles described in subdivision (a) purchased on or after January 1, 1994, shall meet the following requirements:

(1) It shall be the responsibility of the manufacturer to provide a gross axle weight rating (GAWR), gross combined weight rating (GCWR), and gross vehicle weight rating (GVWR), adequate to carry a full water tank with the allowance for personnel and miscellaneous equipment, including hose load, shown in the table below:

	Personnel	Misc. Equipment
Pumpers	1,200 lbs.	2,000 lbs.
Light attack apparatus	600 lbs.	900 lbs.
Water towers	1,200 lbs.	1,500 lbs.
Aerial platforms with ground ladders	1,200 lbs.	2,500 lbs.
Aerial ladders with ground ladders	1,200 lbs.	2,500 lbs.

Fire apparatus shall be weighed and certified by the manufacturer to determine compliance with the table above prior to acceptance by the purchaser. Apparatus and chassis manufacturers shall furnish certification of the gross vehicle weight rating (GVWR), gross combined weight rating (GCWR), and gross axle weight rating (GAWR) on a nameplate affixed to the apparatus.

(2) Any fire apparatus exceeding 31,000 pounds gross vehicle weight rating (GVWR) shall be equipped with a retarder.

(3) For purposes of this section, a "fire apparatus" is any vehicle

or combination of vehicles designed, maintained, and used exclusively for the suppression of fires or for fire prevention activities, including the training of firefighters. A tank vehicle owned by a regularly organized fire suppression agency and used to transport water or other fire suppression materials is a fire apparatus. A vehicle or combination of vehicles which is not designed primarily for fire suppression, including, but not limited to, a hazardous materials response vehicle, dedicated rescue vehicle, command post communications vehicle, passenger vehicle, bus, mobile kitchen, mobile sanitation facility, and heavy equipment transport vehicle, are not a fire apparatus for purposes of this section.

(c) A vehicle owned, operated, or rented by any public agency which is being used in responding to or returning from an emergency, may be operated as required, if a reasonable effort is first made by the agency to obtain verbal permission from an authorized officer or employee of the agency having jurisdiction of the highways used, and, upon termination of the emergency, when the vehicle is returning from the site of the emergency, the public agency either obtains a permit at the location of the emergency or makes a reasonable effort to obtain verbal permission from an authorized officer or employee of the agency having jurisdiction of the highways used, and obtains a written permit for that use pursuant to Section 35780 not later than three days after the date of the emergency. As used in this subdivision, "emergency" means a condition which poses an imminent threat of loss of property or a hazard to life, as determined by the public agency charged with responsibility to respond thereto.

(d) Any governmental agency operating an authorized emergency vehicle or other vehicle subject to this section is liable to the governmental agency having jurisdiction of any state or county highway for any damage to the highway or any highway structure caused by the operation of the vehicle of a size or weight of vehicle or load exceeding that specified in this division. The cost of repair of the damage is a proper charge against the support fund of the governmental agency operating the oversize or overweight vehicle.

(e) Neither the state nor any agency thereof is liable for damage to any highway or highway structure caused by vehicles operated, pursuant to this section, by or on behalf of a local authority or any other local governmental entity.

SEC. 69. Section 40517 of the Vehicle Code is repealed.

SEC. 70. The Department of Transportation may conduct a study to determine the policy and fiscal consequences of deleting paragraph (2) of subdivision (a) of Section 27700 of the Vehicle Code upon receiving donations from nonstate sources to cover the costs of the study. No state funds may be expended to conduct this study.

SEC. 71. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction,

changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 72. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to put into effect as quickly as possible certain statutory changes that the Legislature intended to enact during earlier stages of the 1993-94 Regular Session, and to make other changes that need to become effective for the orderly administration of transportation and vehicle laws as quickly as possible, it is necessary that this act take effect immediately.

CHAPTER 1221

An act to amend Sections 1653.5, 4150, 4150.2, 4604, 5014, 5031, 5902, 13353.7, 14601.5, 14906, 22651, 38040, 38041, 38120, 38205, and 40000.11 of, and to add Sections 13106, 13351.5, 14602.6, and 14604 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 1653.5 of the Vehicle Code is amended to read:

1653.5. (a) Every form prescribed by the department for use by an applicant for the issuance or renewal by the department of a driver's license or identification card pursuant to Division 6 (commencing with Section 12500) shall contain a section for the applicant's social security account number.

(b) Every form prescribed by the department for use by an applicant for the issuance, renewal, or transfer of the registration or certificate of title to a vehicle shall contain a section for the applicant's driver's license or identification card number.

(c) Any person who submits to the department a form which, pursuant to subdivision (a), contains a section for the applicant's social security account number, or pursuant to subdivision (b), the applicant's driver's license or identification card number, if any, shall furnish the appropriate number in the space provided.

(d) The department shall not accept any application which does not include the applicant's social security account number or driver's license or identification card number as required by subdivision (c).

(e) An applicant's social security account number shall not be included by the department on any driver's license, identification card, registration, certificate of title, or any other document issued by the department.

(f) Notwithstanding any other provision of law, information regarding an applicant's social security account number, obtained by the department pursuant to this section, is not a public record and shall not be disclosed by the department except for any of the following purposes:

(1) Responding to a request for information from an agency operating pursuant to, and carrying out the provisions of, Part A (Aid to Families with Dependent Children), or Part D (Child Support and Establishment of Paternity), of Subchapter IV of Chapter 7 of Title 42 of the United States Code.

(2) Implementation of Section 12419.10 of the Government Code.

(3) Responding to information requests from the Franchise Tax Board for the purpose of tax administration.

SEC. 2. Section 4150 of the Vehicle Code is amended to read:

4150. Application for the original or renewal registration of a vehicle of a type required to be registered under this code shall be made by the owner to the department upon the appropriate form furnished by it and shall contain all of the following:

(a) The true, full name, business or residence and mailing address, and driver's license or identification card number, if any, of the owner, and the true, full name and business or residence or mailing address of the legal owner, if any.

(b) The name of the county in which the owner resides.

(c) A description of the vehicle, including the following data insofar as they may exist:

(1) The make, model, and type of body.

(2) The vehicle identification number or any other identifying number as may be required by the department.

(3) The date first sold by a manufacturer, remanufacturer, or dealer to a consumer.

(d) Any other information that is reasonably required by the department to enable it to determine whether the vehicle is lawfully entitled to registration.

SEC. 3. Section 4150.2 of the Vehicle Code is amended to read:

4150.2. Application for the original registration or renewal of the registration of a motorcycle shall be made by the owner to the department upon the appropriate form furnished by it, and shall contain all of the following:

(a) The true, full name, business or residence and mailing address, and driver's license or identification card number, if any, of the owner, and the true, full name and business or residence or mailing address of the legal owner, if any.

(b) The name of the county in which the owner resides.

(c) A description of the motorcycle, including the following data insofar as they may exist:

(1) The make and type of body.

(2) The motor and vehicle identification numbers recorded exactly as they appear on the engine and frame, respectively, by the manufacturer, and any other identifying number of the motorcycle as may be required by the department.

(3) The date first sold by a manufacturer, remanufacturer, or dealer to a consumer.

(d) Any other information that is reasonably required by the department to enable it to determine whether the vehicle is lawfully entitled to registration.

(e) The department shall maintain a cross-index file of motor and vehicle identification numbers registered with it.

SEC. 4. Section 4604 of the Vehicle Code is amended to read:

4604. (a) Except as otherwise provided in subdivision (d), prior to the expiration of the registration of a vehicle, if that registration is not to be renewed prior to its expiration, the owner of the vehicle shall file, under penalty of perjury, a certification that the vehicle will not be operated, moved, or left standing upon any highway during the subsequent registration year without first making an application for registration of the vehicle, including full payment of all fees. The certification is valid only for the following registration year for the vehicle, but may be renewed annually not more than 60 days prior to its expiration. An application for renewal of a certification shall contain a space for the applicant's driver's license or identification card number, and the applicant shall furnish that number, if any, in the space provided.

(b) Each certification filed pursuant to subdivision (a) shall be accompanied by a filing fee of five dollars (\$5).

(c) (1) An application for renewal of registration, except when accompanied by an application for transfer of title to, or any interest in, the vehicle, shall be submitted to the department with payment of the required fees for the current registration year and without penalty for delinquent payment of fees imposed under this code or under Part 5 (commencing with Section 10701) of Division 2 of the Revenue and Taxation Code if the department receives the application prior to or on the date the vehicle is first operated, moved, or left standing upon any highway during the current registration year and the certification required pursuant to subdivision (a) was timely filed with the department.

(2) If an application for renewal of registration is accompanied by an application for transfer of title, that application may be made without incurring a penalty for delinquent payment of fees not later than 20 days after the date the vehicle is first operated, moved, or left standing on any highway if a certification pursuant to subdivision (a) was timely filed with the department.

(d) A certification is not required to be filed pursuant to subdivision (a) for any of the following:

(1) A vehicle on which the registration expires while being held as inventory by a dealer or lessor-retailer or while being held

pending a lien sale by the keeper of a garage or operator of a towing service.

(2) A vehicle registered pursuant to Article 4 (commencing with Section 8050) of Chapter 4 of Division 3.

(3) A vehicle described in Section 5004, 5004.5, 5004.6, or 5051, as provided in Section 4604.2. However, the registered owner may file a certificate of nonoperation in lieu of the certification specified in subdivision (a).

(4) A vehicle registered pursuant to Article 5 (commencing with Section 9700) of Chapter 6 if the registered owner has complied with subdivision (c) of Section 9706.

(e) For purposes of this section, a "vehicle" is, notwithstanding Section 670, a device by which any person or property may be propelled, moved, or driven upon a highway having intact and assembled its major component parts including, but not limited to, the frame or chassis, cowl, and floor pan or, in the case of a trailer, the frame and wheels or, in the case of a motorcycle, the frame, front fork, and engine. For purposes of this section, "vehicle" does not include a device moved exclusively by human power, a device used exclusively upon stationary rails or tracks, or a motorized wheelchair.

SEC. 5. Section 5014 of the Vehicle Code is amended to read:

5014. An application by a person other than a manufacturer or dealer for an identification plate for special construction equipment, cemetery equipment, special mobile equipment, tow dolly, logging vehicle, cotton trailer, or farm trailer as specified in Section 36109, a vehicle which is farmer-owned and used as provided in subdivision (b) of Section 36101, a motor vehicle which is farmer-owned and operated and used as provided in subdivision (a) of Section 36101, or an automatic bale wagon operated as specified in subdivision (a) or (b) of Section 36102 shall include the following:

(a) The true, full name and the driver's license or identification card number, if any, of the owner.

(b) A statement by the owner of the use or uses which he or she intends to make of the equipment.

(c) A description of the vehicle, including any distinctive marks or features.

(d) A photograph of the vehicle. Only one photograph of one piece of equipment shall be required to be attached to the application when identification plates are to be obtained for more than one piece of equipment, each of which is of the same identical type.

(e) Other information as may reasonably be required by the department to determine whether the applicant is entitled to be issued an identification plate.

(f) A service fee of seven dollars (\$7) for each vehicle. The plates shall be renewed between January 1 and February 4 every five calendar years, commencing in 1986. Any part of the year of the first application constitutes a calendar year. An application for renewal of an identification plate shall contain a space for the applicant's

driver's license or identification card number, and the applicant shall furnish that number, if any, in the space provided.

SEC. 6. Section 5031 of the Vehicle Code is amended to read:

5031. An application by a person other than a manufacturer or dealer for a license plate for a motorized bicycle shall include all the following:

(a) The true, full name and the driver's license or identification card number, if any, of the owner.

(b) A description of the motorized bicycle, including any distinctive marks or features.

(c) Other information as may reasonably be required by the department to determine whether a license plate shall be issued for the motorized bicycle.

SEC. 7. Section 5902 of the Vehicle Code is amended to read:

5902. (a) Whenever any person has received as transferee a properly endorsed certificate of ownership, that person shall, within 10 days thereafter, forward the certificate with the proper transfer fee to the department and thereby make application for a transfer of registration. The certificate of ownership shall contain a space for the applicant's driver's license or identification card number, and the applicant shall furnish that number, if any, in the space provided.

(b) An application for a transfer of registration of a commercial motor vehicle specified in Section 34500 shall include a declaration, made by the owner to the department upon the appropriate form furnished by it, that the owner is aware of the applicable motor carrier safety regulations adopted by the Department of the California Highway Patrol pursuant to Section 34501. A fleet owner may make this declaration on a single form for all commercial motor vehicles registered in the fleet owner's name.

SEC. 8. Section 13106 is added to the Vehicle Code, to read:

13106. (a) When the privilege of a person to operate a motor vehicle is suspended or revoked, the department shall notify the person by certified mail, return receipt requested, of the action taken and of the effective date thereof, except for those persons personally given notice by the department or a court, by a peace officer pursuant to Section 23137 or 23158.5, or otherwise pursuant to this code. It shall be conclusively presumed that a person has knowledge of the suspension or revocation if notice has been sent by certified mail by the department pursuant to this section to the most recent address reported by the person to the department pursuant to Section 14600, and the return receipt has been signed and returned to the department. It is the responsibility of every license holder to report changes of address to the department pursuant to Section 14600.

(b) (1) In the event the certified mail is not delivered, the department shall attempt to provide personal service by using a process server for service of any person whose driving privilege was suspended or revoked for a conviction of a violation of Section 23103, 23104, 23152, or 23153, or for any reason listed in subdivision (a) or

(c) of Section 12806, or for negligent or incompetent operation of a vehicle pursuant to subdivision (e) of Section 12809 or Section 12810.

(2) The only purpose of this subdivision is to provide an additional deterrent to unlawful driving.

(c) At the time of license reinstatement, the department shall recover, through fees authorized pursuant to Section 14906, an amount equal to its total costs of providing notices pursuant to this section.

SEC. 9. Section 13351.5 is added to the Vehicle Code, to read:

13351.5. (a) Upon receipt of a duly certified abstract of the record of any court showing that a person has been convicted of a violation of Section 245 of the Penal Code, and a vehicle was found by the court to constitute the deadly weapon or instrument used to commit that offense, the department immediately shall revoke the privilege of that person to drive a motor vehicle.

(b) The department shall not reinstate a privilege revoked under subdivision (a) under any circumstances.

SEC. 10. Section 13353.7 of the Vehicle Code is amended to read:

13353.7. (a) Subject to subdivision (c) and except as provided in Section 13353.6 for persons who have commercial driver's licenses, if the person whose driving privilege has been suspended under Section 13353.2 has not been convicted of, or found to have committed, a separate violation of Section 23103, as specified in Section 23103.5, Section 23140, 23152, or 23153 of this code, or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, and if the person's privilege to operate a motor vehicle has not been suspended or revoked pursuant to Section 13353 or 13353.2 for an offense which occurred on a separate occasion within seven years of the occasion in question and, if the person subsequently enrolls in a program described in Section 11837.3 of the Health and Safety Code, pursuant to subdivision (b) of Section 23161, that person, if 21 years of age or older at the time the offense occurred, may apply to the department for a restricted driver's license limited to travel to and from the activities required by the program or to and from and in the course of the person's employment, or both. Notwithstanding any other provision of law, if the person's restricted driver's license permits travel to and from and in the course of his or her employment, the person's privilege to operate a motor vehicle shall be suspended, subject to the restriction, for six months. After receiving proof of enrollment in the program, and if the person has not been arrested subsequent to the offense for which the person's driving privilege has been suspended under Section 13353.2 for a violation of Section 23103, as specified in Section 23103.5, Section 23140, 23152, or 23153 of this code, or Section 191.5 or paragraph (3) of subdivision (c) of Section 192 of the Penal Code, and if the person's privilege to operate a motor vehicle has not been suspended or revoked pursuant to Section 13353 or 13353.2 for an offense which occurred on a separate occasion, notwithstanding Section 13551, the department shall, after review pursuant to Section 13557, suspend

the person's privilege to operate a motor vehicle for 30 days and then issue the person a restricted driver's license under the following conditions:

(1) The program shall report any failure to participate in the program to the department and shall certify successful completion of the program to the department.

(2) The person was 21 years of age or older at the time the offense occurred and gives proof of financial responsibility as defined in Section 16430.

(3) The restricted driver's license authorizes the operation of a motor vehicle only to and from the activities required under the program.

(4) If any person who has been issued a restricted license under this section fails at any time to participate in the program, the department shall suspend the restricted license immediately. The department shall give notice of the suspension under this paragraph in the same manner as prescribed in subdivision (b) of Section 13353.2 for the period specified in Section 13353.3, which is effective upon receipt by the person.

(5) On or after 60 days after the effective date of the restricted license, and upon notification of successful completion of the program, the department may issue an unrestricted driver's license to the person.

(b) If the court of jurisdiction in a criminal action arising out of the same offense orders the department to suspend or revoke the person's privilege to operate a motor vehicle or does not grant probation after conviction of that offense, notwithstanding subdivision (a), the department shall suspend or revoke the person's privilege pursuant to the order of the court or Section 13352.

(c) If the holder of a commercial driver's license was operating a commercial vehicle, as defined in Section 15210, at the time of the violation which resulted in the suspension of that person's driving privilege under Section 13353.2, the department shall, pursuant to this section, if the person is otherwise eligible, issue the person a class C driver's license restricted in the same manner and subject to the same conditions as specified in subdivision (a), except that the license shall not allow travel to and from or in the course of the person's employment.

(d) This section does not apply to a person whose driving privilege has been suspended or revoked pursuant to the order of the court or Section 13353 or 13353.2 for an offense which occurred on a separate occasion, or as a result of a conviction of a separate violation of Section 23103, as specified in Section 23103.5, or Section 23140, 23152, or 23153, which violation occurred within seven years of the offense in question. This subdivision shall be operative only so long as a one-year suspension of the driving privilege for a second or subsequent occurrence or offense, with no restricted or hardship licenses permitted, is required by Section 408 or 410 of Title 23 of the United States Code.

SEC. 11. Section 14601.5 of the Vehicle Code is amended to read:
14601.5. (a) No person shall drive a motor vehicle at any time when that person's driving privilege is suspended or revoked pursuant to Section 13353 or 13353.2 and that person has knowledge of the suspension or revocation.

(b) Except in full compliance with the restriction, no person shall drive a motor vehicle at any time when that person's driving privilege is restricted pursuant to Section 13353.6 or 13353.7 and that person has knowledge of the restriction.

(c) Knowledge of suspension, revocation, or restriction of the driving privilege shall be conclusively presumed if notice has been given by the department to the person pursuant to Section 13106. The presumption established by this subdivision is a presumption affecting the burden of proof.

(d) Any person convicted of a violation of this section shall be punished as follows:

(1) Upon a first conviction, by imprisonment in the county jail for not more than six months or by a fine of not less than three hundred dollars (\$300) or more than one thousand dollars (\$1,000), or by both that fine and imprisonment.

(2) If the offense occurred within five years of a prior offense which resulted in a conviction for a violation of this section or Section 14601, 14601.1, 14601.2, or 14601.3, by imprisonment in the county jail for not less than 10 days or more than one year, and by a fine of not less than five hundred dollars (\$500) or more than two thousand dollars (\$2,000).

(e) In imposing the minimum fine required by subdivision (d), the court shall take into consideration the defendant's ability to pay the fine and may, in the interest of justice, and for reasons stated in the record, reduce the amount of that minimum fine to less than the amount otherwise imposed.

(f) Nothing in this section prohibits a person who is participating in, or has completed, an alcohol or drug rehabilitation program from driving a motor vehicle, that is owned or utilized by the person's employer, during the course of employment on private property that is owned or utilized by the employer, except an offstreet parking facility as defined in subdivision (c) of Section 12500.

SEC. 12. Section 14601.5 of the Vehicle Code is amended to read:
14601.5. (a) No person shall drive a motor vehicle at any time when that person's driving privilege is suspended or revoked pursuant to Section 13353, 13353.1, or 13353.2 and that person has knowledge of the suspension or revocation.

(b) Except in full compliance with the restriction, no person shall drive a motor vehicle at any time when that person's driving privilege is restricted pursuant to Section 13353.6, 13353.7, or 13353.8 and that person has knowledge of the restriction.

(c) Knowledge of suspension, revocation, or restriction of the driving privilege shall be conclusively presumed if notice has been given by the department to the person pursuant to Section 13106.

The presumption established by this subdivision is a presumption affecting the burden of proof.

(d) Any person convicted of a violation of this section shall be punished as follows:

(1) Upon a first conviction, by imprisonment in the county jail for not more than six months or by a fine of not less than three hundred dollars (\$300) or more than one thousand dollars (\$1,000), or by both that fine and imprisonment.

(2) If the offense occurred within five years of a prior offense which resulted in a conviction for a violation of this section or Section 14601, 14601.1, 14601.2, or 14601.3, by imprisonment in the county jail for not less than 10 days or more than one year, and by a fine of not less than five hundred dollars (\$500) or more than two thousand dollars (\$2,000).

(e) In imposing the minimum fine required by subdivision (d), the court shall take into consideration the defendant's ability to pay the fine and may, in the interest of justice, and for reasons stated in the record, reduce the amount of that minimum fine to less than the amount otherwise imposed.

(f) Nothing in this section prohibits a person who is participating in, or has completed, an alcohol or drug rehabilitation program from driving a motor vehicle, that is owned or utilized by the person's employer, during the course of employment on private property that is owned or utilized by the employer, except an offstreet parking facility as defined in subdivision (d) of Section 12500.

SEC. 13. Section 14602.6 is added to the Vehicle Code, to read:

14602.6. (a) Whenever a peace officer determines that a person was driving a vehicle while his or her driving privilege was suspended or revoked or without ever having been issued a license, the peace officer may immediately arrest that person and cause the removal and seizure of that vehicle in accordance with Chapter 10 (commencing with Section 22650) of Division 11. A vehicle so impounded shall be impounded for 30 days.

(b) The registered and legal owner of a vehicle that is removed and seized under subdivision (a) or their agents shall be provided the opportunity for a storage hearing to determine the validity of the storage in accordance with Section 22852.

(c) Any period in which a vehicle is subjected to storage under this section shall be included as part of the period of impoundment ordered by the court under subdivision (a) of Section 14602.5.

SEC. 14. Section 14604 is added to the Vehicle Code, to read:

14604. (a) No owner of a motor vehicle may knowingly allow another person to drive the vehicle upon a highway unless the owner determines that the person possesses a valid driver's license that authorizes the person to operate the vehicle. For the purposes of this section, an owner is required only to make a reasonable effort or inquiry to determine whether the prospective driver possesses a valid driver's license before allowing him or her to operate the owner's vehicle. An owner is not required to inquire of the

department whether the prospective driver possesses a valid driver's license.

(b) (1) A rental company is deemed to be in compliance with subdivision (a) if the company rents the vehicle in accordance with Sections 14608 and 14609 and if the driver of the rental vehicle is an authorized driver.

(2) As used in this subdivision, "rental company" and "authorized driver" have the same meaning as those terms are defined in paragraphs (1) and (3), respectively, of subdivision (a) of Section 1936 of the Civil Code.

SEC. 15. Section 14906 of the Vehicle Code is amended to read:

14906. (a) In addition to the fees required by Section 14904, the department may require payment of a fee sufficient to pay the actual costs, as determined by the department, for giving any notices in connection with suspensions or revocations in accordance with Sections 22, 29, and 13106.

(b) This section does not apply to any suspension or revocation that is set aside by the department or a court.

SEC. 16. Section 22651 of the Vehicle Code is amended to read:

22651. Any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code; or any regularly employed and salaried employee, who is engaged in directing traffic or enforcing parking laws and regulations, of a city or a county in which a vehicle is located, may remove a vehicle located within the territorial limits in which the officer or employee may act, under any of the following circumstances:

(a) When any vehicle is left unattended upon any bridge, viaduct, or causeway or in any tube or tunnel where the vehicle constitutes an obstruction to traffic.

(b) When any vehicle is parked or left standing upon a highway in a position so as to obstruct the normal movement of traffic or in a condition so as to create a hazard to other traffic upon the highway.

(c) When any vehicle is found upon a highway or any public lands and a report has previously been made that the vehicle has been stolen or a complaint has been filed and a warrant thereon issued charging that the vehicle has been embezzled.

(d) When any vehicle is illegally parked so as to block the entrance to a private driveway and it is impractical to move the vehicle from in front of the driveway to another point on the highway.

(e) When any vehicle is illegally parked so as to prevent access by firefighting equipment to a fire hydrant and it is impracticable to move the vehicle from in front of the fire hydrant to another point on the highway.

(f) When any vehicle, except any highway maintenance or construction equipment, is stopped, parked, or left standing for more than four hours upon the right-of-way of any freeway which has full control of access and no crossings at grade and the driver, if present, cannot move the vehicle under its own power.

(g) When the person or persons in charge of a vehicle upon a highway or any public lands are, by reason of physical injuries or illness, incapacitated to an extent so as to be unable to provide for its custody or removal.

(h) When an officer arrests any person driving or in control of a vehicle for an alleged offense and the officer is, by this code or other law, required or permitted to take, and does take, the person into custody.

(i) (1) When any vehicle, other than a rented vehicle, is found upon a highway or any public lands, or is removed pursuant to this code, and it is known to have been issued five or more notices of parking violation, to which the owner or person in control of the vehicle has not responded within 21 days of citation issuance or 10 days of a notice of delinquent parking violation to the agency responsible for processing notices of parking violation or the registered owner of the vehicle is known to have been issued five or more notices for failure to pay or failure to appear in court for traffic violations for which no certificate has been issued by the magistrate or clerk of the court hearing the case showing that the case has been adjudicated or concerning which the registered owner's record has not been cleared pursuant to Chapter 6 (commencing with Section 41500) of Division 17, the vehicle may be impounded until that person furnishes to the impounding law enforcement agency all of the following:

(A) Evidence of his or her identity.

(B) An address within this state at which he or she can be located.

(C) Satisfactory evidence that all parking penalties due for the vehicle and any other vehicle registered to the registered owner of the impounded vehicle, and all traffic violations of the registered owner, have been cleared.

(2) The requirements in subparagraph (C) of paragraph (1) shall be fully enforced by the impounding law enforcement agency on and after the time that the Department of Motor Vehicles is able to provide access to the necessary records.

(3) A notice of parking violation issued for an unlawfully parked vehicle shall be accompanied by a warning that repeated violations may result in the impounding of the vehicle. In lieu of furnishing satisfactory evidence that the full amount of parking penalties or bail has been deposited, that person may demand to be taken without unnecessary delay before a magistrate, for traffic offenses, or a hearing examiner, for parking offenses, within the county in which the offenses charged are alleged to have been committed and who has jurisdiction of the offenses and is nearest or most accessible with reference to the place where the vehicle is impounded. Evidence of current registration shall be produced after a vehicle has been impounded, or, at the discretion of the impounding law enforcement agency, a notice to appear for violation of subdivision (a) of Section 4000 shall be issued to that person.

(4) A vehicle shall be released to the legal owner, as defined in

Section 370, if the legal owner does all of the following:

(A) Pays the cost of towing and storing the vehicle.

(B) Submits evidence of payment of fees as provided in Section 9561.

(C) Completes an affidavit in a form acceptable to the impounding law enforcement agency stating that the vehicle was not in possession of the legal owner at the time of occurrence of the offenses relating to standing or parking. A vehicle released to a legal owner under this subdivision is a repossessed vehicle for purposes of disposition or sale. The impounding agency shall have a lien on any surplus that remains upon sale of the vehicle to which the registered owner is or may be entitled, as security for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5. The legal owner shall promptly remit to, and deposit with, the agency responsible for processing notices of parking violations from that surplus, on receipt thereof, full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5.

(5) The impounding agency that has a lien on the surplus that remains upon the sale of a vehicle to which a registered owner is entitled pursuant to paragraph (4) has a deficiency claim against the registered owner for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5, less the amount received from the sale of the vehicle.

(j) When any vehicle is found illegally parked and there are no license plates or other evidence of registration displayed, the vehicle may be impounded until the owner or person in control of the vehicle furnishes the impounding law enforcement agency evidence of his or her identity and an address within this state at which he or she can be located.

(k) When any vehicle is parked or left standing upon a highway for 72 or more consecutive hours in violation of a local ordinance authorizing removal.

(l) When any vehicle is illegally parked on a highway in violation of any local ordinance forbidding standing or parking and the use of a highway, or a portion thereof, is necessary for the cleaning, repair, or construction of the highway, or for the installation of underground utilities, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by local authorities pursuant to the ordinance.

(m) Wherever the use of the highway, or any portion thereof, is authorized by local authorities for a purpose other than the normal flow of traffic or for the movement of equipment, articles, or structures of unusual size, and the parking of any vehicle would prohibit or interfere with that use or movement, and signs giving notice that the vehicle may be removed are erected or placed at least

24 hours prior to the removal by local authorities pursuant to the ordinance.

(n) Whenever any vehicle is parked or left standing where local authorities, by resolution or ordinance, have prohibited parking and have authorized the removal of vehicles. No vehicle may be removed unless signs are posted giving notice of the removal.

(o) (1) When any vehicle is found upon a highway, any public lands, or an offstreet parking facility with a registration expiration date in excess of one year before the date it is found on the highway, public lands, or the offstreet parking facility. However, if the vehicle is occupied, only a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may remove the vehicle. For purposes of this subdivision, the vehicle shall be released to the owner or person in control of the vehicle only after the owner or person furnishes the storing law enforcement agency with proof of current registration and a currently valid driver's license to operate the vehicle.

(2) As used in this subdivision, "offstreet parking facility" means any offstreet facility held open for use by the public for parking vehicles and includes any publicly owned facilities for offstreet parking, and privately owned facilities for offstreet parking where no fee is charged for the privilege to park and which are held open for the common public use of retail customers.

(p) When the peace officer issues the driver of a vehicle a notice to appear for a violation of Section 12500, 14601, 14601.1, 14601.2, 14601.3, 14601.4, 14601.5, or 14604 and the vehicle has not been impounded pursuant to Section 22655.5. Any vehicle so removed from the highway or any public lands shall not be released to the registered owner or his or her agent, except upon presentation of the registered owner's or his or her agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court.

(q) Whenever any vehicle is parked for more than 24 hours on a portion of highway which is located within the boundaries of a common interest development, as defined in subdivision (c) of Section 1351 of the Civil Code, and signs, as required by Section 22658.2, have been posted on that portion of highway providing notice to drivers that vehicles parked thereon for more than 24 hours will be removed at the owner's expense, pursuant to a resolution or ordinance adopted by the local authority.

(r) When any vehicle is illegally parked and blocks the movement of a legally parked vehicle.

(s) (1) When any vehicle, except highway maintenance or construction equipment, an authorized emergency vehicle, or a vehicle which is properly permitted or otherwise authorized by the Department of Transportation, is stopped, parked, or left standing for more than eight hours within a roadside rest area or viewpoint.

(2) For purposes of this subdivision, a roadside rest area or viewpoint is a publicly maintained vehicle parking area, adjacent to

a highway, utilized for the convenient, safe stopping of a vehicle to enable motorists to rest or to view the scenery. If two or more roadside rest areas are located on opposite sides of the highway, or upon the center divider, within seven miles of each other, then that combination of rest areas is considered to be the same rest area.

SEC. 17. Section 22651 of the Vehicle Code is amended to read: 22651. Any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code; or any regularly employed and salaried employee, who is engaged in directing traffic or enforcing parking laws and regulations, of a city or a county in which a vehicle is located, may remove a vehicle located within the territorial limits in which the officer or employee may act, under any of the following circumstances:

(a) When any vehicle is left unattended upon any bridge, viaduct, or causeway or in any tube or tunnel where the vehicle constitutes an obstruction to traffic.

(b) When any vehicle is parked or left standing upon a highway in a position so as to obstruct the normal movement of traffic or in a condition so as to create a hazard to other traffic upon the highway.

(c) When any vehicle is found upon a highway or any public lands and a report has previously been made that the vehicle has been stolen or a complaint has been filed and a warrant thereon issued charging that the vehicle has been embezzled.

(d) When any vehicle is illegally parked so as to block the entrance to a private driveway and it is impractical to move the vehicle from in front of the driveway to another point on the highway.

(e) When any vehicle is illegally parked so as to prevent access by firefighting equipment to a fire hydrant and it is impracticable to move the vehicle from in front of the fire hydrant to another point on the highway.

(f) When any vehicle, except any highway maintenance or construction equipment, is stopped, parked, or left standing for more than four hours upon the right-of-way of any freeway which has full control of access and no crossings at grade and the driver, if present, cannot move the vehicle under its own power.

(g) When the person or persons in charge of a vehicle upon a highway or any public lands are, by reason of physical injuries or illness, incapacitated to an extent so as to be unable to provide for its custody or removal.

(h) (1) When an officer arrests any person driving or in control of a vehicle for an alleged offense and the officer is, by this code or other law, required or permitted to take, and does take, the person into custody.

(2) When an officer serves a notice of an order of suspension or revocation of a driver's license pursuant to Section 23137.

(i) (1) When any vehicle, other than a rented vehicle, is found upon a highway or any public lands, or is removed pursuant to this code, and it is known to have been issued five or more notices of

parking violation, to which the owner or person in control of the vehicle has not responded within 21 days of citation issuance or 10 days of a notice of delinquent parking violation to the agency responsible for processing notices of parking violation or the registered owner of the vehicle is known to have been issued five or more notices for failure to pay or failure to appear in court for traffic violations for which no certificate has been issued by the magistrate or clerk of the court hearing the case showing that the case has been adjudicated or concerning which the registered owner's record has not been cleared pursuant to Chapter 6 (commencing with Section 41500) of Division 17, the vehicle may be impounded until that person furnishes to the impounding law enforcement agency all of the following:

(A) Evidence of his or her identity.

(B) An address within this state at which he or she can be located.

(C) Satisfactory evidence that all parking penalties due for the vehicle and any other vehicle registered to the registered owner of the impounded vehicle, and all traffic violations of the registered owner, have been cleared.

(2) The requirements in subparagraph (C) of paragraph (1) shall be fully enforced by the impounding law enforcement agency on and after the time that the Department of Motor Vehicles is able to provide access to the necessary records.

(3) A notice of parking violation issued for an unlawfully parked vehicle shall be accompanied by a warning that repeated violations may result in the impounding of the vehicle. In lieu of furnishing satisfactory evidence that the full amount of parking penalties or bail has been deposited, that person may demand to be taken without unnecessary delay before a magistrate, for traffic offenses, or a hearing examiner, for parking offenses, within the county in which the offenses charged are alleged to have been committed and who has jurisdiction of the offenses and is nearest or most accessible with reference to the place where the vehicle is impounded. Evidence of current registration shall be produced after a vehicle has been impounded, or, at the discretion of the impounding law enforcement agency, a notice to appear for violation of subdivision (a) of Section 4000 shall be issued to that person.

(4) A vehicle shall be released to the legal owner, as defined in Section 370, if the legal owner does all of the following:

(A) Pays the cost of towing and storing the vehicle.

(B) Submits evidence of payment of fees as provided in Section 9561.

(C) Completes an affidavit in a form acceptable to the impounding law enforcement agency stating that the vehicle was not in possession of the legal owner at the time of occurrence of the offenses relating to standing or parking. A vehicle released to a legal owner under this subdivision is a repossessed vehicle for purposes of disposition or sale. The impounding agency shall have a lien on any surplus that remains upon sale of the vehicle to which the registered

owner is or may be entitled, as security for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5. The legal owner shall promptly remit to, and deposit with, the agency responsible for processing notices of parking violations from that surplus, on receipt thereof, full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5.

(5) The impounding agency that has a lien on the surplus that remains upon the sale of a vehicle to which a registered owner is entitled pursuant to paragraph (4) has a deficiency claim against the registered owner for the full amount of the parking penalties for all notices of parking violations issued for the vehicle and for any local administrative charges imposed pursuant to Section 22850.5, less the amount received from the sale of the vehicle.

(j) When any vehicle is found illegally parked and there are no license plates or other evidence of registration displayed, the vehicle may be impounded until the owner or person in control of the vehicle furnishes the impounding law enforcement agency evidence of his or her identity and an address within this state at which he or she can be located.

(k) When any vehicle is parked or left standing upon a highway for 72 or more consecutive hours in violation of a local ordinance authorizing removal.

(l) When any vehicle is illegally parked on a highway in violation of any local ordinance forbidding standing or parking and the use of a highway, or a portion thereof, is necessary for the cleaning, repair, or construction of the highway, or for the installation of underground utilities, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by local authorities pursuant to the ordinance.

(m) Wherever the use of the highway, or any portion thereof, is authorized by local authorities for a purpose other than the normal flow of traffic or for the movement of equipment, articles, or structures of unusual size, and the parking of any vehicle would prohibit or interfere with that use or movement, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by local authorities pursuant to the ordinance.

(n) Whenever any vehicle is parked or left standing where local authorities, by resolution or ordinance, have prohibited parking and have authorized the removal of vehicles. No vehicle may be removed unless signs are posted giving notice of the removal.

(o) (1) When any vehicle is found upon a highway, any public lands, or an offstreet parking facility with a registration expiration date in excess of one year before the date it is found on the highway, public lands, or the offstreet parking facility. However, if the vehicle is occupied, only a peace officer, as defined in Chapter 4.5

(commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may remove the vehicle. For purposes of this subdivision, the vehicle shall be released to the owner or person in control of the vehicle only after the owner or person furnishes the storing law enforcement agency with proof of current registration and a currently valid driver's license to operate the vehicle.

(2) As used in this subdivision, "offstreet parking facility" means any offstreet facility held open for use by the public for parking vehicles and includes any publicly owned facilities for offstreet parking, and privately owned facilities for offstreet parking where no fee is charged for the privilege to park and which are held open for the common public use of retail customers.

(p) When the peace officer issues the driver of a vehicle a notice to appear for a violation of Section 12500, 14601, 14601.1, 14601.2, 14601.3, 14601.4, 14601.5, or 14604 and the vehicle has not been impounded pursuant to Section 22655.5. Any vehicle so removed from the highway or any public lands, or from private property after having been on a highway or public lands, shall not be released to the registered owner or his or her agent, except upon presentation of the registered owner's or his or her agent's currently valid driver's license to operate the vehicle and proof of current vehicle registration, or upon order of a court.

(q) Whenever any vehicle is parked for more than 24 hours on a portion of highway which is located within the boundaries of a common interest development, as defined in subdivision (c) of Section 1351 of the Civil Code, and signs, as required by Section 22658.2, have been posted on that portion of highway providing notice to drivers that vehicles parked thereon for more than 24 hours will be removed at the owner's expense, pursuant to a resolution or ordinance adopted by the local authority.

(r) When any vehicle is illegally parked and blocks the movement of a legally parked vehicle.

(s) (1) When any vehicle, except highway maintenance or construction equipment, an authorized emergency vehicle, or a vehicle which is properly permitted or otherwise authorized by the Department of Transportation, is stopped, parked, or left standing for more than eight hours within a roadside rest area or viewpoint.

(2) For purposes of this subdivision, a roadside rest area or viewpoint is a publicly maintained vehicle parking area, adjacent to a highway, utilized for the convenient, safe stopping of a vehicle to enable motorists to rest or to view the scenery. If two or more roadside rest areas are located on opposite sides of the highway, or upon the center divider, within seven miles of each other, then that combination of rest areas is considered to be the same rest area.

SEC. 18. Section 38040 of the Vehicle Code is amended to read:
38040. Application for the original identification of a motor vehicle, other than a motorcycle, required to be identified pursuant to this division shall be made by the owner to the department upon the appropriate form furnished by it and shall contain all of the

following:

(a) The true, full name, business or residence and mailing address, and the driver's license or identification card number, if any, of the owner and the legal owner, if any.

(b) The name of the county in which the owner resides.

(c) A description of the vehicle, including the following, insofar as it may exist:

(1) The make, model, and type of body.

(2) The vehicle identification number or any other number as may be required by the department.

(d) Information as may reasonably be required by the department to enable it to determine whether the vehicle is lawfully entitled to identification.

SEC. 19. Section 38041 of the Vehicle Code is amended to read: 38041. Application for the original identification of a motorcycle shall be made by the owner to the department upon the appropriate form furnished by it, and shall contain:

(a) The true, full name, business or residence and mailing address, and the driver's license or identification card number, if any, of the owner and the legal owner, if any.

(b) The name of the county in which the owner resides.

(c) A description of the motorcycle including the following data insofar as it may exist:

(1) The make and type of body.

(2) The motor and frame numbers recorded exactly as stamped on the engine and frame, respectively, by the manufacturer, and any other identifying number of the motorcycle as may be required by the department.

(3) The date first sold by a manufacturer or dealer to a consumer.

(d) Such information as may reasonably be required by the department to enable it to determine whether the vehicle is lawfully entitled to identification.

(e) The department shall maintain a cross-index file of motor and frame numbers identified with it.

The application shall be accompanied by a tracing, tape lift, or photograph of the motor or frame numbers, or where the facsimile of the motor or frame numbers cannot be obtained, a verification of the numbers shall be required.

SEC. 20. Section 38120 of the Vehicle Code is amended to read: 38120. (a) Application for renewal of identification of off-highway motor vehicles subject to identification shall be made by the owner not later than midnight of the 30th day of June of the expiration year. The application shall contain the true, full name and driver's license or identification card number, if any, of the owner.

(b) Whenever any application for identification or transfer of ownership of an off-highway motor vehicle subject to identification is filed with the department between June 1 and June 30 of the year of expiration, the application shall be accompanied by the full renewal fees in addition to any other fees then due and payable.

(c) Whenever an application for identification or transfer of ownership of an off-highway motor vehicle subject to identification is filed with the department between January 1 and May 31 of the year of expiration, the application may be accompanied by full renewal fees in addition to any other fees then due and payable, which renewal fees shall be for the two-year period following June 30th of the year in which paid.

SEC. 21. Section 38205 of the Vehicle Code is amended to read:

38205. Whenever any person has received as transferee a properly endorsed certificate of ownership, he or she shall, within 10 days thereafter, endorse the ownership certificate as required and forward the ownership certificate with the proper transfer fee and, if required under Section 38120, any other fee due and thereby make application for transfer of identification. The certificate of ownership shall contain a space for the applicant's driver's license or identification card number, and the applicant shall furnish that number, if any, in the space provided.

SEC. 22. Section 40000.11 of the Vehicle Code is amended to read:

40000.11. A violation of any of the following provisions is a misdemeanor, and not an infraction:

(a) Division 5 (commencing with Section 11100), relating to occupational licensing and business regulations.

(b) Section 12500, subdivision (a), relating to unlicensed drivers.

(c) Section 12515, subdivision (b), relating to persons under 21 years of age driving, and the employment of those persons to drive, vehicles engaged in interstate commerce or transporting hazardous substances or wastes.

(d) Section 12517, relating to a special driver's certificate to operate a schoolbus or school pupil activity bus.

(e) Section 12519, subdivision (a), relating to a special driver's certificate to operate a farm labor vehicle.

(f) Section 12520, relating to a special driver's certificate to operate a tow truck.

(g) Section 12804, subdivision (d), relating to medical certificates.

(h) Section 12951, subdivision (b), relating to refusal to display license.

(i) Section 13004, relating to unlawful use of identification card.

(j) Section 13004.1, relating to identification documents.

(k) Section 14604, relating to unlawful use of a vehicle.

(l) Section 14610, relating to unlawful use of driver's license.

(m) Section 14610.1, relating to identification documents.

(n) Section 15501, relating to use of false or fraudulent license by a minor.

SEC. 23. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 24. Section 12 of this bill incorporates amendments to Section 14601.5 of the Vehicle Code proposed by both this bill and SB 1295. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1995, (2) each bill amends Section 14601.5 of the Vehicle Code, and (3) this bill is enacted after SB 1295, in which case Section 14601.5 of the Vehicle Code, as amended by SB 1295, shall remain operative only until the operative date of this bill, at which time Section 12 of this bill shall become operative, and Section 11 of this bill shall not become operative.

SEC. 25. Section 17 of this bill incorporates amendments to Section 22651 of the Vehicle Code proposed by both this bill and SB 1295. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1995, (2) each bill amends Section 22651 of the Vehicle Code, and (3) this bill is enacted after SB 1295, in which case Section 22651 of the Vehicle Code, as amended by SB 1295, shall remain operative only until the operative date of this bill, at which time Section 17 of this bill shall become operative, and Section 16 of this bill shall not become operative.

CHAPTER 1222

An act to amend Section 51142 of the Government Code, and to amend Sections 61, 63.1, 69.3, 69.5, 75.21, 75.5, 170, 273.5, 276, 480, 5802, and 38204 of, to add Section 2188.11 to, and to repeal Sections 32 and 107.4 of, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 51142 of the Government Code is amended to read:

51142. (a) Upon immediate rezoning of a parcel in a timberland production zone, a tax recoupment fee shall be imposed on the owner of the land. Within 90 days following rezoning of land in the timberland production zone the county assessor shall reassess the rezoned parcels on the basis of the value of the property in its rezoned use. The assessor shall certify this value to the owner of the land and to the county auditor. The owner may appeal this new valuation in the same manner as an assessment appeal. Except when under such an appeal, after the certification the auditor shall, in cases of immediate rezoning, within 10 days compute the tax recoupment

fee and certify the amount to the tax collector. The tax collector shall notify the owner in writing of the amount and due date of the fee. Fees shall be due 60 days after receipt of notification.

(b) The tax recoupment fee shall apply only in cases of immediate rezoning and shall be a multiple of the difference between the amount of the tax last levied against the property when zoned as timberland production and the amount equal to the assessed valuation of the rezoned property times the tax rate of the current levy for the tax rate area, that multiple to be chosen from the following table according to subdivision (c):

Year	Multiple
1.....	1.06000
2.....	2.18360
3.....	3.37462
4.....	4.63709
5.....	5.97332
6.....	7.39384
7.....	8.89747
8.....	10.49132
9.....	12.18080
10.....	13.97164

(c) The multiple shall correspond to the number of years or fraction thereof, but in no event greater than 10, for which the land was zoned as timberland production or was subject to a contract under chapter 7 (commencing with Section 51200).

(d) Tax recoupment fees imposed pursuant to this section shall be due and payable to the county in which the rezoning has taken place.

(e) In cases of immediate rezoning, an owner may submit a written application, requesting the waiver of tax recoupment fees and explaining the reasons therefor, to either the State Board of Equalization or, where the county board of supervisors has adopted an authorizing resolution, to the county board of supervisors. The board receiving an application pursuant to this subdivision may, if it determines that it is in the public interest, waive all or any portion of the fees.

SEC. 2. Section 32 of the Revenue and Taxation Code is repealed.

SEC. 3. Section 61 of the Revenue and Taxation Code is amended to read:

61. Except as otherwise provided in Section 62, change in ownership, as defined in Section 60, includes, but is not limited to:

(a) The creation, renewal, sublease, assignment, or other transfer of the right to produce or extract oil, gas, or other minerals regardless of the period during which the right may be exercised. The balance of the property, other than the mineral rights, shall not be reappraised pursuant to this section.

(b) The creation, renewal, extension, sublease, or assignment of a taxable possessory interest in tax exempt real property for any term.

For purposes of this subdivision, “renewal” and “extension” do not include the granting of an option to renew or extend an existing agreement pursuant to which the term of possession of the existing agreement would, upon exercise of the option, be lengthened, whether the option is granted in the original agreement or subsequent thereto.

(c) (1) The creation of a leasehold interest in taxable real property for a term of 35 years or more (including renewal options), the termination of a leasehold interest in taxable real property which had an original term of 35 years or more (including renewal options), and any transfer of a leasehold interest having a remaining term of 35 years or more (including renewal options); or (2) any transfer of a lessor’s interest in taxable real property subject to a lease with a remaining term (including renewal options) of less than 35 years.

Only that portion of a property subject to that lease or transfer shall be considered to have undergone a change in ownership.

For the purpose of this subdivision, for 1979–80 and each year thereafter, it shall be conclusively presumed that all homes eligible for the homeowners’ exemption, other than manufactured homes located on rented or leased land and subject to taxation pursuant to Part 13 (commencing with Section 5800), that are on leased land have a renewal option of at least 35 years on the lease of that land, whether or not in fact that renewal option exists in any contract or agreement.

(d) The creation, transfer, or termination of any joint tenancy interest, except as provided in subdivision (f) of Section 62, and in Section 63 and Section 65.

(e) The creation, transfer, or termination of any tenancy-in-common interest, except as provided in subdivision (a) of Section 62 and in Section 63.

(f) Any vesting of the right to possession or enjoyment of a remainder or reversionary interest which occurs upon the termination of a life estate or other similar precedent property interest, except as provided in subdivision (d) of Section 62 and in Section 63.

(g) Any interests in real property which vest in persons other than the trustor (or, pursuant to Section 63, his or her spouse) when a revocable trust becomes irrevocable.

(h) The transfer of stock of a cooperative housing corporation, vested with legal title to real property that conveys to the transferee the exclusive right to occupancy and possession of that property, or a portion thereof. A “cooperative housing corporation” is a real estate development in which membership in the corporation, by stock ownership, is coupled with the exclusive right to possess a portion of the real property.

(i) The transfer of any interest in real property between a corporation, partnership, or other legal entity and a shareholder, partner, or any other person.

SEC. 4. Section 63.1 of the Revenue and Taxation Code is

amended to read:

63.1. (a) Notwithstanding any other provision of this chapter, a change in ownership shall not include either of the following purchases or transfers for which a claim is filed pursuant to this section:

(1) The purchase or transfer of real property which is the principal residence of an eligible transferor in the case of a purchase or transfer between parents and their children.

(2) The purchase or transfer of the first one million dollars (\$1,000,000) of full cash value of all other real property of an eligible transferor in the case of a purchase or transfer between parents and their children.

(b) (1) For purposes of paragraph (1) of subdivision (a), "principal residence" means a dwelling for which a homeowner's exemption or a disabled veteran's residence exemption has been granted in the name of the eligible transferor. "Principal residence" includes only that portion of the land underlying the principal residence that consists of an area of reasonable size that is used as a site for the residence.

(2) For purposes of paragraph (2) of subdivision (a), the one million dollar (\$1,000,000) exclusion shall apply separately to each eligible transferor with respect to all purchases by and transfers to eligible transferees on and after November 6, 1986, of real property, other than the principal residence, of that eligible transferor. The exclusion shall not apply to any property in which the eligible transferor's interest was received through a transfer, or transfers, excluded from change in ownership by the provisions of either subdivision (f) of Section 62 or subdivision (b) of Section 65, unless the transferor qualifies as an original transferor under subdivision (b) of Section 65. In the case of any purchase or transfer subject to this paragraph involving two or more eligible transferors, the transferors may elect to combine their separate one million dollar (\$1,000,000) exclusions and, upon making that election, the combined amount of their separate exclusions shall apply to any property jointly sold or transferred by the electing transferors, provided that in no case shall the amount of full cash value of real property of any one eligible transferor excluded under this election exceed the amount of the transferor's separate unused exclusion on the date of the joint sale or transfer.

(c) As used in this section:

(1) "Purchase or transfer between parents and their children" means either a transfer from a parent or parents to a child or children of the parent or parents or a transfer from a child or children to a parent or parents of the child or children. For purposes of this section, the date of any transfer between parents and their children under a will or intestate succession shall be the date of the decedent's death, if the decedent died on or after November 6, 1986.

(2) "Children" means any of the following:

(A) Any child born of the parent or parents, except a child, as

defined in subparagraph (D), who has been adopted by another person or persons.

(B) Any stepchild of the parent or parents and the spouse of that stepchild while the relationship of stepparent and stepchild exists. For purposes of this paragraph, the relationship of stepparent and stepchild shall be deemed to exist until the marriage on which the relationship is based is terminated by divorce, or, if the relationship is terminated by death, until the remarriage of the surviving stepparent.

(C) Any son-in-law or daughter-in-law of the parent or parents. For the purposes of this paragraph, the relationship of parent and son-in-law or daughter-in-law shall be deemed to exist until the marriage on which the relationship is based is terminated by divorce or, if the relationship is terminated by death, until the remarriage of the surviving son-in-law or daughter-in-law.

(D) Any child adopted by the parent or parents pursuant to statute, other than an individual adopted after reaching the age of 18 years.

(3) "Full cash value" means full cash value, as defined in Section 2 of Article XIII A of the California Constitution and Section 110.1, with any adjustments authorized by those sections, and the full value of any new construction in progress, determined as of the date immediately prior to the date of a purchase by or transfer to an eligible transferee of real property subject to this section.

(4) "Eligible transferor" means a parent or child of an eligible transferee.

(5) "Eligible transferee" means a parent or child of an eligible transferor.

(6) "Real property" means real property as defined in Section 104. Real property does not include any interest in a legal entity.

(7) "Transfer" includes, and is not limited to, any transfer of the present beneficial ownership of property from an eligible transferor to an eligible transferee through the medium of an inter vivos or testamentary trust.

(8) "Social security number" also includes a taxpayer identification number issued by the Internal Revenue Service in the case in which the taxpayer is a foreign national who cannot obtain a social security number.

(d) (1) The exclusions provided for in subdivision (a) shall not be allowed unless the eligible transferee, the transferee's legal representative, or the executor or administrator of the transferee's estate files a claim with the assessor for the exclusion sought and furnishes to the assessor each of the following:

(A) A written certification by the transferee, the transferee's legal representative, or the executor or administrator of the transferee's estate made under penalty of perjury that the transferee is a parent or child of the transferor.

(B) A copy of a written certification by the transferor, the transferor's legal representative, or the executor or administrator of

the transferor's estate made under penalty of perjury that the transferor is a parent or child of the transferee. The written certification shall also include either or both of the following:

(i) If the purchase or transfer of real property includes the purchase or transfer of residential real property, a certification that the residential real property is or is not the transferor's principal residence.

(ii) If the purchase or transfer of real property includes the purchase or transfer of real property other than the transferor's principal residence, a certification that other real property of the transferor that is subject to this section has or has not been previously sold or transferred to an eligible transferee, the total amount of full cash value, as defined in subdivision (c), of any real property subject to this section that has been previously sold or transferred by that transferor to eligible transferees, the location of that real property, the Social Security number of each eligible transferor, and the names of the eligible transferees of that property.

(2) If the full cash value of the real property purchased by or transferred to the transferee exceeds the permissible exclusion of the transferor or the combined permissible exclusion of the transferors, in the case of a purchase or transfer from two or more joint transferors, taking into account any previous purchases by or transfers to an eligible transferee from the same transferor or transferors, the transferee shall specify in his or her claim the amount and the allocation of the exclusion he or she is seeking. Within any appraisal unit, as determined in accordance with subdivision (e) of Section 51 by the assessor of the county in which the real property is located, the exclusion shall be applied only on a pro rata basis, however, and shall not be applied to a selected portion or portions of the appraisal unit.

(e) The State Board of Equalization shall design the form for claiming eligibility. Any claim under this section shall be filed:

(1) For transfers of real property between parents and their children occurring prior to September 30, 1990, within three years after the date of the purchase or transfer of real property for which the claim is filed.

(2) For transfers of real property between parents and their children occurring on or after September 30, 1990, within three years after the date of the purchase or transfer of real property for which the claim is filed, or prior to transfer of the real property to a third party, whichever is earlier.

(3) Notwithstanding paragraphs (1) and (2), a claim shall be deemed to be timely filed if it is filed within six months after the date of mailing of a notice of supplemental or escape assessment, issued as a result of the purchase or transfer of real property for which the claim is filed.

(4) Unless otherwise expressly provided, the provisions of this subdivision shall apply to any purchase or transfer of real property that occurred on or after November 6, 1986.

(f) The assessor shall report quarterly to the State Board of Equalization all purchases or transfers, other than purchases or transfers involving a principal residence, for which a claim for exclusion is made pursuant to subdivision (d). Each report shall contain the assessor's parcel number for each parcel for which the exclusion is claimed, the amount of each exclusion claimed, the Social Security number of each eligible transferor, and any other information the board shall require in order to monitor the one million dollar (\$1,000,000) limitation in paragraph (2) of subdivision (a).

(g) This section shall apply to both voluntary transfers and transfers resulting from a court order or judicial decree. Nothing in this subdivision shall be construed as conflicting with paragraph (1) of subdivision (c) or the general principle that transfers by reason of death occur at the time of death.

(h) This section shall apply to purchases and transfers of real property completed on or after November 6, 1986, and shall not be effective for any change in ownership, including a change in ownership arising on the date of a decedent's death, that occurred prior to that date.

SEC. 5. Section 69.3 of the Revenue and Taxation Code, as added by Chapter 72 of the Statutes of 1994, is amended to read:

69.3. (a) (1) Notwithstanding any other provision of law, pursuant to the authority of paragraph (3) of subdivision (e) of Section 2 of Article XIII A of the California Constitution, a county board of supervisors, after consultation with affected local agencies located within the boundaries of the county, may adopt an ordinance that authorizes the transfer, subject to the conditions and limitations of this section, of the base year value of real property that is located within another county in this state and has been substantially damaged or destroyed by a disaster to comparable replacement property, including land, of equal or lesser value that is located within the adopting county and has been acquired or newly constructed as a replacement for the damaged or destroyed property within three years after the damage or destruction of the original property.

(2) The base year value of the original property shall be the base year value of the original property as determined in accordance with Section 110.1, with the inflation factor adjustments permitted by subdivision (f) of Section 110.1, determined as of the date immediately prior to the date that the original property was substantially damaged or destroyed. The base year value of the original property shall also include any inflation factor adjustments permitted by subdivision (f) of Section 110.1 for the period subsequent to the date of the substantial damage to, or destruction of, the original property and up to the date the replacement property is acquired or newly constructed, regardless of whether the claimant continued to own the original property during this entire period. The base year or years used to compute the base year value of the original

property shall be deemed to be the base year or years of any property to which that base year value is transferred pursuant to this section.

(b) For purposes of this section:

(1) "Affected local agency" means any city, special district, school district, or community college district that receives an annual allocation of ad valorem property tax revenues.

(2) "Claimant" means an owner or owners of real property claiming the property tax relief provided by this section.

(3) "Comparable replacement property" means a replacement property that has a full cash value of equal or lesser value as defined in paragraph (6).

(4) "Consultation" means a noticed hearing, that is conducted by a county board of supervisors concerning the adoption of an ordinance described in subdivision (a) and with respect to which all affected local agencies within the boundaries of the county are provided with reasonable notice of the time and the place of the hearing and a reasonable opportunity to appear and participate.

(5) "Disaster" means a major misfortune or calamity in an area subsequently proclaimed by the Governor to be in a state of disaster as a result of the misfortune or calamity.

(6) "Equal or lesser value" means that the amount of the full cash value of the replacement property does not exceed one of the following:

(A) One hundred five percent of the amount of the full cash value of the original property if the replacement property is purchased or newly constructed within the first year following the date of the damage or destruction of the original property.

(B) One hundred ten percent of the amount of the full cash value of the original property if the replacement property is purchased or newly constructed within the second year following the date of the damage or destruction of the original property.

(C) One hundred fifteen percent of the amount of the full cash value of the original property if the replacement property is purchased or newly constructed within the third year following the date of the damage or destruction of the original property.

For the purposes of this paragraph, if the replacement property is, in part, purchased and, in part, newly constructed, the date the "replacement property is purchased or newly constructed" is the date of the purchase or the date of completion of new construction, whichever is later.

(7) "Full cash value of the original property" means its full cash value, as determined in accordance with Section 110, immediately prior to its substantial damage or destruction, as determined by the county assessor of the county in which the property is located.

(8) "Full cash value of the replacement property" means its full cash value, as determined in accordance with Section 110.1 as of the date upon which it was purchased or new construction was completed, that is applicable on and after that date.

(9) "Original property" means a building, structure, or other

shelter constituting a place of abode, whether real property or personal property, that is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated, that has been substantially damaged or destroyed by a disaster. For purposes of this paragraph, land constituting a part of original property includes only that area of reasonable size that is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. For purposes of this paragraph, each unit of a multiunit dwelling shall be considered a separate original property.

(10) "Owner or owners" means an individual or individuals, but does not include any firm, partnership, association, corporation, company, other legal entity or organization of any kind.

(11) "Replacement property" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, that is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of the replacement property includes only that area of reasonable size that is used as the site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. For purposes of this paragraph, each unit of a multiunit dwelling shall be considered a separate replacement property. "Replacement property" does not include any property, including land or improvements, if the claimant owned any portion of that property prior to the date of the disaster that damaged or destroyed the original property.

(12) "Substantially damaged or destroyed" means property that sustains physical damage amounting to more than 50 percent of its full cash value immediately prior to the disaster. Damage includes a diminution in the value of property as a result of restricted access to the property where the restricted access was caused by the disaster and is permanent in nature.

(c) At the time the base year value of the substantially damaged or destroyed property is transferred to the replacement property pursuant to an ordinance adopted under this section, the substantially damaged or destroyed property shall be reassessed at its full cash value. However, the substantially damaged or destroyed property shall retain its base year value notwithstanding that transfer. If the owner or owners of substantially damaged or destroyed property receive property tax relief under this section, that property shall not be eligible for property tax relief under subdivision (c) of Section 70 in the event of its reconstruction.

(d) Only the owner or owners of the property that has been substantially damaged or destroyed may receive property tax relief

under an ordinance adopted pursuant to this section. Relief under an ordinance adopted pursuant to this section shall be granted to an owner or owners of a substantially damaged or destroyed property obtaining comparable replacement property. The acquisition of an ownership interest in a legal entity that, directly or indirectly, owns real property is not an acquisition of comparable replacement property for purposes of this section.

(e) A timely claim for relief under an ordinance adopted pursuant to this section, in that form as shall be prescribed by the board, shall be filed by the owner with the assessor of the county in which the replacement property is located. No relief under an ordinance adopted pursuant to this section shall be granted unless the claim is filed no later than January 1, 1996, or within three years after the replacement property is acquired or newly constructed, whichever is later.

(f) Any taxes that were levied on the replacement property prior to the filing of a claim on the basis of the replacement property's new base year value, and any allowable annual adjustments thereto, shall be canceled or refunded to the claimant to the extent that taxes exceed the amount that would be due when determined on the basis of the adjusted new base year value.

(g) This section shall apply to any comparable replacement property of equal or lesser value that is acquired or newly constructed as a replacement for property that has been substantially damaged or destroyed by a disaster occurring on or after October 20, 1991, and to the determination of base year values for the 1991-92 fiscal year and each fiscal year thereafter.

SEC. 6. Section 69.5 of the Revenue and Taxation Code, as amended by Section 3 of Chapter 1180 of the Statutes of 1992, is amended to read:

69.5. (a) (1) Notwithstanding any other provision of law, pursuant to subdivision (a) of Section 2 of Article XIII A of the California Constitution, any person over the age of 55 years, or any severely and permanently disabled person, who resides in property that is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII of the California Constitution and Section 218 may transfer, subject to the conditions and limitations provided in this section, the base year value of that property to any replacement dwelling of equal or lesser value that is located within the same county and is purchased or newly constructed by that person as his or her principal residence within two years of the sale by that person of the original property, provided that the base year value of the original property shall not be transferred to the replacement dwelling until the original property is sold.

(2) Notwithstanding the limitation in paragraph (1) requiring that the original property and the replacement dwelling be located in the same county, this limitation shall not apply in any county in which the county board of supervisors, after consultation with local affected agencies within the boundaries of the county, adopts an

ordinance making the provisions of paragraph (1) also applicable to situations in which replacement dwellings are located in that county and the original properties are located in another county within this state. The authorization contained in this paragraph shall be applicable in a county only if the ordinance adopted by the board of supervisors complies with the following requirements:

(A) It is adopted only after consultation between the board of supervisors and all other local affected agencies within the county's boundaries.

(B) It requires that all claims for transfers of base year value from original property located in another county be granted if the claims meet the applicable requirements of both subdivision (a) of Section 2 of Article XIII A of the California Constitution and this section.

(C) It requires that all base year valuations of original property located in another county and determined by its assessor be accepted in connection with the granting of claims for transfers of base year value.

(D) The ordinance provides that its provisions shall remain operative for a period of not less than five years.

(E) The ordinance specifies the date on and after which its provisions shall be applicable. However, the date specified shall not be earlier than November 9, 1988. The specified applicable date may be a date earlier than the date the county adopts the ordinance.

(b) In addition to meeting the requirements of subdivision (a), any person claiming the property tax relief provided by this section shall be eligible for that relief only if the following conditions are met:

(1) The claimant is an owner and a resident of the original property either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(2) The original property is eligible for the homeowner's exemption, as the result of the claimant's ownership and occupation of the property as his or her principal residence, either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(3) At the time of the sale of the original property, the claimant or the claimant's spouse who resides with the claimant is at least 55 years of age, or is severely and permanently disabled.

(4) At the time of claiming the property tax relief provided by subdivision (a), the claimant is an owner of a replacement dwelling and occupies it as his or her principal place of residence and, as a result thereof, the property is currently eligible for the homeowner's exemption or would be eligible for the exemption except that the property is already receiving the exemption because of an exemption claim filed by the previous owner.

(5) The original property of the claimant is sold by him or her within two years of the purchase or new construction of the replacement dwelling. For purposes of this paragraph, the purchase or new construction of the replacement dwelling includes the

purchase of that portion of land on which the replacement building, structure, or other shelter constituting a place of abode of the claimant will be situated and which, pursuant to paragraph (3) of subdivision (g), constitutes a part of the replacement dwelling.

(6) (A) For purposes of paragraph (1) of subdivision (a), the replacement dwelling, including that portion of land on which it is situated which is specified in paragraph (5), is located entirely within the same county as the claimant's original property.

(B) For purposes of paragraph (2) of subdivision (a), the replacement dwelling, including that portion of the land on which it is situated which is specified in paragraph (5), is located entirely within the county.

(7) The claimant has not previously been granted, as a claimant, the property tax relief provided by this section. In order to prevent duplication of claims under this section within this state, county assessors shall report quarterly to the State Board of Equalization that information from claims filed in accordance with subdivision (f) and from county records as is specified by the board necessary to identify fully all claims under this section allowed by assessors and all claimants who have thereby received relief. The board may specify that the information include all or a part of the names and social security numbers of claimants and their spouses and the identity and location of the replacement dwelling to which the claim applies. The information may be required in the form of data processing media or other media and in a format that is compatible with the recordkeeping processes of the counties and the auditing procedures of the state.

(c) The property tax relief provided by this section shall be available if the original property or the replacement dwelling, or both, of the claimant, includes, but is not limited to, either of the following:

(1) A unit or lot within a cooperative housing corporation, a community apartment project, a condominium project, or a planned unit development. If the unit or lot constitutes the original property of the claimant, the assessor shall transfer to the claimant's replacement dwelling only the base year value of the claimant's unit or lot and his or her share in any common area reserved as an appurtenance of that unit or lot. If the unit or lot constitutes the replacement dwelling of the claimant, the assessor shall transfer the base year value of the claimant's original property only to the unit or lot of the claimant and any share of the claimant in any common area reserved as an appurtenance of that unit or lot.

(2) A mobilehome or a mobilehome and any land owned by the claimant on which the mobilehome is situated. If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's original property, the assessor shall transfer to the claimant's replacement dwelling either the base year value of the mobilehome or the base year value of the mobilehome and the land on which it is situated, as appropriate. No transfer of base year value

shall be made by the assessor of that portion of land that does not constitute a part of the original property, as provided in paragraph (4) of subdivision (g). If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's replacement dwelling, the assessor shall transfer the base year value of the claimant's original property either to the mobilehome or the mobilehome and the land on which it is situated, as appropriate. No transfer of base year value shall be made by the assessor to that portion of land that does not constitute a part of the replacement dwelling, as provided in paragraph (3) of subdivision (g).

This subdivision shall be subject to the limitations specified in subdivision (d).

(d) The property tax relief provided by this section shall be available to a claimant who is the coowner of the original property, as a joint tenant, a tenant in common, or a community property owner, subject to the following limitations:

(1) If a single replacement dwelling is purchased or newly constructed by all of the coowners and each coowner retains an interest in the replacement dwelling, the claimant shall be eligible under this section whether or not any or all of the remaining coowners would otherwise be eligible claimants.

(2) If two or more replacement dwellings are separately purchased or newly constructed by two or more coowners and more than one coowner would otherwise be an eligible claimant, only one coowner shall be eligible under this section. These coowners shall determine by mutual agreement which one of them shall be deemed eligible.

(3) If two or more replacement dwellings are separately purchased or newly constructed by two coowners who held the original property as community property, only the coowner who has attained the age of 55 years, or is severely and permanently disabled, shall be eligible under this section. If both spouses are over 55 years of age, they shall determine by mutual agreement which one of them shall be deemed eligible.

In the case of coowners whose original property is a multiunit dwelling, the limitations imposed by paragraphs (2) and (3) shall only apply to coowners who occupied the same dwelling unit within the original property at the time specified in paragraph (2) of subdivision (b).

(e) Upon the sale of original property, the assessor shall determine a new base year value for that property in accordance with subdivision (a) of Section 2 of Article XIII A of the California Constitution and Section 110.1, whether or not a replacement dwelling is subsequently purchased or newly constructed by the former owner or owners of the original property.

This section shall not apply unless the transfer of the original property is a change in ownership which either (1) subjects that property to reappraisal at its current fair market value in accordance with Section 110.1 or 5803 or (2) results in a base year value

determined in accordance with this section, Section 69, or Section 69.3 because the property qualifies under this section, Section 69, or Section 69.3 as a replacement dwelling or property.

(f) A claimant shall not be eligible for the property tax relief provided by this section unless the claimant provides to the assessor, on a form that the assessor shall make available upon request, the following information:

(1) The name and social security number of each claimant and of any spouse of the claimant who is a record owner of the replacement dwelling.

(2) Proof that the claimant or the claimant's spouse who resided on the original property with the claimant was, at the time of its sale, at least 55 years of age or severely and permanently disabled. Proof of severe and permanent disability shall be considered a certification, signed by a licensed physician and surgeon of appropriate specialty, attesting to the claimant's severely and permanently disabled condition. In the absence of available proof that a person is over 55 years of age, the claimant shall certify under penalty of perjury that the age requirement is met. In the case of a severely and permanently disabled claimant either of the following shall be submitted:

(A) A certification, signed by a licensed physician or surgeon of appropriate specialty that identifies specific reasons why the disability necessitates a move to the replacement dwelling and the disability-related requirements, including any locational requirements, of a replacement dwelling. The claimant shall substantiate that the replacement dwelling meets disability-related requirements so identified and that the primary reason for the move to the replacement dwelling is to satisfy those requirements. If the claimant, or the claimant's spouse or guardian, so declares under penalty of perjury, it shall be rebuttably presumed that the primary purpose of the move to the replacement dwelling is to satisfy identified disability-related requirements.

(B) The claimant's substantiation that the primary purpose of the move to the replacement dwelling is to alleviate financial burdens caused by the disability. If the claimant, or the claimant's spouse or guardian, so declares under penalty of perjury, it shall be rebuttably presumed that the primary purpose of the move is to alleviate the financial burdens caused by the disability.

(3) The address and, if known, the assessor's parcel number of the original property, and, if the original property is located within another county, the name of the county or counties and, if applicable, city or cities in which the original property is located.

(4) The date of the claimant's sale of the original property and the date of the claimant's purchase or new construction of a replacement dwelling.

(5) A statement by the claimant that he or she occupied the replacement dwelling as his or her principal place of residence on the date of the filing of his or her claim.

(6) If the original property and the replacement dwelling are located in different counties, the base year value of the original property determined by the assessor of the county in which the original property is located.

The State Board of Equalization shall design the form for claiming eligibility.

Any claim under this section shall be filed within three years of the date the replacement dwelling was purchased or the new construction of the replacement dwelling was completed.

(g) For purposes of this section:

(1) "Person over the age of 55 years" means any person or the spouse of any person who has attained the age of 55 years or older at the time of the sale of original property.

(2) "Base year value of the original property" means its base year value, as determined in accordance with Section 110.1, with the adjustments permitted by subdivision (b) of Section 2 of Article XIII A of the California Constitution and subdivision (f) of Section 110.1, determined as of the date immediately prior to the date that the original property is sold by the claimant.

If the replacement dwelling is purchased or newly constructed after the transfer of the original property, "base year value of the original property" also includes any inflation factor adjustments permitted by subdivision (f) of Section 110.1 for the period subsequent to the sale of the original property. The base year or years used to compute the "base year value of the original property" shall be deemed to be the base year or years of any property to which that base year value is transferred pursuant to this section.

(3) "Replacement dwelling" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, that is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of a replacement dwelling includes only that area of reasonable size which is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate replacement dwelling.

(4) "Original property" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, that is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of original property includes only that area of reasonable size that is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit

of a multiunit dwelling shall be considered a separate original property.

(5) "Equal or lesser value" means that the amount of the full cash value of a replacement dwelling does not exceed one of the following:

(A) One hundred percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed prior to the date of the sale of the original property.

(B) One hundred and five percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the first year following the date of the sale of the original property.

(C) One hundred and ten percent of the amount of the full cash value of the original property if either of the following conditions are met:

(i) The replacement dwelling is purchased or newly constructed within the second year following the date of the sale of the original property.

(ii) The replacement dwelling is purchased or newly constructed on or after November 5, 1986, and on or before January 1, 1988, and within two years of the sale of the original property.

For the purposes of this paragraph, except as otherwise provided in paragraph (4) of subdivision (h), if the replacement dwelling is, in part, purchased and, in part, newly constructed, the date the "replacement dwelling is purchased or newly constructed" is the date of purchase or the date of completion of construction, whichever is later.

(6) "Full cash value of the replacement dwelling" means its full cash value, determined in accordance with Section 110.1, as of the date on which it was purchased or new construction was completed, and after the purchase or the completion of new construction.

(7) "Full cash value of the original property" means its new base year value, determined in accordance with subdivision (e), without the application of subdivision (h) of Section 2 of Article XIII A of the California Constitution, plus the adjustments permitted by subdivision (b) of Section 2 of Article XIII A and subdivision (f) of Section 110.1 for the period from the date of its sale by the claimant to the date on which the replacement property was purchased or new construction was completed.

(8) "Sale" means any change in ownership of the original property for consideration.

(9) "Claimant" means any person claiming the property tax relief provided by this section. If a spouse of that person is a record owner of the replacement dwelling, the spouse shall also be deemed a claimant for purposes of determining whether the condition of paragraph (7) of subdivision (b) has been met.

(10) "Property that is eligible for the homeowner's exemption" includes property which is the principal place of residence of its

owner and is entitled to exemption pursuant to Section 205.5.

(11) "Consultation" means a noticed hearing conducted by a county board of supervisors concerning the adoption of an ordinance described in paragraph (2) of subdivision (a) and with respect to which all local affected agencies within the boundaries of the county are provided with reasonable notice of the time and place of the hearing and a reasonable opportunity to appear and participate at the hearing.

(12) "Local affected agency" means any city, special district, school district, or community college district that receives an annual property tax revenue allocation.

(13) "Person" means any individual, but does not include any firm, partnership, association, corporation, company, or other legal entity or organization of any kind.

(14) "Severely and permanently disabled person" means any person described in subdivision (b) of Section 74.3.

(h) (1) Upon the timely filing of a claim, the assessor shall adjust the new base year value of the replacement dwelling in conformity with this section. This adjustment shall be made as of the latest of the following dates:

(A) The date the original property is sold.

(B) The date the replacement dwelling is purchased.

(C) The date the new construction of the replacement dwelling is completed.

(2) Any taxes which were levied on the replacement dwelling prior to the filing of the claim on the basis of the replacement dwelling's new base year value, and any allowable annual adjustments thereto, shall be canceled or refunded to the claimant to the extent that the taxes exceed the amount which would be due when determined on the basis of the adjusted new base year value.

(3) Notwithstanding Section 75.10, Chapter 3.5 (commencing with Section 75) shall be utilized for purposes of implementing this subdivision, including adjustments of the new base year value of replacement dwellings acquired prior to the sale of the original property.

(4) In the case where a claim under this section has been timely filed and granted, and new construction is performed upon the replacement dwelling subsequent to the transfer of base year value, the property tax relief provided by this section also shall apply to the replacement dwelling, as improved, and thus there shall be no reassessment upon completion of the new construction if both of the following conditions are met:

(A) The new construction is completed within two years of the date of the sale of the original property and the owner notifies the assessor in writing of completion of the new construction within 30 days after completion.

(B) The fair market value of the new construction on the date of completion, plus the full cash value of the replacement dwelling on the date of acquisition, is not more than the full cash value of the

original property as determined pursuant to paragraph (7) of subdivision (g) for purposes of granting the original claim.

(i) Any claimant may rescind a claim for the property tax relief provided by this section and shall not be considered to have received that relief for purposes of paragraph (7) of subdivision (b), if a written notice of rescission is delivered to the office of the assessor in which the original claim was filed and all of the following have occurred:

(1) The notice is signed by the original filing claimant or claimants.

(2) The notice is delivered to the office of the assessor before the date that the county first issues, as a result of relief granted under this section, a refund check for property taxes imposed upon the replacement dwelling. If granting relief will not result in a refund of property taxes, then the notice shall be delivered before payment is first made of any property taxes, or any portion thereof, imposed upon the replacement dwelling consistent with relief granted under this section. If payment of the taxes is not made, then notice shall be delivered before the first date that those property taxes, or any portion thereof, imposed upon the replacement dwelling, consistent with relief granted under this section, are delinquent.

(3) The notice is accompanied by the payment of a fee as the assessor may require, provided that the fee shall not exceed an amount reasonably related to the estimated cost of processing a rescission claim, including both direct costs and developmental and indirect costs, such as costs for overhead, personnel, supplies, materials, office space, and computers.

(j) (1) With respect to the transfer of base year value of original properties to replacement dwellings located in the same county, this section, except as provided in paragraph (3) or (4), shall apply to any replacement dwelling that is purchased or newly constructed on or after November 5, 1986.

(2) With respect to the transfer of base year value of original properties to replacement dwellings located in different counties, this section, except as provided in paragraph (3), shall apply to any replacement dwelling that is purchased or newly constructed on or after the date specified in accordance with subparagraph (E) of paragraph (2) of subdivision (a) in the ordinance of the county in which the replacement dwelling is located, but shall not apply to any replacement dwelling which was purchased or newly constructed before November 9, 1988.

(3) With respect to the transfer of base year value by a severely and permanently disabled person, this section shall apply only to replacement dwellings that are purchased or newly constructed on or after June 6, 1990.

(4) The amendments made to subdivision (e) by the act adding this paragraph shall apply only to replacement dwellings under Section 69 that are acquired or newly constructed on or after October 20, 1991, and shall apply commencing with the 1991-92 fiscal

year.

(k) The amendments to this section made by the act adding this subdivision, and the amendments to this section during the 1989 portion of the 1989-90 Regular Session of the Legislature, shall remain operative only until January 1, 1999, and on that date are repealed.

SEC. 7. Section 69.5 of the Revenue and Taxation Code, as amended by Section 3.5 of Chapter 1180 of the Statutes of 1992, is amended to read:

69.5. (a) Notwithstanding any other provision of law, pursuant to subdivision (a) of Section 2 of Article XIII A of the California Constitution, any person over the age of 55 years, or any severely and permanently disabled person, who resides in property that is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII of the California Constitution and Section 218 may transfer, subject to the conditions and limitations provided in this section, the base year value of that property to any replacement dwelling of equal or lesser value that is located within the same county and is purchased or newly constructed by that person as his or her principal residence within two years of the sale by that person of the original property, provided that the base year value of the original property shall not be transferred to the replacement dwelling until the original property is sold.

(b) In addition to meeting the requirements of subdivision (a), any person claiming the property tax relief provided by this section shall be eligible for that relief only if the following conditions are met:

(1) The claimant is an owner and a resident of the original property either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(2) The original property is eligible for the homeowner's exemption, as the result of the claimant's ownership and occupation of the property as his or her principal residence, either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(3) At the time of the sale of the original property, the claimant or the claimant's spouse who resides with the claimant is at least 55 years of age, or is severely and permanently disabled.

(4) At the time of claiming the property tax relief provided by subdivision (a), the claimant is an owner of a replacement dwelling and occupies it as his or her principal place of residence and, as a result thereof, the property is currently eligible for the homeowner's exemption or would be eligible for the exemption except that the property is already receiving the exemption because of an exemption claim filed by the previous owner.

(5) The original property of the claimant is sold by him or her within two years of the purchase or new construction of the replacement dwelling. For purposes of this paragraph, the purchase or new construction of the replacement dwelling includes the

purchase of that portion of land on which the replacement building, structure, or other shelter constituting a place of abode of the claimant will be situated and that, pursuant to paragraph (3) of subdivision (g), constitutes a part of the replacement dwelling.

(6) The replacement dwelling, including that portion of land on which it is situated that is specified in paragraph (5), is located entirely within the same county as the claimant's original property.

(7) The claimant has not previously been granted, as a claimant, the property tax relief provided by this section. In order to prevent duplication of claims under this section within this state, county assessors shall report quarterly to the State Board of Equalization that information from claims filed in accordance with subdivision (f) and from county records as is specified by the board necessary to identify fully all claims under this section allowed by assessors and all claimants who have thereby received relief. The board may specify that the information include all or a part of the names and social security numbers of claimants and their spouses and the identity and location of the replacement dwelling to which the claim applies. The information may be required in the form of data processing media or other media and in a format that is compatible with the recordkeeping processes of the counties and the auditing procedures of the state.

(c) The property tax relief provided by this section shall be available if the original property or the replacement dwelling, or both, of the claimant, includes, but is not limited to, either of the following:

(1) A unit or lot within a cooperative housing corporation, a community apartment project, a condominium project, or a planned unit development. If the unit or lot constitutes the original property of the claimant, the assessor shall transfer to the claimant's replacement dwelling only the base year value of the claimant's unit or lot and his or her share in any common area reserved as an appurtenance of that unit or lot. If the unit or lot constitutes the replacement dwelling of the claimant, the assessor shall transfer the base year value of the claimant's original property only to the unit or lot of the claimant and any share of the claimant in any common area reserved as an appurtenance of that unit or lot.

(2) A mobilehome or a mobilehome and any land owned by the claimant on which the mobilehome is situated. If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's original property, the assessor shall transfer to the claimant's replacement dwelling either the base year value of the mobilehome or the base year value of the mobilehome and the land on which it is situated, as appropriate. No transfer of base year value shall be made by the assessor of that portion of land that does not constitute a part of the original property, as provided in paragraph (4) of subdivision (g). If the mobilehome or the mobilehome and the land on which it is situated constitutes the claimant's replacement dwelling, the assessor shall transfer the base year value of the

claimant's original property either to the mobilehome or the mobilehome and the land on which it is situated, as appropriate. No transfer of base year value shall be made by the assessor to that portion of land that does not constitute a part of the replacement dwelling, as provided in paragraph (3) of subdivision (g).

This subdivision shall be subject to the limitations specified in subdivision (d).

(d) The property tax relief provided by this section shall be available to a claimant who is the coowner of original property, as a joint tenant, a tenant in common, or a community property owner, subject to the following limitations:

(1) If a single replacement dwelling is purchased or newly constructed by all of the coowners and each coowner retains an interest in the replacement dwelling, the claimant shall be eligible under this section whether or not any or all of the remaining coowners would otherwise be eligible claimants.

(2) If two or more replacement dwellings are separately purchased or newly constructed by two or more coowners and more than one coowner would otherwise be an eligible claimant, only one coowner shall be eligible under this section. These coowners shall determine by mutual agreement which one of them shall be deemed eligible.

(3) If two or more replacement dwellings are separately purchased or newly constructed by two coowners who held the original property as community property, only the coowner who has attained the age of 55 years, or is severely and permanently disabled, shall be eligible under this section. If both spouses are over 55 years of age, they shall determine by mutual agreement which one of them is eligible.

In the case of coowners whose original property is a multiunit dwelling, the limitations imposed by paragraphs (2) and (3) shall only apply to coowners who occupied the same dwelling unit within the original property at the time specified in paragraph (2) of subdivision (b).

(e) Upon the sale of original property, the assessor shall determine a new base year value for that property in accordance with subdivision (a) of Section 2 of Article XIII A of the California Constitution and Section 110.1, whether or not a replacement dwelling is subsequently purchased or newly constructed by the former owner or owners of the original property.

This section shall not apply unless the transfer of the original property is a change in ownership that either (1) subjects that property to reappraisal at its current fair market value in accordance with Section 110.1 or 5803 or (2) results in a base year value determined in accordance with this section, Section 69, or Section 69.3 because the property qualifies under this section, Section 69, or Section 69.3 as a replacement dwelling or property.

(f) A claimant shall not be eligible for the property tax relief provided by this section unless the claimant provides to the assessor,

on a form that the assessor shall make available upon request, the following information:

(1) The name and social security number of each claimant and of any spouse of the claimant who was a record owner of the original property at the time of its sale or is a record owner of the replacement dwelling.

(2) Proof that the claimant or the claimant's spouse who resided on the original property with the claimant was, at the time of its sale, at least 55 years of age, or severely and permanently disabled. Proof of severe and permanent disability shall be considered a certification, signed by a licensed physician and surgeon of appropriate specialty, attesting to the claimant's severely and permanently disabled condition. In the absence of available proof that a person is over 55 years of age, the claimant shall certify under penalty of perjury that the age requirement is met. In the case of a severely and permanently disabled claimant either of the following shall be submitted:

(A) A certification, signed by a licensed physician or surgeon of appropriate specialty that identifies specific reasons why the disability necessitates a move to the replacement dwelling and the disability-related requirements, including any locational requirements, of a replacement dwelling. The claimant shall substantiate that the replacement dwelling meets disability-related requirements so identified and that the primary reason for the move to the replacement dwelling is to satisfy those requirements. If the claimant, or the claimant's spouse or guardian, so declares under penalty of perjury, it shall be rebuttably presumed that the primary purpose of the move to the replacement dwelling is to satisfy identified disability-related requirements.

(B) The claimant's substantiation that the primary purpose of the move to the replacement dwelling is to alleviate financial burdens caused by the disability. If the claimant, or the claimant's spouse or guardian, so declares under penalty of perjury, it shall be rebuttably presumed that the primary purpose of the move is to alleviate the financial burdens caused by the disability.

(3) The address and, if known, the assessor's parcel number of the original property.

(4) The date of the claimant's sale of the original property and the date of the claimant's purchase or new construction of a replacement dwelling.

(5) A statement by the claimant that he or she occupied the replacement dwelling as his or her principal place of residence on the date of the filing of his or her claim.

The State Board of Equalization shall design the form for claiming eligibility.

Any claim under this section shall be filed within three years of the date the replacement dwelling was purchased or the new construction of the replacement dwelling was completed.

(g) For purposes of this section:

(1) "Person over the age of 55 years" means any person or the spouse of any person who has attained the age of 55 years or older at the time of the sale of original property.

(2) "Base year value of the original property" means its base year value, as determined in accordance with Section 110.1, with the adjustments permitted by subdivision (b) of Section 2 of Article XIII A of the California Constitution and subdivision (f) of Section 110.1, determined as of the date immediately prior to the date that the original property is sold by the claimant.

If the replacement dwelling is purchased or newly constructed after the transfer of the original property, "base year value of the original property" also includes any inflation factor adjustments permitted by subdivision (f) of Section 110.1 for the period subsequent to the sale of the original property. The base year or years used to compute the "base year value of the original property" shall be deemed to be the base year or years of any property to which that base year value is transferred pursuant to this section.

(3) "Replacement dwelling" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, that is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of a replacement dwelling includes only that area of reasonable size that is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate replacement dwelling.

(4) "Original property" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, that is owned and occupied by a claimant as his or her principal place of residence, and any land owned by the claimant on which the building, structure, or other shelter is situated. For purposes of this paragraph, land constituting a part of original property includes only that area of reasonable size that is used as a site for a residence, and "land owned by the claimant" includes land for which the claimant either holds a leasehold interest described in subdivision (c) of Section 61 or a land purchase contract. Each unit of a multiunit dwelling shall be considered a separate original property.

(5) "Equal or lesser value" means that the amount of the full cash value of a replacement dwelling does not exceed one of the following:

(A) One hundred percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed prior to the date of the sale of the original property.

(B) One hundred and five percent of the amount of the full cash

value of the original property if the replacement dwelling is purchased or newly constructed within the first year following the date of the sale of the original property.

(C) One hundred and ten percent of the amount of the full cash value of the original property if the replacement dwelling is purchased or newly constructed within the second year following the date of the sale of the original property.

For the purposes of this paragraph, except as otherwise provided in paragraph (4) of subdivision (h), if the replacement dwelling is, in part, purchased and, in part, newly constructed, the date the "replacement dwelling is purchased or newly constructed" is the date of purchase or the date of completion of construction, whichever is later.

(6) "Full cash value of the replacement dwelling" means its full cash value, determined in accordance with Section 110.1, as of the date on which it was purchased or new construction was completed, and after the purchase or the completion of new construction.

(7) "Full cash value of the original property" means its new base year value, determined in accordance with subdivision (e), without the application of subdivision (h) of Section 2 of Article XIII A of the California Constitution, plus the adjustments permitted by subdivision (b) of Section 2 of Article XIII A and subdivision (f) of Section 110.1 for the period from the date of its sale by the claimant to the date on which the replacement property was purchased or new construction was completed.

(8) "Sale" means any change in ownership of the original property for consideration.

(9) "Claimant" means any person claiming the property tax relief provided by this section. If a spouse of that person is a record owner of the replacement dwelling, the spouse is also a claimant for purposes of determining whether in any future claim filed by the spouse under this section the condition of eligibility specified in paragraph (7) of subdivision (b) has been met.

(10) "Property that is eligible for the homeowner's exemption" includes property that is the principal place of residence of its owner and is entitled to exemption pursuant to Section 205.5.

(11) "Person" means any individual, but does not include any firm, partnership, association, corporation, company, or other legal entity or organization of any kind.

(12) "Severely and permanently disabled" means any person described in subdivision (b) of Section 74.3.

(h) (1) Upon the timely filing of a claim, the assessor shall adjust the new base year value of the replacement dwelling in conformity with this section. This adjustment shall be made as of the latest of the following dates:

(A) The date the original property is sold.

(B) The date the replacement dwelling is purchased.

(C) The date the new construction of the replacement dwelling is completed.

(2) Any taxes that were levied on the replacement dwelling prior to the filing of the claim on the basis of the replacement dwelling's new base year value, and any allowable annual adjustments thereto, shall be canceled or refunded to the claimant to the extent that the taxes exceed the amount that would be due when determined on the basis of the adjusted new base year value.

(3) Notwithstanding Section 75.10, Chapter 3.5 (commencing with Section 75) shall be utilized for purposes of implementing this subdivision, including adjustments of the new base year value of replacement dwellings acquired prior to the sale of the original property.

(4) In the case where a claim under this section has been timely filed and granted, and new construction is performed upon the replacement dwelling subsequent to the transfer of base year value, the property tax relief provided by this section also shall apply to the replacement dwelling, as improved, and thus there shall be no reassessment upon completion of the new construction if both of the following conditions are met:

(A) The new construction is completed within two years of the date of the sale of the original property and the owner notifies the assessor in writing of completion of the new construction within 30 days after completion.

(B) The fair market value of the new construction on the date of completion, plus the full cash value of the replacement dwelling on the date of acquisition, is not more than the full cash value of the original property as determined pursuant to paragraph (7) of subdivision (g) for purposes of granting the original claim.

(i) Any claimant may rescind a claim for the property tax relief provided by this section and shall not be considered to have received that relief for purposes of paragraph (7) of subdivision (b), if a written notice of rescission is delivered to the office of the assessor in which the original claim was filed and all of the following have occurred:

(1) The notice is signed by the original filing claimant or claimants.

(2) The notice is delivered to the office of the assessor before the date that the county first issues, as a result of relief granted under this section, a refund check for property taxes imposed upon the replacement dwelling. If granting relief will not result in a refund of property taxes, then the notice shall be delivered before payment is first made of any property taxes, or any portion thereof, imposed upon the replacement dwelling consistent with relief granted under this section. If payment of the taxes is not made, then notice shall be delivered before the first date that those property taxes, or any portion thereof, imposed upon the replacement dwelling, consistent with relief granted under this section, are delinquent.

(3) The notice is accompanied by the payment of a fee as the assessor may require, provided that the fee shall not exceed an amount reasonably related to the estimated cost of processing a

rescission claim, including both direct costs and developmental and indirect costs, such as costs for overhead, personnel, supplies, materials, office space, and computers.

(j) (1) This section, except as provided in paragraph (2) or (3), shall apply to any replacement dwelling that is purchased or newly constructed on or after November 6, 1986.

(2) With respect to the transfer of base year value by a severely and permanently disabled person, this section shall apply only to replacement dwellings that are purchased or newly constructed on or after June 6, 1990.

(3) The amendments made to subdivision (e) by the act adding this paragraph shall apply only to replacement dwellings under Section 69 that are acquired or newly constructed on or after October 20, 1991, and shall apply commencing with the 1991-92 fiscal year.

(k) The amendments to this section made by the act adding this subdivision shall become operative on January 1, 1999.

SEC. 8. Section 75.21 of the Revenue and Taxation Code is amended to read:

75.21. (a) Exemptions shall be applied to the amount of the supplemental assessment, provided that the property is not receiving any other exemption on either the current roll or the roll being prepared except as provided for in subdivision (b), that the assessee is eligible for the exemption, and that in those instances in which the provisions of this division require the filing of claims for exemption, the assessee makes a claim for the exemption.

(b) If the property received an exemption on the current roll or the roll being prepared and the assessee on the supplemental roll is eligible for an exemption and in those instances in which the provisions of this division require the filing of claims for exemption, the assessee makes a claim for an exemption of a greater amount, then the difference in the amount between the two exemptions shall be applied to the supplemental assessment.

(c) In those instances in which the provisions of this division require the filing of claims for exemption, except as provided in subdivision (d) or (e), any person claiming to be eligible for an exemption to be applied against the amount of the supplemental assessment shall file a claim or an amendment to a current claim, in that form as prescribed by the board, on or before the 30th day following the date of notice of the supplemental assessment, in order to receive a 100 percent exemption.

(1) With respect to property as to which the college, cemetery, church, religious, exhibition, veterans' organization, free public libraries, free museums, public schools, community colleges, state colleges, state universities, or welfare exemption was available but for which a timely application for exemption was not filed, the following amounts shall be canceled or refunded:

(A) Ninety percent of any tax or penalty or interest thereon, or any amount of tax or penalty or interest thereon exceeding two

hundred fifty dollars (\$250) in total amount, whichever is greater, for each supplemental assessment, provided that an appropriate application for exemption is filed on or before the date on which the first installment of taxes on the supplemental tax bill becomes delinquent, as provided by Section 75.52.

(B) Eighty-five percent of any tax or penalty or interest thereon, or any amount of tax or penalty or interest thereon exceeding two hundred fifty dollars (\$250) in total amount, whichever is greater, for each supplemental assessment, if an appropriate application for exemption is thereafter filed.

(2) With respect to property as to which the welfare exemption or veterans' organization exemption was available, all provisions of Section 254.5, other than the specified dates for the filing of affidavits and other acts, are applicable to this section.

(3) With respect to property as to which the veterans', homeowners', or disabled veterans' exemption was available but for which a timely application for exemption was not filed, that portion of tax attributable to 80 percent of the amount of exemption available shall be canceled or refunded, provided that an appropriate application for exemption is filed on or before the date on which the first installment of taxes on the supplemental tax bill becomes delinquent, as provided by Section 75.52.

(4) With respect to property as to which any other exemption was available, but for which a timely application for exemption was not filed, the following amounts shall be canceled or refunded:

(A) Ninety percent of any tax or penalty or interest thereon, provided that an appropriate application for exemption is filed on or before the date on which the first installment of taxes on the supplemental tax bill becomes delinquent, as provided by Section 75.52.

(B) Eighty-five percent of any tax or penalty or interest thereon, or any amount of tax or penalty or interest thereon exceeding two hundred fifty dollars (\$250) in total amount, whichever is greater, for each supplemental assessment, if an appropriate application for exemption is thereafter filed.

Other provisions of this division pertaining to the late filing of claims for exemption do not apply to assessments made pursuant to this chapter.

(d) For purposes of this section, any claim for the homeowners' exemption, veterans' exemption, or disabled veterans' exemption previously filed by the owner of a dwelling, granted and in effect, constitutes the claim or claims for that exemption required in this section. In the event that no claim for the homeowners' exemption, veterans' exemption, or disabled veterans' exemption is in effect, a claim for any of those exemptions for a single supplemental assessment for a change in ownership or new construction occurring on or after June 1, up to and including February 29, shall apply to that assessment; a claim for any of those exemptions for the two supplemental assessments for a change in ownership or new

construction occurring on or after March 1, up to and including May 31, one for the current fiscal year and one for the following fiscal year, shall apply to those assessments. In either case, if granted, the claim shall remain in effect until title to the property changes, the owner does not occupy the home as his or her principal place of residence on the lien date, or the property is otherwise ineligible pursuant to Section 205, 205.5, or 218.

(e) Notwithstanding subdivision (c), no additional exemption claim shall be required to be filed until the next succeeding lien date in the case in which a supplemental assessment results from the completion of new construction on property that has previously been granted exemption on either the current roll or the roll being prepared.

SEC. 9. Section 75.5 of the Revenue and Taxation Code is amended to read:

75.5. "Property" means and includes real property, other than fixtures which are normally valued as a separate appraisal unit from a structure, and manufactured homes subject to taxation under Part 13 (commencing with Section 5800).

SEC. 10. Section 107.4 of the Revenue and Taxation Code is repealed.

SEC. 11. Section 170 of the Revenue and Taxation Code, as amended by Chapter 33 of the Statutes of 1994, is amended to read:

170. (a) Notwithstanding any provision of law to the contrary, the board of supervisors may, by ordinance, provide that every assessee of any taxable property, or any person liable for the taxes thereon, whose property was damaged or destroyed without his or her fault, may apply for reassessment of that property as provided herein.

To be eligible for reassessment the damage or destruction to the property shall have been caused by any of the following:

(1) A major misfortune or calamity, in an area or region subsequently proclaimed by the Governor to be in a state of disaster, if that property was damaged or destroyed by the major misfortune or calamity that caused the Governor to proclaim the area or region to be in a state of disaster. As used in this paragraph "damage" includes a diminution in the value of property as a result of restricted access to the property where that restricted access was caused by the major misfortune or calamity.

(2) A misfortune or calamity.

(3) A misfortune or calamity that, with respect to a possessory interest in land owned by the state or federal government has caused the permit or other right to enter upon the land to be suspended or restricted. As used in this paragraph, "misfortune or calamity" includes a drought condition such as existed in this state in 1976 and 1977.

The application for reassessment may be filed within the time specified in the ordinance, or, if no time is specified, within 60 days of the misfortune or calamity, by delivering to the assessor a written

application requesting reassessment showing the condition and value, if any, of the property immediately after the damage or destruction, and the dollar amount of the damage. The application shall be executed under penalty of perjury, or if executed outside the State of California, verified by affidavit.

An ordinance may be made applicable to a major misfortune or calamity specified in paragraph (1) or to any misfortune or calamity specified in paragraph (2), or to both, as the board of supervisors determines. An ordinance may not be made applicable to a misfortune or calamity specified in paragraph (3), unless an ordinance making paragraph (2) applicable is operative in the county. The ordinance may specify a period of time within which the ordinance shall be effective, and, if no period of time is specified, it shall remain in effect until repealed.

(b) Upon receiving a proper application, the assessor shall appraise the property and determine separately the full cash value of land, improvements and personalty immediately before and after the damage or destruction. If the sum of the full cash values of the land, improvements and personalty before the damage or destruction exceeds the sum of the values after the damage by five thousand dollars (\$5,000) or more, the assessor shall also separately determine the percentage reductions in value of land, improvements and personalty due to the damage or destruction. The assessor shall reduce the values appearing on the assessment roll by the percentages of damage or destruction computed pursuant to this subdivision, and the taxes due on the property shall be adjusted as provided in subdivision (e). However, the amount of the reduction shall not exceed the actual loss.

(c) The assessor shall notify the applicant in writing of the amount of the proposed reassessment. The notice shall state that the applicant may appeal the proposed reassessment to the local board of equalization within 14 days of the date of mailing the notice. If an appeal is requested within the 14-day period, the board shall hear and decide the matter as if the proposed reassessment had been entered on the roll as an assessment made outside the regular assessment period. The decision of the board regarding the damaged value of the property shall be final, provided that a decision of the local board of equalization regarding any reassessment made pursuant to this section shall create no presumption as regards the value of the affected property subsequent to the date of the damage.

Those reassessed values resulting from reductions in full cash value of amounts, as determined above, shall be forwarded to the auditor by the assessor or the clerk of the local equalization board, as the case may be. The auditor shall enter the reassessed values on the roll. After being entered on the roll, those reassessed values shall not be subject to review, except by a court of competent jurisdiction.

(d) If no application is made and the assessor determines that within the preceding six months a property has suffered damage caused by misfortune or calamity that may qualify the property

owner for relief under an ordinance adopted under this section, the assessor shall provide the last known owner of the property with an application for reassessment. The property owner shall file the completed application within 30 days of notification by the assessor but in no case more than six months after the occurrence of said damage. Upon receipt of a properly completed, timely filed application, the property shall be reassessed in the same manner as required in subdivision (b).

(e) The tax rate fixed for property on the roll on which the property so reassessed appeared at the time of the misfortune or calamity, shall be applied to the amount of the reassessment as determined in accordance with this section and the assessee shall be liable for: (1) a prorated portion of the taxes that would have been due on the property for the current fiscal year had the misfortune or calamity not occurred, to be determined on the basis of the number of months in the current fiscal year prior to the misfortune or calamity; plus, (2) a proration of the tax due on the property as reassessed in its damaged or destroyed condition, to be determined on the basis of the number of months in the fiscal year after the damage or destruction, including the month in which the damage was incurred. If the damage or destruction occurred after March 1 and before the beginning of the next fiscal year, the reassessment shall be utilized to determine the tax liability for the next fiscal year provided, however, that if the property is fully restored during the next fiscal year, taxes due for that year shall be prorated based on the number of months in the year before and after the completion of restoration.

(f) Any tax paid in excess of the total tax due shall be refunded to the taxpayer pursuant to Chapter 5 (commencing with Section 5096) of Part 9, as an erroneously collected tax or by order of the board of supervisors without the necessity of a claim being filed pursuant to Chapter 5.

(g) The assessed value of the property in its damaged condition, as determined pursuant to subdivision (b) compounded annually by the inflation factor specified in subdivision (a) of Section 51, shall be the taxable value of the property until it is restored, repaired, reconstructed or other provisions of the law require the establishment of a new base year value.

If partial reconstruction, restoration, or repair has occurred on any subsequent lien date, the taxable value shall be increased by an amount determined by multiplying the difference between its factored base year value immediately before the calamity and its assessed value in its damaged condition by the percentage of the repair, reconstruction, or restoration completed on that lien date.

(h) (1) When the property is fully repaired, restored, or reconstructed, the assessor shall make an additional assessment or assessments in accordance with subparagraph (A) or (B) upon completion of the repair, restoration, or reconstruction:

(A) If the completion of the repair, restoration, or reconstruction

occurs on or after March 1, but on or before May 31, then there shall be two additional assessments. The first additional assessment shall be the difference between the new taxable value as of the date of completion and the taxable value on the current roll. The second additional assessment shall be the difference between the new taxable value as of the date of completion and the taxable value to be enrolled on the roll being prepared.

(B) If the completion of the repair, restoration, or reconstruction occurs on or after June 1, but before the succeeding March 1, then the additional assessment shall be the difference between the new taxable value as of the date of completion and the taxable value on the current roll.

(2) On the lien date following completion of the repair, restoration, or reconstruction, the assessor shall enroll the new taxable value of the property as of that lien date.

(3) For purposes of this subdivision, "new taxable value" shall mean the lesser of the property's (A) full cash value, or (B) factored base year value or its factored base year value as adjusted pursuant to subdivision (c) of Section 70.

(i) The assessor may apply Chapter 3.5 (commencing with Section 75) of Part 0.5 in implementing this section, to the extent that chapter is consistent with this section.

(j) This section applies to all counties, whether operating under a charter or under the general laws of this state.

(k) Any ordinance in effect pursuant to Section 155.1, 155.13, or 155.14 shall remain in effect according to its terms as if that ordinance was adopted pursuant to this section, subject to the limitations of subdivision (b).

(l) In lieu of subdivision (d), if no application is made and the assessor determines that within the preceding six months a property has suffered damage caused by misfortune or calamity, that may qualify the property owner for relief under an ordinance adopted under this section, the assessor may, with the approval of the board of supervisors, reassess the property as provided in subdivision (b) and notify the last known owner of the property of the reassessment.

SEC. 11.5. Section 273.5 of the Revenue and Taxation Code is amended to read:

273.5. (a) If a claimant for the veterans' exemption for the 1976-77 fiscal year or any year thereafter fails to file the required affidavit with the assessor by 5 p.m. on April 15 of the calendar year in which the fiscal year begins, but files that claim on or before the following December 10, an exemption of the lesser of three thousand two hundred dollars (\$3,200) or 80 percent of the full value of the property shall be granted by the assessor.

(b) On those claims filed pursuant to subdivision (a) after November 15, this exemption may be applied to the second installment, and if applied to the second installment, the first installment will still become delinquent on December 10, and the delinquent penalty provided for in this division will attach if the tax

amount due is not paid.

If this exemption is applied to the second installment and if both installments are paid on or before December 10, or if the reduction in taxes from this exemption exceeds the amount of taxes due on the second installment, a refund shall be made to the taxpayer upon a claim submitted by the taxpayer to the auditor.

SEC. 12. Section 276 of the Revenue and Taxation Code is amended to read:

276. (a) A claimant for the disabled veterans' property tax exemption for the 1976-77 fiscal year or any year thereafter may qualify for a partial exemption if the claimant fails to file the required affidavit with the assessor by 5 p.m. on April 15 of the calendar year in which the fiscal year begins, but files the claim on or before the following December 10. Commencing with the 1979-80 assessment year, late-filed claims for the forty thousand dollar (\$40,000) exemption provided in Section 205.5 shall receive the lesser of thirty-two thousand dollars (\$32,000) or 80 percent of the full value of the dwelling. Late-filed claims for the sixty thousand dollar (\$60,000) exemption provided in Section 205.5, when filed in conjunction with late-filed claims for the forty thousand dollar (\$40,000) exemption, shall receive the lesser of forty-eight thousand dollars (\$48,000) or 80 percent of the full value of the dwelling. Late-filed claims for the sixty thousand dollar (\$60,000) exemption, when filed in conjunction with timely filed claims for the forty thousand dollar (\$40,000) exemption, shall receive the lesser of fifty-six thousand dollars (\$56,000) or forty thousand dollars (\$40,000) plus 80 percent of the full value of the dwelling over forty thousand dollars (\$40,000). Commencing with the 1984-85 assessment year, late-filed claims for the one hundred thousand dollar (\$100,000) exemption provided in Section 205.5 shall receive the lesser of eighty thousand dollars (\$80,000) or 80 percent of the full value of the dwelling. Commencing with the 1990-91 assessment year, late-filed claims for the one hundred fifty thousand dollar (\$150,000) exemption provided in Section 205.5, when filed in conjunction with late-filed claims for the one hundred thousand dollar (\$100,000) exemption, shall receive the lesser of one hundred twenty thousand dollars (\$120,000) or 80 percent of the full value of the dwelling. Commencing with the 1990-91 assessment year, late-filed claims for the one hundred fifty thousand dollar (\$150,000) exemption, when filed in conjunction with timely filed claims for the one hundred thousand dollar (\$100,000) exemption, shall receive the lesser of one hundred forty thousand dollars (\$140,000) or one hundred thousand dollars (\$100,000) plus 80 percent of the full value of the dwelling over one hundred thousand dollars (\$100,000).

(b) On those claims filed pursuant to subdivision (a) after November 15, this exemption may be applied to the second installment, and if applied to the second installment, the first installment will still become delinquent on December 10, and the delinquent penalty provided for in this division will attach if the tax

amount due is not paid.

If this exemption is applied to the second installment and if both installments are paid on or before December 10, or if the reduction in taxes from this exemption exceeds the amount of taxes due on the second installment, a refund shall be made to the taxpayer upon a claim submitted by the taxpayer to the auditor.

SEC. 13. Section 480 of the Revenue and Taxation Code is amended to read:

480. (a) Whenever there occurs any change in ownership of real property or of a manufactured home that is subject to local property taxation and is assessed by the county assessor, the transferee shall file a signed change in ownership statement in the county where the real property or manufactured home is located, as provided for in subdivision (c). In the case of a change in ownership where the transferee is not locally assessed, no change in ownership statement is required.

(b) The personal representative shall file a change in ownership statement with the county recorder or assessor in each county in which the decedent owned real property at the time of death that is subject to probate proceedings. The statement shall be filed prior to or at the time the inventory and appraisal is filed with the court clerk. In all other cases in which an interest in real property is transferred by reason of death, including a transfer through the medium of a trust, the change in ownership statement or statements shall be filed by the trustee (if the property was held in trust) or the transferee with the county recorder or assessor in each county in which the decedent owned an interest in real property within 150 days after the date of death.

(c) Except as provided in subdivision (d), the change in ownership statement as required pursuant to subdivision (a) shall be declared to be true under penalty of perjury and shall give that information relative to the real property or manufactured home acquisition transaction as the board shall prescribe after consultation with the California Assessors' Association. The information shall include, but not be limited to, a description of the property, the parties to the transaction, the date of acquisition, the amount, if any, of the consideration paid for the property, whether paid in money or otherwise, and the terms of the transaction. The change in ownership statement shall not include any question that is not germane to the assessment function. The statement shall contain a notice informing the transferee of the property tax relief available under Section 69.5. The statement shall contain a notice that is printed, with the title in at least 12-point boldface type and the body in at least 8-point boldface type, in the following form:

“Important Notice”

“The law requires any transferee acquiring an interest in real property or manufactured home subject to local property taxation,

and that is assessed by the county assessor, to file a change in ownership statement with the county recorder or assessor. The change in ownership statement must be filed at the time of recording or, if the transfer is not recorded, within 45 days of the date of the change in ownership, except that where the change in ownership has occurred by reason of death the statement shall be filed within 150 days after the date of death or, if the estate is probated, shall be filed at the time the inventory and appraisal is filed. The failure to file a change in ownership statement within 45 days from the date of a written request by the assessor results in a penalty of either: (1) one hundred dollars (\$100), or (2) 10 percent of the taxes applicable to the new base year value reflecting the change in ownership of the real property or manufactured home, whichever is greater, but not to exceed two thousand five hundred dollars (\$2,500) if that failure to file was not willful. This penalty will be added to the assessment roll and shall be collected like any other delinquent property taxes, and be subject to the same penalties for nonpayment.”

(d) The change in ownership statement may be attached to or accompany the deed or other document evidencing a change in ownership filed for recording, in which case the notice, declaration under penalty of perjury, and any information contained in the deed or other transfer document otherwise required by subdivision (c) may be omitted.

(e) If the document evidencing a change in ownership is recorded in the county recorder's office, then the statement shall be filed with the recorder at the time of recordation. However, the recordation of the deed or other document evidencing a change in ownership shall not be denied or delayed because of the failure to file a change of ownership statement, or filing of an incomplete statement, in accordance with this subdivision. If the document evidencing a change in ownership is not recorded or is recorded without the concurrent filing of a change in ownership statement, then the statement shall be filed with the assessor no later than 45 days from the date the change in ownership occurs, except that where the change in ownership has occurred by reason of death the statement shall be filed within 150 days after the date of death or, if the estate is probated, shall be filed at the time the inventory and appraisal is filed.

(f) Whenever a change in ownership statement is filed with the county recorder's office, the recorder shall transmit, as soon as possible, the original statement or a true copy thereof to the assessor along with a copy of every recorded document as required by Section 255.7.

(g) The change in ownership statement may be filed with the assessor through the United States mail, properly addressed with the postage prepaid.

(h) In the case of a corporation, the change in ownership statement shall be signed either by an officer of the corporation or

an employee or agent who has been designated in writing by the board of directors to sign those statements on behalf of the corporation. In the case of a partnership or other legal entity, the statement shall be signed by an officer, partner, or an employee or agent who has been designated in writing by the partnership or legal entity.

(i) No person or entity acting for or on behalf of the parties to a transfer of real property shall incur liability for the consequences of assistance rendered to the transferee in preparation of any change in ownership statement, and no action may be brought or maintained against any person or entity as a result of that assistance.

Nothing in this section shall create a duty, either directly or by implication, that the assistance be rendered by any person or entity acting for or on behalf of parties to a transfer of real property.

SEC. 13.3. Section 480 of the Revenue and Taxation Code is amended to read:

480. (a) Whenever there occurs any change in ownership of real property or of a manufactured home that is subject to local property taxation and is assessed by the county assessor, the transferee shall file a signed change in ownership statement in the county where the real property or manufactured home is located, as provided for in subdivision (c). In the case of a change in ownership where the transferee is not locally assessed, no change in ownership statement is required.

(b) The personal representative shall file a change in ownership statement with the county recorder or assessor in each county in which the decedent owned real property at the time of death that is subject to probate proceedings. The statement shall be filed prior to or at the time the inventory and appraisal is filed with the court clerk. In all other cases in which an interest in real property is transferred by reason of death, including a transfer through the medium of a trust, the change in ownership statement or statements shall be filed by the trustee (if the property was held in trust) or the transferee with the county recorder or assessor in each county in which the decedent owned an interest in real property within 150 days after the date of death.

(c) Except as provided in subdivision (d), the change in ownership statement as required pursuant to subdivision (a) shall be declared to be true under penalty of perjury and shall give that information relative to the real property or manufactured home acquisition transaction as the board shall prescribe after consultation with the California Assessors' Association. The information shall include, but not be limited to, a description of the property, the parties to the transaction, the date of acquisition, the amount, if any, of the consideration paid for the property, whether paid in money or otherwise, and the terms of the transaction. The change in ownership statement shall not include any question that is not germane to the assessment function. The statement shall contain a notice informing the transferee of the property tax relief available

under Section 69.5. The statement shall contain a notice that is printed, with the title in at least 12-point boldface type and the body in at least 8-point boldface type, in the following form:

“Important Notice”

“The law requires any transferee acquiring an interest in real property or manufactured home subject to local property taxation, and that is assessed by the county assessor, to file a change in ownership statement with the county recorder or assessor. The change in ownership statement must be filed at the time of recording or, if the transfer is not recorded, within 45 days of the date of the change in ownership, except that where the change in ownership has occurred by reason of death the statement shall be filed within 150 days after the date of death or, if the estate is probated, shall be filed at the time the inventory and appraisal is filed. The failure to file a change in ownership statement within 45 days from the date of a written request by the assessor results in a penalty of either: (1) one hundred dollars (\$100), or (2) 10 percent of the taxes applicable to the new base year value reflecting the change in ownership of the real property or manufactured home, whichever is greater, but not to exceed two thousand five hundred dollars (\$2,500) if that failure to file was not willful. This penalty will be added to the assessment roll and shall be collected like any other delinquent property taxes, and be subject to the same penalties for nonpayment.”

(d) The change in ownership statement may be attached to or accompany the deed or other document evidencing a change in ownership filed for recording, in which case the notice, declaration under penalty of perjury, and any information contained in the deed or other transfer document otherwise required by subdivision (c) may be omitted.

(e) If the document evidencing a change in ownership is recorded in the county recorder’s office, then the statement shall be filed with the recorder at the time of recordation. However, the recordation of the deed or other document evidencing a change in ownership shall not be denied or delayed because of the failure to file a change of ownership statement, or filing of an incomplete statement, in accordance with this subdivision. If the document evidencing a change in ownership is not recorded or is recorded without the concurrent filing of a change in ownership statement, then the statement shall be filed with the assessor no later than 45 days from the date the change in ownership occurs, except that where the change in ownership has occurred by reason of death the statement shall be filed within 150 days after the date of death or, if the estate is probated, shall be filed at the time the inventory and appraisal is filed.

(f) Whenever a change in ownership statement is filed with the county recorder’s office, the recorder shall transmit, as soon as

possible, the original statement or a true copy thereof to the assessor along with a copy of every recorded document as required by Section 255.7.

(g) The change in ownership statement may be filed with the assessor through the United States mail, properly addressed with the postage prepaid.

(h) In the case of a corporation, the change in ownership statement shall be signed either by an officer of the corporation or an employee or agent who has been designated in writing by the board of directors to sign those statements on behalf of the corporation. In the case of a partnership, limited liability company, or other legal entity, the statement shall be signed by an officer, partner, manager, or an employee or agent who has been designated in writing by the partnership, limited liability company, or legal entity.

(i) No person or entity acting for or on behalf of the parties to a transfer of real property shall incur liability for the consequences of assistance rendered to the transferee in preparation of any change in ownership statement, and no action may be brought or maintained against any person or entity as a result of that assistance.

Nothing in this section shall create a duty, either directly or by implication, that the assistance be rendered by any person or entity acting for or on behalf of parties to a transfer of real property.

SEC. 13.5. Section 2188.11 is added to the Revenue and Taxation Code, to read:

2188.11. The assessor shall separately assess undivided interests in accordance with Chapter 3 (commencing with Section 2801) of Part 5.

SEC. 14. Section 5802 of the Revenue and Taxation Code, as amended by Section 2 of Chapter 1200 of the Statutes of 1993, is amended to read:

5802. (a) Except as provided in subdivision (b), "base year value" as used in this part means the full cash value of a manufactured home on the date the manufactured home is purchased or changes ownership. If the manufactured home undergoes any new construction after it is purchased or changes ownership, the base year value of the new construction is its full cash value on the date on which the new construction is completed, and if uncompleted, on the lien date.

(b) The base year value of a manufactured home for which the license fee is delinquent shall be its full cash value on the lien date for the fiscal year in which it is first enrolled.

(c) The base year value of a manufactured home converted pursuant to Section 18119 of the Health and Safety Code from taxation under Part 5 (commencing with Section 10701) of Division 2 to taxation under this part shall be its full cash value on the lien date for the fiscal year in which that manufactured home is first enrolled.

(d) Notwithstanding any other provision of law, the assessor shall determine the base year value of a manufactured home, located in

a resident-owned mobilehome park or a rental park in the process of being changed to resident ownership, that is converted to property taxation by the registered owner pursuant to Section 18555 of the Health and Safety Code, so that the property taxes levied, after adjustment for any applicable exemption, shall be the same amount as the vehicle license fee that was imposed for the registration year in which the home was converted to property taxation.

(e) This section shall remain in effect until January 1, 1999, and on that date is repealed.

SEC. 15. Section 5802 of the Revenue and Taxation Code, as amended by Section 3 of Chapter 1200 of the Statutes of 1993, is amended to read:

5802. (a) Except as provided in subdivision (b), "base year value" as used in this part means the full cash value of a manufactured home on the date the manufactured home is purchased or changes ownership. If the manufactured home undergoes any new construction after it is purchased or changes ownership, the base year value of the new construction is its full cash value on the date on which the new construction is completed, and if uncompleted, on the lien date.

(b) The base year value of a manufactured home for which the license fee is delinquent shall be its full cash value on the lien date for the fiscal year in which it is first enrolled.

(c) The base year value of a manufactured home converted pursuant to Section 18119 of the Health and Safety Code from taxation under Part 5 (commencing with Section 10701) of Division 2 to taxation under this part shall be its full cash value on the lien date for the fiscal year in which that manufactured home is first enrolled.

(d) This section shall become operative on January 1, 1999.

SEC. 16. Section 38204 of the Revenue and Taxation Code is amended to read:

38204. (a) On or before December 31, 1976, and periodically thereafter as determined by the board, the board after consultation with the Timber Advisory Committee and after public hearings held pursuant to the Administrative Procedure Act, shall designate areas containing timber having similar growing, harvesting, and marketing conditions to be used as timber value areas for the preparation and application of immediate harvest values. The board may designate areas for timber standing on lands owned by local agencies and on timberland as defined in Section 51104 of the Government Code and designate separate areas for timber standing on national forest lands owned by the United States government. On or before March 1, 1977, for timber harvested between April 1 and December 31, 1977, and on or before December 31, 1977, and on June 30 and December 31 of each year thereafter for timber harvested during the succeeding two calendar quarters, the board, after consultation with the Timber Advisory Committee, shall estimate the immediate harvest values of each species or subclassification of timber within those areas as of the initial date of the period. These

values shall be determined under rules adopted pursuant to the Administrative Procedure Act from the best evidence available, including (1) gross proceeds from sales on the stump of similar timber of like quality and character at similar locations, or (2) gross proceeds from sales of logs, or of finished products, adjusted to reflect only the portion of those proceeds attributable to value on the stump immediately prior to harvest, or a combination of (1) and (2), and shall be determined in a manner that makes reasonable allowance for differences in age, size, quality, cost of removal, accessibility to point of conversion, market conditions and other relevant factors.

(b) The board, either on its own motion after consultation with the Timber Advisory Committee or in response to application from a timber owner, may modify the immediate harvest values to reflect material changes in timber values that result from fire, blowdown, ice storm, flood, disease, insect damage or other cause, for any area or part thereof in which damaged timber is located. The board shall specify any additional accounting or other requirements to be complied with in reporting and paying the tax on that timber.

SEC. 17. Section 13.3 of this bill incorporates amendments to Section 480 of the Revenue and Taxation Code proposed by this bill and SB 469. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1995, (2) each bill amends Section 480 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 469, in which case Section 480 of the Revenue and Taxation Code, as amended by SB 469, shall remain operative only until the operative date of this bill, at which time Section 13.3 of this bill shall become operative, and Section 13 of this bill shall not become operative.

CHAPTER 1223

An act to amend Sections 25205.2, 25205.4, 25205.7, and 25205.9 of, to add Section 25174.9 to, and to repeal Section 25359.8 of, the Health and Safety Code, and to amend Sections 43555, 45651.5, 50153, 50159, and 50161 of, to add Part 22.1 (commencing with Section 43800) to Division 2 of, and to repeal Section 43152.16 of, the Revenue and Taxation Code, relating to hazardous substances.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 25174.9 is added to the Health and Safety Code, to read:

25174.9. (a) Notwithstanding any other provision of law, non-RCRA hazardous waste, excluding asbestos, generated in a remedial action, a removal action, or a corrective action taken

pursuant to this chapter, Chapter 6.7 (commencing with Section 25280), Chapter 6.75 (commencing with Section 25299.10), or Chapter 6.8 (commencing with Section 25300), or generated in any other cleanup, removal, or remediation of a hazardous substance, shall be subject to any fees due under this article, at a rate of twelve dollars (\$12) per ton, unless the hazardous waste is otherwise exempt from the fee under this article.

(b) For purposes of this section, "remedial action" has the same meaning as defined in Section 25322 and "removal action" has the same meaning as defined in Section 25323.

SEC. 2. Section 25205.2 of the Health and Safety Code is amended to read:

25205.2. (a) Except as provided in subdivisions (c) and (h), in addition to the fees specified in Section 25174.1, each operator of a facility shall pay a facility fee for each reporting period, or any portion thereof, to the board based on the size and type of the facility, as specified in Section 25205.4. On or before January 31 of each calendar year, the department annually shall notify the board of all known facility operators by facility type and size. The department shall also notify the board of any operator who is issued a permit or grant of interim status within 30 days from the date that a permit or grant of interim status is issued to the operator. The fee specified in this section does not apply to facilities exempted pursuant to Section 25205.12.

(b) The board shall deposit all fees collected pursuant to subdivision (a) in the Hazardous Waste Control Account in the General Fund. The fees so deposited may be expended by the department, upon appropriation by the Legislature, for the purposes specified in subdivision (b) of Section 25174.

(c) Notwithstanding subdivision (a), a person who is issued a variance by the department from the requirement of obtaining a hazardous waste facilities permit or grant of interim status is not subject to the fee, for any reporting period following the reporting period in which the variance was granted by the department.

(d) Operators subject to facility fee liability pursuant to this section shall pay the following amounts:

(1) The operator shall pay the applicable facility fee for each reporting period in which the facility actually engaged in the treatment, storage, or disposal of hazardous waste.

(2) The operator shall pay the applicable facility fee for one additional reporting period immediately following the final reporting period in which the facility actually engaged in that treatment or storage. For the 1994 reporting period and thereafter, the facility's size for that additional reporting period shall be deemed to be the largest size at which the facility has ever been subject to the fee. If the department previously approved a unit or portion of the facility for a variance, closure, or permit-by-rule, the facility's size for that reporting period shall be deemed to be its largest size since the department granted the approval.

(3) The operator of a disposal facility shall pay twice the applicable facility fee for one additional reporting period immediately following the final reporting period in which the facility actually engaged in disposal of hazardous waste.

(4) For the 1994 reporting period and thereafter, a facility shall not be deemed to have stopped treating, storing, or disposing of hazardous waste unless it has actually ceased that activity and has notified the department of its intent to close.

(5) If the reporting period which immediately followed the final reporting period in which a facility actually engaged in the treatment, storage, or disposal of the hazardous waste was the six-month period from July 1, 1991, through December 31, 1991, the operator shall be subject to twice the fee otherwise applicable to that operator for that reporting period under paragraphs (2) and (3).

(e) No facility shall be subject to a facility fee for treatment, storage, or disposal, if that activity ceased before July 1, 1986, and if the fee for the activity was not paid prior to January 1, 1994.

(f) Notwithstanding any other provision of this section, a person who ceased actual treatment, storage, or disposal of hazardous waste, whether generated onsite or received from offsite, before July 1, 1986, and who paid facility fees for any reporting period after that date pursuant to a decision of the State Board of Equalization, and who filed a claim for refund of those fees on or before January 1, 1994, shall be entitled to a refund of those amounts.

(g) Facility operators who treated, stored, or disposed of hazardous waste on or after July 1, 1986, shall be subject to the provisions of this section which were in effect prior to January 1, 1994, as to payments which their operators made prior to January 1, 1994. The operators shall be subject to subdivision (d) as to any other liability for the facility fee.

(h) A treatment facility is not subject to the facility fee established pursuant to this section, if the facility engages in treatment exclusively to accomplish a removal or remedial action or a corrective action in accordance with an order issued by the Environmental Protection Agency pursuant to the federal act or in accordance with an order issued by the department pursuant to Section 25187, if the facility was put in operation solely for purposes of complying with that order. The department shall instead assess a fee for that facility for the actual time spent by the department for the inspection and oversight of that facility. The department shall base the fee on the department's work standards and shall assess the fee on an hourly basis.

(i) Notwithstanding subdivision (a), a facility operating pursuant to a standardized permit, as specified in Section 25201.6, is exempt from the annual facility fee imposed by this section for a period of time equal to the number of years that the facility lawfully operated prior to September 21, 1993, pursuant to a hazardous waste facilities permit or other grant of authorization and paid facility fees for the operation of the facility pursuant to this section.

SEC. 2.1. Section 25205.2 of the Health and Safety Code is amended to read:

25205.2. (a) Except as provided in subdivisions (c) and (h), in addition to the fees specified in Section 25174.1, each operator of a facility shall pay a facility fee for each reporting period, or any portion thereof, to the board based on the size and type of the facility, as specified in Section 25205.4. On or before January 31 of each calendar year, the department annually shall notify the board of all known facility operators by facility type and size. The department shall also notify the board of any operator who is issued a permit or grant of interim status within 30 days from the date that a permit or grant of interim status is issued to the operator. The fee specified in this section does not apply to facilities exempted pursuant to Section 25205.12.

(b) The board shall deposit all fees collected pursuant to subdivision (a) in the Hazardous Waste Control Account in the General Fund. The fees so deposited may be expended by the department, upon appropriation by the Legislature, for the purposes specified in subdivision (b) of Section 25174.

(c) Notwithstanding subdivision (a), a person who is issued a variance by the department from the requirement of obtaining a hazardous waste facilities permit or grant of interim status is not subject to the fee, for any reporting period following the reporting period in which the variance was granted by the department.

(d) Operators subject to facility fee liability pursuant to this section shall pay the following amounts:

(1) The operator shall pay the applicable facility fee for each reporting period in which the facility actually engaged in the treatment, storage, or disposal of hazardous waste.

(2) The operator shall pay the applicable facility fee for one additional reporting period immediately following the final reporting period in which the facility actually engaged in that treatment or storage. For the 1994 reporting period and thereafter, the facility's size for that additional reporting period shall be deemed to be the largest size at which the facility has ever been subject to the fee. If the department previously approved a unit or portion of the facility for a variance, closure, or permit-by-rule, the facility's size for that reporting period shall be deemed to be its largest size since the department granted the approval.

(3) The operator of a disposal facility shall pay twice the applicable facility fee for one additional reporting period immediately following the final reporting period in which the facility actually engaged in disposal of hazardous waste.

(4) For the 1994 reporting period and thereafter, a facility shall not be deemed to have stopped treating, storing, or disposing of hazardous waste unless it has actually ceased that activity and has notified the department of its intent to close.

(5) If the reporting period which immediately followed the final reporting period in which a facility actually engaged in the

treatment, storage, or disposal of the hazardous waste was the six-month period from July 1, 1991, through December 31, 1991, the operator shall be subject to twice the fee otherwise applicable to that operator for that reporting period under paragraphs (2) and (3).

(e) No facility shall be subject to a facility fee for treatment, storage, or disposal, if that activity ceased before July 1, 1986, and if the fee for the activity was not paid prior to January 1, 1994.

(f) Notwithstanding any other provision of this section, a person who ceased actual treatment, storage, or disposal of hazardous waste, whether generated onsite or received from offsite, before July 1, 1986, and who paid facility fees for any reporting period after that date pursuant to a decision of the State Board of Equalization, and who filed a claim for refund of those fees on or before January 1, 1994, shall be entitled to a refund of those amounts.

(g) Facility operators who treated, stored, or disposed of hazardous waste on or after July 1, 1986, shall be subject to the provisions of this section which were in effect prior to January 1, 1994, as to payments which their operators made prior to January 1, 1994. The operators shall be subject to subdivision (d) as to any other liability for the facility fee.

(h) A treatment facility is not subject to the facility fee established pursuant to this section, if the facility engages in treatment exclusively to accomplish a removal or remedial action or a corrective action in accordance with an order issued by the Environmental Protection Agency pursuant to the federal act or in accordance with an order issued by the department pursuant to Section 25187, if the facility was put in operation solely for purposes of complying with that order. The department shall instead assess a fee for that facility for the actual time spent by the department for the inspection and oversight of that facility. The department shall base the fee on the department's work standards and shall assess the fee on an hourly basis.

(i) Notwithstanding subdivision (a), a facility operating pursuant to a standardized permit or grant of interim status, as specified in Section 25201.6, is exempt from the annual facility fee imposed by this section for a period of time equal to the number of years that the facility lawfully operated prior to September 21, 1993, pursuant to a hazardous waste facilities permit or other grant of authorization and paid facility fees for the operation of the facility pursuant to this section.

SEC. 2.2. Section 25205.2 of the Health and Safety Code is amended to read:

25205.2. (a) Except as provided in subdivisions (c) and (h), in addition to the fees specified in Section 25174.1, each operator of a facility shall pay a facility fee for each reporting period, or any portion thereof, to the board based on the size and type of the facility, as specified in Section 25205.4. On or before January 31 of each calendar year, the department annually shall notify the board of all known facility operators by facility type and size. The

department shall also notify the board of any operator who is issued a permit or grant of interim status within 30 days from the date that a permit or grant of interim status is issued to the operator. The fee specified in this section does not apply to facilities exempted pursuant to Section 25205.12.

(b) The board shall deposit all fees collected pursuant to subdivision (a) in the Hazardous Waste Control Account in the General Fund. The fees so deposited may be expended by the department, upon appropriation by the Legislature, for the purposes specified in subdivision (b) of Section 25174.

(c) Notwithstanding subdivision (a), a person who is issued a variance by the department from the requirement of obtaining a hazardous waste facilities permit or grant of interim status is not subject to the fee, for any reporting period following the reporting period in which the variance was granted by the department.

(d) Operators subject to facility fee liability pursuant to this section shall pay the following amounts:

(1) The operator shall pay the applicable facility fee for each reporting period in which the facility actually engaged in the treatment, storage, or disposal of hazardous waste.

(2) The operator shall pay the applicable facility fee for one additional reporting period immediately following the final reporting period in which the facility actually engaged in that treatment or storage. For the 1994 reporting period and thereafter, the facility's size for that additional reporting period shall be deemed to be the largest size at which the facility has ever been subject to the fee. If the department previously approved a unit or portion of the facility for a variance, closure, or permit-by-rule, the facility's size for that reporting period shall be deemed to be its largest size since the department granted the approval.

(3) The operator of a disposal facility shall pay twice the applicable facility fee for one additional reporting period immediately following the final reporting period in which the facility actually engaged in disposal of hazardous waste.

(4) For the 1994 reporting period and thereafter, a facility shall not be deemed to have stopped treating, storing, or disposing of hazardous waste unless it has actually ceased that activity and has notified the department of its intent to close.

(5) If the reporting period which immediately followed the final reporting period in which a facility actually engaged in the treatment, storage, or disposal of the hazardous waste was the six-month period from July 1, 1991, through December 31, 1991, the operator shall be subject to twice the fee otherwise applicable to that operator for that reporting period under paragraphs (2) and (3).

(e) No facility shall be subject to a facility fee for treatment, storage, or disposal, if that activity ceased before July 1, 1986, and if the fee for the activity was not paid prior to January 1, 1994.

(f) Notwithstanding any other provision of this section, a person who ceased actual treatment, storage, or disposal of hazardous waste,

whether generated onsite or received from offsite, before October 1, 1987, and who paid facility fees for any reporting period after that date pursuant to a decision of the State Board of Equalization, and who filed a claim for refund of those fees on or before January 1, 1994, shall be entitled to a refund of those amounts.

(g) Facility operators who treated, stored, or disposed of hazardous waste on or after July 1, 1986, shall be subject to the provisions of this section which were in effect prior to January 1, 1994, as to payments which their operators made prior to January 1, 1994. The operators shall be subject to subdivision (d) as to any other liability for the facility fee.

(h) A treatment facility is not subject to the facility fee established pursuant to this section, if the facility engages in treatment exclusively to accomplish a removal or remedial action or a corrective action in accordance with an order issued by the Environmental Protection Agency pursuant to the federal act or in accordance with an order issued by the department pursuant to Section 25187, if the facility was put in operation solely for purposes of complying with that order. The department shall instead assess a fee for that facility for the actual time spent by the department for the inspection and oversight of that facility. The department shall base the fee on the department's work standards and shall assess the fee on an hourly basis.

(i) Notwithstanding subdivision (a), a facility operating pursuant to a standardized permit, as specified in Section 25201.6, is exempt from the annual facility fee imposed by this section for a period of time equal to the number of years that the facility lawfully operated prior to September 21, 1993, pursuant to a hazardous waste facilities permit or other grant of authorization and paid facility fees for the operation of the facility pursuant to this section.

SEC. 2.3. Section 25205.2 of the Health and Safety Code is amended to read:

25205.2. (a) Except as provided in subdivisions (c) and (h), in addition to the fees specified in Section 25174.1, each operator of a facility shall pay a facility fee for each reporting period, or any portion thereof, to the board based on the size and type of the facility, as specified in Section 25205.4. On or before January 31 of each calendar year, the department annually shall notify the board of all known facility operators by facility type and size. The department shall also notify the board of any operator who is issued a permit or grant of interim status within 30 days from the date that a permit or grant of interim status is issued to the operator. The fee specified in this section does not apply to facilities exempted pursuant to Section 25205.12.

(b) The board shall deposit all fees collected pursuant to subdivision (a) in the Hazardous Waste Control Account in the General Fund. The fees so deposited may be expended by the department, upon appropriation by the Legislature, for the purposes specified in subdivision (b) of Section 25174.

(c) Notwithstanding subdivision (a), a person who is issued a variance by the department from the requirement of obtaining a hazardous waste facilities permit or grant of interim status is not subject to the fee, for any reporting period following the reporting period in which the variance was granted by the department.

(d) Operators subject to facility fee liability pursuant to this section shall pay the following amounts:

(1) The operator shall pay the applicable facility fee for each reporting period in which the facility actually engaged in the treatment, storage, or disposal of hazardous waste.

(2) The operator shall pay the applicable facility fee for one additional reporting period immediately following the final reporting period in which the facility actually engaged in that treatment or storage. For the 1994 reporting period and thereafter, the facility's size for that additional reporting period shall be deemed to be the largest size at which the facility has ever been subject to the fee. If the department previously approved a unit or portion of the facility for a variance, closure, or permit-by-rule, the facility's size for that reporting period shall be deemed to be its largest size since the department granted the approval.

(3) The operator of a disposal facility shall pay twice the applicable facility fee for one additional reporting period immediately following the final reporting period in which the facility actually engaged in disposal of hazardous waste.

(4) For the 1994 reporting period and thereafter, a facility shall not be deemed to have stopped treating, storing, or disposing of hazardous waste unless it has actually ceased that activity and has notified the department of its intent to close.

(5) If the reporting period which immediately followed the final reporting period in which a facility actually engaged in the treatment, storage, or disposal of the hazardous waste was the six-month period from July 1, 1991, through December 31, 1991, the operator shall be subject to twice the fee otherwise applicable to that operator for that reporting period under paragraphs (2) and (3).

(e) No facility shall be subject to a facility fee for treatment, storage, or disposal, if that activity ceased before July 1, 1986, and if the fee for the activity was not paid prior to January 1, 1994.

(f) Notwithstanding any other provision of this section, a person who ceased actual treatment, storage, or disposal of hazardous waste, whether generated onsite or received from offsite, before October 1, 1987, and who paid facility fees for any reporting period after that date pursuant to a decision of the State Board of Equalization, and who filed a claim for refund of those fees on or before January 1, 1994, shall be entitled to a refund of those amounts.

(g) Facility operators who treated, stored, or disposed of hazardous waste on or after July 1, 1986, shall be subject to the provisions of this section which were in effect prior to January 1, 1994, as to payments which their operators made prior to January 1, 1994. The operators shall be subject to subdivision (d) as to any other

liability for the facility fee.

(h) A treatment facility is not subject to the facility fee established pursuant to this section, if the facility engages in treatment exclusively to accomplish a removal or remedial action or a corrective action in accordance with an order issued by the Environmental Protection Agency pursuant to the federal act or in accordance with an order issued by the department pursuant to Section 25187, if the facility was put in operation solely for purposes of complying with that order. The department shall instead assess a fee for that facility for the actual time spent by the department for the inspection and oversight of that facility. The department shall base the fee on the department's work standards and shall assess the fee on an hourly basis.

(i) Notwithstanding subdivision (a), a facility operating pursuant to a standardized permit or grant of interim status, as specified in Section 25201.6, is exempt from the annual facility fee imposed by this section for a period of time equal to the number of years that the facility lawfully operated prior to September 21, 1993, pursuant to a hazardous waste facilities permit or other grant of authorization and paid facility fees for the operation of the facility pursuant to this section.

SEC. 3. Section 25205.4 of the Health and Safety Code is amended to read:

25205.4. (a) The base rate for the facility fee imposed by Section 25205.2 for the 1991-92 fiscal year is the base rate for the 1991 reporting period, as established pursuant to this section as it read on June 30, 1991. Commencing with the 1992 reporting period, and for each reporting period thereafter, the board shall adjust the base rate annually to reflect increases or decreases in the cost-of-living measured by the Consumer Price Index issued by the United States Department of Labor or by a successor agency of the federal government.

(b) The determination of the facility fee pursuant to this section, including the redetermination of the base rate, is exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) Except as provided in subdivision (e), in computing the facility fees, all of the following shall apply:

(1) The fee to be paid by a ministorage facility shall equal 25 percent of the base facility rate.

(2) The fee to be paid by a small storage facility shall equal the base facility rate.

(3) The fee to be paid by a large storage facility shall equal twice the base facility rate.

(4) The fee to be paid by a minitreatment facility shall equal 50 percent of the base facility rate.

(5) The fee to be paid by a small treatment facility shall equal twice the base facility rate.

(6) The fee to be paid by a large treatment facility shall equal

three times the base facility rate.

(7) The fee to be paid by a disposal facility shall equal 10 times the base facility rate.

(8) The fee to be paid by a facility with a postclosure permit shall be seven thousand five hundred dollars (\$7,500) annually for a small facility, fifteen thousand dollars (\$15,000) annually for a medium facility, and twenty-two thousand five hundred dollars (\$22,500) for a large facility during the first five years of the postclosure period. The fee to be paid by a facility with a postclosure permit during the remaining years of the postclosure care period shall be four thousand dollars (\$4,000) annually for a small facility, eight thousand dollars (\$8,000) annually for a medium facility, and thirteen thousand five hundred dollars (\$13,500) annually for a large facility.

(d) If a facility falls into more than one category listed in subdivision (c) or (e), multiple operations under a single hazardous waste facility permit or grant of interim status fall into more than one category listed in subdivision (c) or (e), the facility operator shall pay only the rate for the facility category which is the highest rate.

(e) Notwithstanding subdivision (c), the facility fee for a facility that has been issued a standardized permit shall be as follows:

(1) The fee to be paid for a facility that has been issued a Series A standardized permit shall be fifteen thousand three hundred seventy-three dollars (\$15,373).

(2) The fee to be paid for a facility that has been issued a Series B standardized permit shall be seven thousand two hundred five dollars (\$7,205).

(3) Except as specified in paragraph (4), the fee to be paid for a facility that has been issued a Series C standardized permit shall be six thousand fifty-one dollars (\$6,051).

(4) The fee for a facility that has been issued a Series C standardized permit is three thousand twenty-five dollars (\$3,025) if the facility meets all of the following conditions:

(A) The facility treats not more than 1,500 gallons of liquid hazardous waste and not more than 3,000 pounds of solid hazardous waste in any calendar month.

(B) The total facility storage capacity does not exceed 15,000 gallons of liquid hazardous waste and 30,000 pounds of solid hazardous waste.

(C) If the facility both treats and stores hazardous waste, the facility does not exceed the volume limitations specified in subparagraphs (A) and (B) for each individual activity.

(f) The fee imposed pursuant to this section shall be paid in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code.

SEC. 3.1. Section 25205.4 of the Health and Safety Code is amended to read:

25205.4. (a) The base rate for the facility fee imposed by Section 25205.2 for the 1991-92 fiscal year is the base rate for the 1991 reporting period, as established pursuant to this section as it read on

June 30, 1991. Commencing with the 1992 reporting period, and for each reporting period thereafter, the board shall adjust the base rate annually to reflect increases or decreases in the cost-of-living measured by the Consumer Price Index issued by the United States Department of Labor or by a successor agency of the federal government.

(b) The determination of the facility fee pursuant to this section, including the redetermination of the base rate, is exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) Except as provided in subdivision (e), in computing the facility fees, all of the following shall apply:

(1) The fee to be paid by a ministorage facility shall equal 25 percent of the base facility rate.

(2) The fee to be paid by a small storage facility shall equal the base facility rate.

(3) The fee to be paid by a large storage facility shall equal twice the base facility rate.

(4) The fee to be paid by a minitreatment facility shall equal 50 percent of the base facility rate.

(5) The fee to be paid by a small treatment facility shall equal twice the base facility rate.

(6) The fee to be paid by a large treatment facility shall equal three times the base facility rate.

(7) The fee to be paid by a disposal facility shall equal 10 times the base facility rate.

(8) The fee to be paid by a facility with a postclosure permit shall be seven thousand five hundred dollars (\$7,500) annually for a small facility, fifteen thousand dollars (\$15,000) annually for a medium facility, and twenty-two thousand five hundred dollars (\$22,500) for a large facility during the first five years of the postclosure period. The fee to be paid by a facility with a postclosure permit during the remaining years of the postclosure care period shall be four thousand dollars (\$4,000) annually for a small facility, eight thousand dollars (\$8,000) annually for a medium facility, and thirteen thousand five hundred dollars (\$13,500) annually for a large facility.

(d) If a facility falls into more than one category listed in either subdivision (c) or (e), or any combination thereof, or multiple operations under a single hazardous waste facilities permit or grant of interim status fall into more than one category listed in subdivision (c) or (e), or any combination thereof, the facility operator shall pay only the rate for the facility category which is the highest rate.

(e) Notwithstanding subdivision (c), the facility fee for a facility that has been issued a standardized permit shall be as follows:

(1) The fee to be paid for a facility that has been issued a Series A standardized permit shall be fifteen thousand three hundred seventy-three dollars (\$15,373).

(2) The fee to be paid for a facility that has been issued a Series B standardized permit shall be seven thousand two hundred five

dollars (\$7,205).

(3) Except as specified in paragraph (4), the fee to be paid for a facility that has been issued a Series C standardized permit shall be six thousand fifty-one dollars (\$6,051).

(4) The fee for a facility that has been issued a Series C standardized permit is three thousand twenty-five dollars (\$3,025) if the facility meets all of the following conditions:

(A) The facility treats not more than 1,500 gallons of liquid hazardous waste and not more than 3,000 pounds of solid hazardous waste in any calendar month.

(B) The total facility storage capacity does not exceed 15,000 gallons of liquid hazardous waste and 30,000 pounds of solid hazardous waste.

(C) If the facility both treats and stores hazardous waste, the facility does not exceed the volume limitations specified in subparagraphs (A) and (B) for each individual activity.

(f) The fee imposed pursuant to this section shall be paid in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code.

SEC. 4. Section 25205.7 of the Health and Safety Code, as amended by Chapter 65 of the Statutes of 1994, is amended to read:

25205.7. (a) The board shall assess a fee for any application for a new hazardous waste facilities permit, a variance, or a permit modification issued by the department pursuant to this chapter or the regulations adopted pursuant to this chapter. The fee shall be nonrefundable, even if the application is withdrawn or the permit, variance, or modification is denied. The department shall provide the board with any information which is necessary to assess fees pursuant to this section. The fee shall be collected in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code, and deposited into the Hazardous Waste Control Account. A person who submits a single application for a facility that falls within more than one fee category shall pay only the higher fee.

(b) The amounts stated in this section shall be base rates for the 1989-90 fiscal year. Thereafter the fees shall be adjusted annually to reflect increases or decreases in the cost of living, as measured by the Consumer Price Index for the United States, as reported by the Department of Labor or a successor agency of the United States government. The fee shall be assessed upon application to the department. For a facility operating pursuant to a grant of interim status, the submittal of the application shall be the submittal of the Part B application in accordance with regulations adopted by the department. A person who submits an application for renewal of any existing permit shall pay an amount equal to the fee that would have been assessed had the person requested the same changes in a modification application, but not less than one-half the fee required for a new permit.

(c) A person submitting a hazardous waste facilities permit

application for a land disposal facility shall pay eighty-three thousand dollars (\$83,000) for a small facility, one hundred seventy-seven thousand dollars (\$177,000) for a medium facility, and three hundred four thousand dollars (\$304,000) for a large facility.

(d) A person submitting a hazardous waste facilities permit application for any incinerator shall pay fifty thousand dollars (\$50,000) for a small facility, one hundred six thousand dollars (\$106,000) for a medium facility, and one hundred eighty-two thousand dollars (\$182,000) for a large facility.

(e) (1) Except as provided in paragraphs (2) and (3), a person submitting a hazardous waste facility permit application for a storage facility, a treatment facility, or a storage and treatment facility shall pay seventeen thousand dollars (\$17,000) for a small facility, thirty-one thousand dollars (\$31,000) for a medium facility, and sixty thousand dollars (\$60,000) for a large facility.

(2) A person submitting an application for a standardized permit for a storage facility, a treatment facility, or a storage and treatment facility, as specified in Section 25201.6, shall pay thirty thousand fifty-one dollars (\$30,051) for a Series A standardized permit, eighteen thousand seven hundred sixty-two dollars (\$18,762) for a Series B standardized permit, and five thousand dollars (\$5,000) for a Series C standardized permit. The board shall assess these fees based upon the classifications specified in subdivision (a) of Section 25201.6.

(3) In addition to the fees specified in paragraph (2), the board shall assess a fee equal to the department's costs in reviewing and overseeing any corrective action program described in the application for a standardized permit pursuant to subparagraph (C) of paragraph (2) of subdivision (c) of Section 25201.6, and in reviewing and overseeing any corrective action work undertaken at the facility pursuant to that corrective action program.

(f) A person submitting a hazardous waste facilities permit application for a transportable treatment unit shall pay thirteen thousand dollars (\$13,000) for a small unit, thirty thousand dollars (\$30,000) for a medium unit, and sixty thousand dollars (\$60,000) for a large unit.

(g) (1) (A) A person submitting a request for a variance shall pay three thousand dollars (\$3,000) for a variance from any hazardous waste storage requirements imposed by this chapter, three hundred dollars (\$300) for a variance issued pursuant to Section 25179.8, three hundred dollars (\$300) for a variance to allow the use of a test method or analytical method which is an alternative to the methods prescribed by regulation for use in classifying a waste, and eight hundred dollars (\$800) for a variance from the requirements for hazardous waste haulers imposed by this chapter.

(B) A person submitting a request for a variance not otherwise listed in this paragraph shall pay eight thousand dollars (\$8,000), unless the applicant is a small business and the department determines in its discretion that payment of this fee would cause

financial or other unreasonable hardship to the applicant. If that finding is made, the department may assess the applicant up to 50 percent of the standard fee. For the purposes of this subparagraph, "small business" means a business which is independently owned and operated, has 25 employees or less, and has a gross annual income which does not exceed two million dollars (\$2,000,000).

(C) If the variance application requests a variance from more than one specific statute or regulation, a separate fee may be assessed for each statute or regulation from which the variance is requested.

(2) If the variance contains no significant changes from a variance previously issued to the same owner or operator, the fee shall be 25 percent of the amount otherwise provided for by this section. A change is a significant change if, had it been made to a permit, it would have been a class 2 or class 3 modification, as specified in subdivision (h).

(3) Any variance granted pursuant to Article 3 (commencing with Section 66260.21) of Chapter 10 of Division 4.5 of Title 22 of the California Code of Regulations is not subject to a fee under this section.

(h) (1) A person who applies for one or more class 1 permit modifications shall pay a fee of five hundred dollars (\$500) for each unit directly impacted by the modification, up to a maximum of one thousand five hundred dollars (\$1,500) for each application.

(2) A person who applies for one or more class 2 permit modifications shall pay a fee equal to 20 percent of the fee for a new permit for that facility for each unit directly impacted by the modifications, up to a maximum of 40 percent for each application, except that each person who applies for one or more class 2 permit modifications for a land disposal facility or an incinerator shall pay a fee equal to 15 percent of the fee for a new permit for that facility for each unit directly impacted by the modifications, up to a maximum of 30 percent for each application.

(3) A person who applies for one or more class 3 permit modifications shall pay a fee equal to 40 percent of the fee for a new permit for that facility for each unit directly impacted by the modifications, up to a maximum of 80 percent for each application, except that a person who applies for one or more class 3 permit modifications for a land disposal facility shall pay a fee equal to 30 percent of the fee for a new permit for that facility for each unit directly impacted by the modifications, up to a maximum of 60 percent for each modification.

(4) No facility which is exempted from fees imposed by this article pursuant to subdivision (e) of Section 25205.3, nor any operator who is subject to paragraph (2) or (3) of subdivision (d) of Section 25205.2, shall be subject to any fee pursuant to this section for a permit modification resulting from a revision of the facility's or operator's closure plan.

(i) (1) Permits for postclosure shall be required for hazardous waste facilities if hazardous wastes remain after closure which will

not be subject to the requirements of any other hazardous waste facilities permit issued by the department at the time of postclosure permit approval.

(2) A person submitting a hazardous waste facilities permit application for a postclosure permit shall pay a fee of eight thousand dollars (\$8,000) for a small facility, eighteen thousand dollars (\$18,000) for a medium facility, and thirty thousand dollars (\$30,000) for a large facility.

(3) For purposes of this subdivision and paragraph (8) of subdivision (c) of Section 25205.4, and notwithstanding subdivision (j), any facility or unit is "small" if 0.5 tons (1,000 pounds) or less of hazardous waste remain after closure, "medium" if more than 0.5 tons (1,000 pounds), but less than 1,000 tons of hazardous waste remain after closure, and "large" if 1,000 or more tons of hazardous waste remain after closure.

(j) For purposes of this section, and notwithstanding Section 25205.1, any facility or unit is "small" if it manages 0.5 tons (1,000 pounds) or less of hazardous waste during any one month of the state's current fiscal year, "medium" if it manages more than 0.5 tons (1,000 pounds), but less than 1,000 tons, of hazardous waste during any one month of the state's current fiscal year, and "large" if it manages 1,000 or more tons of hazardous waste during any one month of the state's current fiscal year.

(k) (1) The fees assessed pursuant to this section do not apply to any permit or variance to operate a research, development, and demonstration facility, if the duration of the permit or variance is not longer than one year, unless the permit or variance is renewed pursuant to the regulations adopted by the department.

(2) For purposes of this section, a "research, development, and demonstration facility" is a facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which regulations prescribing permit standards have not been adopted.

(l) The fees assessed pursuant to this section do not apply to any of the following:

(1) Any variance issued to a public agency to transport wastes for purposes of operating a household hazardous waste collection facility, or to transport waste from a household hazardous waste collection facility, which receives household hazardous waste or hazardous waste from conditionally exempted small quantity generators pursuant to Article 10.8 (commencing with Section 25218).

(2) A permanent household hazardous waste collection facility.

(3) Any variance issued to a public agency to conduct a collection program for agricultural wastes.

(m) Except as provided in paragraph (3) of subdivision (e), the department shall not assess any fees for the department's costs in reviewing and overseeing a corrective action taken in conjunction with a hazardous waste facility permit application.

(n) The fees assessed pursuant to subdivision (h) do not apply to any government agency for hazardous wastes which result when the government agency, or its contractor, investigates, removes, or remedies a release of hazardous waste caused by another person.

(o) Any person producing or transporting extremely hazardous waste shall pay a fee of two hundred dollars (\$200) per calendar year, in addition to any other fee imposed by this section. The fee shall be collected annually.

SEC. 4.1. Section 25205.7 of the Health and Safety Code, as amended by Chapter 65 of the Statutes of 1994, is amended to read:

25205.7. (a) The board shall assess a fee for any application for a new hazardous waste facilities permit, a variance, or a permit modification issued by the department pursuant to this chapter or the regulations adopted pursuant to this chapter. The fee shall be nonrefundable, even if the application is withdrawn or the permit, variance, or modification is denied. The department shall provide the board with any information which is necessary to assess fees pursuant to this section. The fee shall be collected in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code, and deposited into the Hazardous Waste Control Account. A person who submits a single application for a facility that falls within more than one fee category shall pay only the higher fee.

(b) (1) The amounts stated in this section shall be base rates for the 1989-90 fiscal year for all facilities, other than those operating pursuant to a standardized permit, as specified in Section 25201.6. For all facilities operating pursuant to a standardized permit, the amounts stated in this section shall be the base rates for the 1993-94 fiscal year. Thereafter the fees shall be adjusted annually to reflect increases or decreases in the cost of living, as measured by the Consumer Price Index for the United States, as reported by the Department of Labor or a successor agency of the United States government.

(2) The board shall pay a refund of the portion of the fee that was paid for the 1993-94 fiscal year, in excess of the amounts specified in this section, to an owner or operator of a facility operating pursuant to a standardized permit pursuant to Section 25201.6 who paid fees in excess of the amounts specified in this section for that fiscal year.

(3) The fee shall be assessed upon application to the department. For a facility operating pursuant to a grant of interim status, the submittal of the application shall be the submittal of the Part B application in accordance with regulations adopted by the department. A person who submits an application for renewal of any existing permit shall pay an amount equal to the fee that would have been assessed had the person requested the same changes in a modification application, but not less than one-half the fee required for a new permit.

(c) A person submitting a hazardous waste facilities permit application for a land disposal facility shall pay eighty-three thousand

dollars (\$83,000) for a small facility, one hundred seventy-seven thousand dollars (\$177,000) for a medium facility, and three hundred four thousand dollars (\$304,000) for a large facility.

(d) A person submitting a hazardous waste facilities permit application for any incinerator shall pay fifty thousand dollars (\$50,000) for a small facility, one hundred six thousand dollars (\$106,000) for a medium facility, and one hundred eighty-two thousand dollars (\$182,000) for a large facility.

(e) (1) Except as provided in paragraphs (2) and (3), a person submitting a hazardous waste facility permit application for a storage facility, a treatment facility, or a storage and treatment facility shall pay seventeen thousand dollars (\$17,000) for a small facility, thirty-one thousand dollars (\$31,000) for a medium facility, and sixty thousand dollars (\$60,000) for a large facility.

(2) A person submitting an application for a standardized permit for a storage facility, a treatment facility, or a storage and treatment facility, as specified in Section 25201.6, shall pay thirty thousand fifty-one dollars (\$30,051) for a Series A standardized permit, eighteen thousand seven hundred sixty-two dollars (\$18,762) for a Series B standardized permit, and five thousand dollars (\$5,000) for a Series C standardized permit. The board shall assess these fees based upon the classifications specified in subdivision (a) of Section 25201.6.

(3) In addition to the fees specified in paragraph (2), the board shall assess a fee equal to the department's costs in reviewing and overseeing any corrective action program described in the application for a standardized permit pursuant to subparagraph (C) of paragraph (2) of subdivision (c) of Section 25201.6, and in reviewing and overseeing any corrective action work undertaken at the facility pursuant to that corrective action program.

(f) A person submitting a hazardous waste facilities permit application for a transportable treatment unit shall pay thirteen thousand dollars (\$13,000) for a small unit, thirty thousand dollars (\$30,000) for a medium unit, and sixty thousand dollars (\$60,000) for a large unit.

(g) (1) (A) A person submitting a request for a variance shall pay three thousand dollars (\$3,000) for a variance from any hazardous waste storage requirements imposed by this chapter, three hundred dollars (\$300) for a variance issued pursuant to Section 25179.8, three hundred dollars (\$300) for a variance to allow the use of a test method or analytical method which is an alternative to the methods prescribed by regulation for use in classifying a waste, eight hundred dollars (\$800) for a variance from the requirements for hazardous waste haulers imposed by this chapter.

(B) A person submitting a request for a variance not listed in subparagraph (A) shall pay eight thousand dollars (\$8,000), unless the applicant is a small business and the department determines in its discretion that payment of this fee would cause financial or other unreasonable hardship to the applicant. If that finding is made, the

department may assess the applicant up to 50 percent of the standard fee. For the purposes of this subparagraph, "small business" means a business which is independently owned and operated, has 25 employees or less, and has a gross annual income which does not exceed two million dollars (\$2,000,000).

(C) If the variance application requests a variance from more than one specific statute or regulation, a separate fee may be assessed for each statute or regulation from which the variance is requested.

(2) If the variance contains no significant changes from a variance previously issued to the same owner or operator, the fee shall be 25 percent of the amount otherwise provided for by this section. A change is a significant change if, had it been made to a permit, it would have been a class 2 or class 3 modification, as specified in subdivision (h).

(3) Any variance granted pursuant to Article 3 (commencing with Section 66260.21) of Chapter 10 of Division 4.5 of Title 22 of the California Code of Regulations is not subject to a fee under this section.

(h) (1) A person who applies for one or more class 1 permit modifications shall pay a fee of five hundred dollars (\$500) for each unit directly impacted by the modification, up to a maximum of one thousand five hundred dollars (\$1,500) for each application.

(2) A person who applies for one or more class 2 permit modifications shall pay a fee equal to 20 percent of the fee for a new permit for that facility for each unit directly impacted by the modifications, up to a maximum of 40 percent for each application, except that each person who applies for one or more class 2 permit modifications for a land disposal facility or an incinerator shall pay a fee equal to 15 percent of the fee for a new permit for that facility for each unit directly impacted by the modifications, up to a maximum of 30 percent for each application.

(3) A person who applies for one or more class 3 permit modifications shall pay a fee equal to 40 percent of the fee for a new permit for that facility for each unit directly impacted by the modifications, up to a maximum of 80 percent for each application, except that a person who applies for one or more class 3 permit modifications for a land disposal facility shall pay a fee equal to 30 percent of the fee for a new permit for that facility for each unit directly impacted by the modifications, up to a maximum of 60 percent for each modification.

(4) No facility which is exempted from fees imposed by this article pursuant to subdivision (e) of Section 25205.3, nor any operator who is subject to paragraph (2) or (3) of subdivision (d) of Section 25205.2, shall be subject to any fee pursuant to this section for a permit modification resulting from a revision of the facility's or operator's closure plan.

(i) (1) Permits for postclosure shall be required for hazardous waste facilities if hazardous wastes remain after closure which will not be subject to the requirements of any other hazardous waste

facilities permit issued by the department at the time of postclosure permit approval.

(2) A person submitting a hazardous waste facilities permit application for a postclosure permit shall pay a fee of eight thousand dollars (\$8,000) for a small facility, eighteen thousand dollars (\$18,000) for a medium facility, and thirty thousand dollars (\$30,000) for a large facility.

(3) For purposes of this subdivision and paragraph (8) of subdivision (c) of Section 25205.4, and notwithstanding subdivision (j), any facility or unit is "small" if 0.5 tons (1,000 pounds) or less of hazardous waste remain after closure, "medium" if more than 0.5 tons (1,000 pounds), but less than 1,000 tons of hazardous waste remain after closure, and "large" if 1,000 or more tons of hazardous waste remain after closure.

(j) For purposes of this section, and notwithstanding Section 25205.1, any facility or unit is "small" if it manages 0.5 tons (1,000 pounds) or less of hazardous waste during any one month of the state's current fiscal year, "medium" if it manages more than 0.5 tons (1,000 pounds), but less than 1,000 tons, of hazardous waste during any one month of the state's current fiscal year, and "large" if it manages 1,000 or more tons of hazardous waste during any one month of the state's current fiscal year.

(k) (1) The fees assessed pursuant to this section do not apply to any permit or variance to operate a research, development, and demonstration facility, if the duration of the permit or variance is not longer than one year, unless the permit or variance is renewed pursuant to the regulations adopted by the department.

(2) For purposes of this section, a "research, development, and demonstration facility" is a facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which regulations prescribing permit standards have not been adopted.

(l) The fees assessed pursuant to this section do not apply to any of the following:

(1) Any variance issued to a public agency to transport wastes for purposes of operating a household hazardous waste collection facility, or to transport waste from a household hazardous waste collection facility, which receives household hazardous waste or hazardous waste from conditionally exempted small quantity generators pursuant to Article 10.8 (commencing with Section 25218).

(2) A permanent household hazardous waste collection facility.

(3) Any variance issued to a public agency to conduct a collection program for agricultural wastes.

(m) Except as provided in paragraph (3) of subdivision (e), the department shall not assess any fees for the department's costs in reviewing and overseeing a corrective action taken in conjunction with a hazardous waste facility permit application.

(n) The fees assessed pursuant to subdivision (h) do not apply to

any government agency for hazardous wastes which result when the government agency, or its contractor, investigates, removes, or remedies a release of hazardous waste caused by another person.

(o) Any person producing or transporting extremely hazardous waste shall pay a fee of two hundred dollars (\$200) per calendar year, in addition to any other fee imposed by this section. The fee shall be collected annually.

SEC. 5. Section 25205.9 of the Health and Safety Code is amended to read:

25205.9. (a) In addition to the fees imposed by Section 25205.5, every generator of hazardous waste, including, but not limited to, generators who are exempt from paying the fee imposed by Section 25205.5 because they have paid facility fees, shall pay to the board, in the amounts specified in subdivision (b), a surcharge for each generator site for each calendar year, or portion thereof. The rates specified in subdivision (b) are for the 1993 calendar year and the board shall adjust the surcharge annually to reflect increases or decreases in the cost of living measured by the Consumer Price Index issued by the United States Department of Labor or by a successor agency of the federal government. For purposes of this chapter, the surcharge imposed by this section shall be known as the waste reporting surcharge.

(b) The amount of the surcharge shall be one of the following:

(1) Each generator who generates an amount equal to, or more than, five tons, but less than 25 tons, of hazardous waste during the prior calendar year shall pay six dollars (\$6).

(2) Each generator who generates an amount equal to, or more than, 25 tons, but less than 50 tons, of hazardous waste during the prior calendar year shall pay fifty-four dollars (\$54).

(3) Each generator who generates an amount equal to, or more than, 50 tons, but less than 250 tons, of hazardous waste during the prior calendar year shall pay one hundred thirty-four dollars (\$134).

(4) Each generator who generates an amount equal to, or more than, 250 tons, but less than 500 tons, of hazardous waste during the prior calendar year shall pay six hundred seventy-one dollars (\$671).

(5) Each generator who generates an amount equal to, or more than, 500 tons, but less than 1,000 tons, of hazardous waste during the prior calendar year shall pay one thousand three hundred forty-one dollars (\$1,341).

(6) Each generator who generates an amount equal to, or more than, 1,000 tons, but less than, 2,000 tons, of hazardous waste during the prior calendar year shall pay two thousand eleven dollars (\$2,011).

(7) Each generator who generates an amount equal to, or more than, 2,000 tons of hazardous waste during the prior calendar year shall pay two thousand six hundred eighty-two dollars (\$2,682).

(c) The fee imposed pursuant to this section shall be paid in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code.

(d) The board shall deposit the surcharges collected pursuant to subdivisions (a) and (c) in the Hazardous Waste Control Account, created in Section 25174. The surcharges deposited in the account may be expended by the department, upon appropriation by the Legislature, for the purposes specified in Article 11.9 (commencing with Section 25244.12).

(e) The fees assessed pursuant to this section do not apply to any local government agency for any hazardous waste which results when a government agency, or its contractor, investigates, removes, or remedies a release of hazardous waste caused by another person.

(f) The exemptions contained in subdivision (e) of Section 25205.5 and in Sections 25174.7 and 25250.24 shall apply to the fee imposed by this section in the same manner as they apply to the fee imposed by Section 25205.5.

SEC. 6. Section 25359.8 of the Health and Safety Code is repealed.

SEC. 7. Section 43152.16 of the Revenue and Taxation Code is repealed.

SEC. 8. Section 43555 of the Revenue and Taxation Code is amended to read:

43555. Notwithstanding Section 43551, all amounts required to be paid to the state pursuant to Section 43051, 43053, 43054, and 43055 by the United States and its agencies and instrumentalities shall be paid to the board in the form of remittances payable to the State Board of Equalization of the State of California. The board shall transmit the payment to the Treasurer to be deposited into the State Treasury to the credit of the Federal Receipts Account, created pursuant to Section 25174.8 of the Health and Safety Code, and which may be expended by the department, upon appropriation by the Legislature, for those administrative purposes allowed by federal law.

SEC. 9. Part 22.1 (commencing with Section 43800) is added to Division 2 of the Revenue and Taxation Code, to read:

PART 22.1. HAZARDOUS SPILL PREVENTION FEE LAW

43800. This part shall be known, and may be cited, as the Hazardous Spill Prevention Fee Law.

43801. The collection and administration of the fee imposed by Article 10 (commencing with Section 7710) of Chapter 1 of Division 4 of the Public Utilities Code shall be governed by the definitions specified in Section 7710 of the Public Utilities Code, unless expressly superseded by the definitions contained in this part or Part 30 (commencing with Section 55001) of Division 2 of this code.

43802. "Department" means the Department of Toxic Substances Control.

43803. "Director" means the Director of Toxic Substances Control.

43804. "Hazardous material" means any of the following:

- (1) A hazardous material as defined in Section 172 of Title 49 of

the Code of Federal Regulations.

(2) A hazardous material as defined in Section 25501 of the Health and Safety Code.

(3) A hazardous material as defined in Section 2402.7 of the Vehicle Code.

(4) A hazardous material as defined in Section 1160.3 of Title 13 of the California Code of Regulations.

43805. "Hazardous waste" has the same meaning as defined in Section 25117 of the Health and Safety Code.

43806. (a) "Surface transporter" means any surface transporter required to pay the fee established pursuant to Section 7714.5 of the Public Utilities Code.

(b) Notwithstanding subdivision (a), the department may, by regulation, revise the definition of the term "surface transporter" for purposes of this part.

43807. The fee imposed on surface transporters of hazardous materials pursuant to Section 7714.5 of the Public Utilities Code shall be administered and collected by the board in accordance with this part and Part 30 (commencing with Section 55001) of Division 2 of this code, and shall be due and payable as follows:

(a) The fee to be paid by motor carriers is due and payable on the last day of December for each state fiscal year.

(b) The fee to be paid by railroads is due and payable within 30 days from the date of assessment and the fee payer shall deliver a remittance of the amount of the assessed fee to the office of the board within that 30-day period.

43808. All fees, interest, and penalties imposed and all amounts of fees required to be paid to the state pursuant to Section 43807 shall be paid to the board in the form of remittance payable to the State Board of Equalization of the State of California. The board shall transmit the payments to the Treasurer to be deposited in the State Treasury to the credit of the Hazardous Spill Prevention Account in the Railroad Accident Prevention and Response Fund.

43810. Notwithstanding Section 55381, for purposes of the fee administered under Section 43807, "department" means the Department of Toxic Substances Control.

SEC. 10. Section 45651.5 of the Revenue and Taxation Code is amended to read:

45651.5. Except as provided in Section 48008 of the Public Resources Code, when an amount represented by a person to a customer as constituting reimbursement for fees due under this part is computed upon an amount that is not subject to that fee or is in excess of that fee amount due and is actually paid by the customer to the person, the amount so paid shall be returned by the person to the customer upon notification by the State Board of Equalization or by the customer that the excess has been ascertained. If the person fails or refuses to do so, the amount so paid, if knowingly or mistakenly computed by the person upon an amount that is not subject to the fee or is in excess of the fee due, shall be remitted by

that person to the State Board of Equalization.

SEC. 11. Section 50153 of the Revenue and Taxation Code is amended to read:

50153. The board may examine the books and records of any feepayer, or the books and records of any person who is not a feepayer but operates an underground storage tank in a manner that may result in a fee liability being assessed against a feepayer, as it may determine to be necessary in carrying out this part.

SEC. 12. Section 50159 of the Revenue and Taxation Code is amended to read:

50159. (a) The board shall provide any information obtained under this part to the State Water Resources Control Board, including any information regarding underground storage tanks containing petroleum.

(b) The State Water Resources Control Board and the board may utilize any information obtained pursuant to this part to develop data on underground storage tanks containing petroleum within the state. Notwithstanding Section 50161, the State Water Resources Control Board may make this underground storage tank data available to the public.

(c) The board may disclose otherwise confidential information obtained from the lessee or operator of an underground storage tank only to the feepayer and only to the extent that this information is necessary for assessment, administration, and verification of the underground storage tank fee.

SEC. 13. Section 50161 of the Revenue and Taxation Code is amended to read:

50161. Except as provided in subdivisions (b) and (c) of Section 50159, this chapter does not limit or increase public access to information on any aspect of petroleum contained in underground storage tanks made available pursuant to any other state or local law, regulation, or ordinance.

SEC. 14. (a) Section 2.1 of this bill incorporates amendments to Section 25205.2 of the Health and Safety Code proposed by both this bill and SB 1815. It shall only become operative if (1) both bills are enacted and become effective January 1, 1995, (2) each bill amends Section 25205.2 of the Health and Safety Code, and (3) SB 1967 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1815, in which case Sections 2, 2.2, and 2.3 of this bill shall not become operative.

(b) Section 2.2 of this bill incorporates amendments to Section 25205.2 of the Health and Safety Code proposed by both this bill and SB 1967. It shall only become operative if (1) both bills are enacted and become effective January 1, 1995, (2) each bill amends Section 25205.2 of the Health and Safety Code, (3) SB 1815 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1967, in which case Sections 2, 2.1, and 2.3 of this bill shall not become operative.

(c) Section 2.3 of this bill incorporates amendments to Section

25205.2 of the Health and Safety Code proposed by this bill, SB 1815, and SB 1967. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1995, (2) all three bills amend Section 25205.2 of the Health and Safety Code, and (3) this bill is enacted after SB 1815 and SB 1967, in which case Sections 2, 2.1, and 2.2 of this bill shall not become operative.

SEC. 15. Section 3.1 of this bill incorporates amendments to Section 25205.4 of the Health and Safety Code proposed by both this bill and SB 1815. It shall only become operative if (1) both bills are enacted and become effective January 1, 1995, (2) each bill amends Section 25205.4 of the Health and Safety Code, and (3) this bill is enacted after SB 1815, in which case Section 3 of this bill shall not become operative.

SEC. 16. Section 4.1 of this bill incorporates amendments to Section 25205.7 of the Health and Safety Code proposed by both this bill and SB 1815. It shall only become operative if (1) both bills are enacted and become effective January 1, 1995, (2) each bill amends Section 25205.7 of the Health and Safety Code, and (3) this bill is enacted after SB 1815, in which case Section 4 of this bill shall not become operative.

SEC. 17. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1224

An act to add and repeal Chapter 4.3 (commencing with Section 16580) of Part 2 of Division 4 of Title 2 of the Government Code, relating to state and local government.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Chapter 4.3 (commencing with Section 16580) is added to Part 2 of Division 4 of Title 2 of the Government Code, to read:

CHAPTER 4.3. THE ACCOUNTS RECEIVABLE MANAGEMENT ACT

16580. This chapter shall be known and may be cited as the Accounts Receivable Management Act.

16581. "Participant" for the purposes of this chapter means all state agencies, departments, and offices.

16582. (a) Each participant shall submit a written report to the Joint Legislative Budget Committee, the Franchise Tax Board, the Legislative Analyst's office, the Chairperson of the Assembly Committee on Ways and Means, and the Chairperson of the Senate Committee on Budget and Fiscal Review no later than December 1 of each year.

(b) The report required by subdivision (a) shall include, but not be limited to, the following information:

(1) A description of the participant's present accounts receivable collection system.

(2) A summary inventory of all accounts receivable by number of accounts and age of debt, including, but not limited to, 30-day, 60-day, 120-day accounts, and accounts one year or older.

(3) A goal for percentage of accounts receivable debt likely to be collected during the fiscal year.

(4) A comparison, in subsequent reporting years, of the actual percentage of accounts receivable debts recovered compared to the goal established pursuant to paragraph (3).

(5) Recommendations for improving the participant's collection of accounts receivable.

16583. (a) Each participant shall allocate collection resources based on giving highest priority to those accounts with the highest expected return.

(b) Each participant shall consult with the Franchise Tax Board or any other state agency that has successfully established an effective accounts receivable collection system.

16584. (a) A participant may elect to assign or sell part or all of its accounts receivable to a private debt collector or private persons or entities, provided that the participant does all of the following:

(1) Determines the consignment or sale is likely to generate more net revenue or net value than equivalent state efforts.

(2) Determines the consignment or sale will not compromise future state revenue collections.

(3) Notifies the debtor in writing at the address of record that the alleged accounts receivable debt will be turned over for private collection unless the debt is paid, or appealed within a time period, as determined by the participant.

(b) No participant shall assign or sell any account receivable pursuant to subdivision (a) if the account receivable debt has been contested.

16585. (a) A city, county, or city and county may sell or transfer part or all of its accounts receivable to a private debt collector or private persons or entities, provided the city, county, or city and

county notifies the debtor in writing at the address of record that the alleged accounts receivable debt will be turned over for private collection unless the debt is paid, or appealed within a time period, as determined by the city, county, or city and county providing the notice.

(b) No city, county, or city and county shall assign or sell any account receivable pursuant to subdivision (a) if the account receivable debt been contested.

16586. Claims for reimbursement under Sections 11487 and 11487.5 of the Welfare and Institutions Code are not subject to this chapter.

16587. This chapter shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

CHAPTER 1225

An act to amend Sections 25200.14 and 25201 of, and to add Section 25110.11 and 25201.12 to, the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. It is the intent of the Legislature that the enactment by this act of Section 25110.11 of the Health and Safety Code which defines "contained gaseous material" is consistent with, and shall not be construed as revising the terms of, and the basis for, any determination of when a container that has held compressed gas is empty pursuant to paragraph (1) of Section 66261.7 of Title 22 of the California Code of Regulations and paragraph (2) of subdivision (b) of Section 261.7 of Title 40 of the Code of Federal Regulations, as in effect on January 1, 1995.

SEC. 2. Section 25110.11 is added to the Health and Safety Code, to read:

25110.11. "Contained gaseous material," for purposes of subdivision (a) of Section 25124 or any other provision of this chapter, means any gas that is contained in an enclosed cylinder or other enclosed container. "Contained gaseous material" does not include any exhaust gas, flue gas, or other vapor stream, regardless of the source, that is abated or controlled by an air pollution control device that is permitted by an air pollution control district or air quality management district, or which is specially exempted from those permit requirements.

SEC. 3. Section 25200.14 of the Health and Safety Code is amended to read:

25200.14. (a) Except as provided in subdivision (h), in implementing the requirements of Section 25200.10 for facilities operating pursuant to a permit-by-rule or generators operating pursuant to a grant of conditional authorization under Section 25200.3, the department shall require the owner or operator of the facility or generator operating pursuant to a permit-by-rule or grant of conditional authorization under Section 25200.3, to complete and file a phase I environmental assessment with the department within one year from the date of the adoption of the checklist specified in subdivision (e). After submitting a phase I environmental assessment, the owner or operator of the facility or generator subject to this section shall subsequently submit to the department, during the next regular reporting period, if any, updated information obtained by the owner, operator, or generator concerning releases subsequent to the submission of the phase I environmental assessment.

(b) For purposes of this section, a phase I environmental assessment means a preliminary site assessment based on reasonably available knowledge of the facility, including, but not limited to, historical use of the property, prior releases, visual and other surveys, records, consultant reports, and regulatory agency correspondence. An assessment which would otherwise meet the requirements of this section which is prepared for another purpose and was completed no more than three years prior to the date by which the generator is required to submit a phase I environmental assessment may be used to comply with the requirements of this section, if the assessment is supplemented by any relevant updated information reasonably available to the owner, operator, or generator.

(c) The department shall not require sampling or testing as part of the phase I environmental assessment. A phase I environmental assessment shall be certified by the owner, operator, or their designee, certified professional engineer, geologist, or registered environmental assessor. The phase I environmental assessment shall indicate whether the preparer believes that further investigation, including sampling and analysis, is necessary to determine whether a release has occurred, or to determine the extent of a release from a solid waste management unit or hazardous waste management unit.

(d) If the results of the phase I environmental assessment conducted pursuant to subdivision (a) indicate that further investigation is needed in order to determine the existence or extent of a release from a solid waste management unit or hazardous waste management unit, the facility shall submit a schedule, within 90 days of submission of the phase I environmental assessment to the department, for that further investigation to the department. If the department determines, based upon a review of the phase I environmental assessment or other site-specific information in its possession, that further investigation is needed to determine the existence or extent of a release from a solid waste management unit

or hazardous waste management unit, in addition to any further action proposed by the owner or operator of the facility, or determines that a different schedule is necessary to prevent harm to human health and safety or to the environment, the department shall inform the owner or operator of the facility of this determination and shall set a reasonable time period in which to accomplish that further investigation. If a facility is conducting further investigation in order to determine the nature or extent of a release pursuant to, and in compliance with the provisions of, an order issued by a California regional water quality control board or other state or federal environmental enforcement agency, the department shall deem that investigation adequate for the purposes of determining the nature and extent of the release or releases which that order addressed, as the investigation pertains to the jurisdiction of the ordering agency.

(e) The department shall develop a checklist to be used by facilities in conducting a phase I environmental assessment. The development and publication of the checklist is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The department shall hold at least one public workshop concerning the development of the checklist.

(f) A facility, or to the extent required by the regulations adopted by the department, a transportable treatment unit, operating pursuant to a permit-by-rule shall additionally comply with the remaining corrective action requirements, as specified in Section 67450.7 of Title 22 of the California Code of Regulations, as in effect on January 1, 1992.

(g) A generator operating pursuant to a grant of conditional authorization pursuant to Section 25200.3 shall additionally comply with the requirement of paragraph (3) of subdivision (c) of Section 25200.3.

(h) The department shall not require a phase I environmental assessment pursuant to this section for those portions of a facility subject to a corrective action order issued pursuant to Section 25187, a cleanup and abatement order issued pursuant to Section 13304 of the Water Code, or a corrective action required under subsection (u) of Section 6294 of Title 42 of the United States Code or subsection (h) of Section 6928 of Title 42 of the United States Code.

SEC. 4. Section 25201 of the Health and Safety Code is amended to read:

25201. (a) Except as provided in subdivisions (c) and (d) and in Sections 25201.5 and 25201.12, no owner or operator of a storage facility, treatment facility, transfer facility, resource recovery facility, or disposal site shall accept, treat, store, or dispose of a hazardous waste at the facility, area, or site, unless the owner or operator holds a hazardous waste facilities permit or other grant of authorization from the department to use and operate the facility, area, or site.

(b) Except as necessary to comply with Section 25159.18, any

person planning to construct a new hazardous waste facility or a new hazardous waste management unit, which would manage RCRA hazardous waste, shall obtain a hazardous waste facilities permit or a permit amendment from the department prior to commencing construction.

(c) A hazardous waste facilities permit is not required for a recycle-only household hazardous waste collection facility operated in accordance with subdivision (b) of Section 25218.8.

(d) A hazardous waste facilities permit is not required for a facility that meets the requirements of Section 13263.2 of the Water Code.

SEC. 5. Section 25201.12 is added to the Health and Safety Code, to read:

25201.12. Notwithstanding any other provision of law, a hazardous waste facilities permit or other grant of authorization from the department, and payment of any fee imposed pursuant to Article 9.1 (commencing with Section 25205.1), are not required for a facility, with regard to the facility's operation of a physical process to remove air pollutants from exhaust gases prior to their emission to the atmosphere, as permitted by an air pollution control district or an air quality management district, unless a permit is required for that operation pursuant to the federal act. However, the facility is subject to all requirements imposed pursuant to this chapter on hazardous waste generators with regard to any liquid, semisolid, or solid hazardous waste that is generated as part of, and upon its removal from, the air pollution control process.

CHAPTER 1226

An act to amend Section 16809.3 of, to amend, repeal, and add Section 16809 of, and to add and repeal Section 16809.4 of, the Welfare and Institutions Code, relating to local health funding.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 16809 of the Welfare and Institutions Code, as amended by Section 138 of Chapter 722 of the Statutes of 1992, is amended to read:

16809. (a) (1) The board of supervisors of a county which contracted with the department pursuant to Section 16709 during the 1990-91 fiscal year and any county with a population under 300,000, as determined in accordance with the 1990 decennial census, by adopting a resolution to that effect, may elect to participate in the County Medical Services Program. The County Medical Services Program shall have responsibilities for specified health services to county residents certified eligible for those services by the county.

(2) If the County Medical Services Program Governing Board contracts with the department to administer the County Medical Services Program, that contract shall include, but need not be limited to, all of the following:

(A) Provisions for the payment to participating counties for making eligibility determinations based on the formula used by the County Medical Services Program for the 1993–94 fiscal year.

(B) Provisions for payment of expenses of the County Medical Services Program Governing Board.

(C) Provisions relating to the flow of funds from counties' vehicle license fees, sales taxes, and participation fees and the procedures to be followed if a county does not pay those funds to the program.

(D) Those provisions, as applicable, contained in the 1993–94 fiscal year contract with counties under the County Medical Services Program.

(3) The contract between the department and the County Medical Services Program Governing Board shall require that the state maintain at least the level of administrative support provided to the County Medical Services Program for the 1993–94 fiscal year. The department may decline to implement decisions made by the governing board that would require a greater level of administrative support than that for the 1993–94 fiscal year. The department may implement decisions upon compensation by the governing board to cover that increased level of support.

(4) The department shall administer the County Medical Services Program pursuant to the provisions of the 1993–94 fiscal year contract with the counties and regulations relating to the administration of the program until the County Medical Services Program Governing Board executes a contract for the administration of the County Medical Services Program and adopts regulations for that purpose.

(5) The department shall not be liable for any costs related to decisions of the County Medical Services Program Governing Board that are in excess of those set forth in the contract between the department and the County Medical Services Program Governing Board.

(b) Each county intending to participate in the County Medical Services Program pursuant to this section shall submit to the Governing Board of the County Medical Services Program a notice of intent to contract adopted by the board of supervisors no later than April 1 of the fiscal year preceding the fiscal year in which the county will participate in the County Medical Services Program.

(c) A county participating in the County Medical Services Program pursuant to this section shall not be relieved of its indigent health care obligation under Section 17000.

(d) (1) The County Medical Services Program Account is established in the County Health Services Fund. The following amounts may be deposited in the account:

(A) Any interest earned upon money deposited in the account.

(B) Moneys provided by participating counties or appropriated

by the Legislature to the account.

(C) Moneys loaned pursuant to subdivision (q).

(2) The methods and procedures used to deposit funds into the account shall be consistent with the methods used by the program during the 1993-94 fiscal year.

(e) Moneys in the program account shall be used by the department, pursuant to its contract with the County Medical Services Program Governing Board, to pay for health care services provided to the county residents meeting the eligibility criteria established pursuant to subdivision (j) and to pay for the expense of the governing board as set forth in the contract between the board and the department.

(f) (1) Moneys in this account shall be administered on an accrual basis and notwithstanding any other provision of law, except as provided in this section, shall not be transferred to any other fund or account in the State Treasury except for purposes of investment as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code.

(2) (A) All interest or other increment resulting from the investment shall be deposited in the program account, at the end of the 1982-83 fiscal year and every six months thereafter, notwithstanding Section 16305.7 of the Government Code.

(B) All interest deposited pursuant to subparagraph (A) shall be available to reimburse program-covered services, County Medical Services Program Governing Board expenses, or for expenditures to augment the program's rates, benefits, or eligibility criteria pursuant to subdivision (j).

(g) A separate County Medical Services Program Reserve Account is established in the County Health Services Fund. Six months after the end of each fiscal year, any projected savings in the program account shall be transferred to the reserve account, with final settlement occurring no more than 12 months later. Moneys in this account shall be utilized when expenditures for health services made pursuant to subdivision (j) for a fiscal year exceed the amount of funds available in the program account for that fiscal year. When funds in the reserve account are estimated to exceed 10 percent of the budget for health services for all counties electing to participating in the County Medical Services Program under this section for the fiscal year, the additional funds shall be available for expenditure to augment the rates, benefits, or eligibility criteria pursuant to subdivision (j) or for reducing the participation fees as determined by the County Medical Services Program Governing Board pursuant to subdivision (i). Nothing in this section shall preclude the CMSP Governing Board from establishing other reserves.

(h) Moneys in the program account and the reserve account, except for moneys provided by the state in excess of the amount required to fund the state risk specified in subdivision (j), and any funds loaned pursuant to subdivision (p), shall not be transferred to

any other fund or account in the State Treasury except for purposes of investment as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code. All interest or other increment resulting from investment shall be deposited in the program account, notwithstanding Section 16705.7 of the Government Code.

(i) (1) Counties shall pay participation fees as established by the County Medical Services Program Governing Board and their jurisdictional risk amount in a method that is consistent with that established in the 1993-94 fiscal year.

(2) A county may request, due to financial hardship, the payments under paragraph (1) be delayed. The request shall be subject to approval by the CMSP Governing Board.

(3) Payments made pursuant to this subdivision shall be deposited in the program account.

(4) Payments may be made as part of the deposits authorized by the county pursuant to Sections 17603.05 and 17604.05.

(j) (1) (A) For the 1991-92 fiscal year and all preceding fiscal years, the state shall be at risk for any costs in excess of the amounts deposited in the reserve fund.

(B) Beginning in the 1992-93 fiscal year and for each fiscal year thereafter, counties and the state shall share the risk for cost increases of the County Medical Services Program not funded through other sources. The state shall be at risk for any cost that exceed the cumulative annual growth in dedicated sales tax and vehicle license fee revenue, up to the amount of twenty million two hundred thirty-seven thousand four hundred sixty dollars (\$20,237,460) per fiscal year. Counties shall be at risk up to the cumulative annual growth in the Local Revenue Fund created by Section 17600, according to the table specified in paragraph (2), to the County Medical Services Program, plus the additional cost increases in excess of twenty million two hundred thirty-seven thousand four hundred sixty dollars (\$20,237,460) per fiscal year. In the 1994-95 fiscal year, the amount of the state risk shall be twenty million two hundred thirty-seven thousand four hundred sixty dollars (\$20,237,460) per fiscal year, in addition to the cost of administrative support pursuant to paragraph (3) of subdivision (a).

(C) The CMSP Governing Board, after consultation with the department, shall establish uniform eligibility criteria and benefits for the County Medical Services Program.

(2) For the 1991-92 fiscal year, jurisdictional risk limitations shall be as follows:

Jurisdiction	Amount
Alpine	\$ 13,150
Amador	620,264
Butte	5,950,593
Calaveras.....	913,959
Colusa	799,988
Del Norte	781,358
El Dorado	3,535,288
Glenn.....	787,933
Humboldt	6,883,182
Imperial.....	6,394,422
Inyo	1,100,257
Kings	2,832,833
Lassen	687,113
Madera	2,882,147
Marin	7,725,909
Mariposa	435,062
Modoc	469,034
Mono	369,309
Napa.....	3,062,967
Nevada.....	1,860,793
Plumas	905,192
San Benito	1,086,011
Shasta.....	5,361,013
Sierra	135,888
Siskiyou	1,372,034
Solano	6,871,127
Sonoma	13,183,359
Sutter	2,996,118
Tehama	1,912,299
Trinity	611,497
Tuolumne	1,455,320
Yuba	2,395,580

(3) Beginning in the 1991–92 fiscal year and in subsequent fiscal years, the jurisdictional risk limitation for the counties that did not contract with the department pursuant to Section 16709 during the 1990–91 fiscal year shall be the amount specified in paragraph (A) plus the amount determined pursuant to paragraph (B), minus the amount specified by the County Medical Services Program Governing Board as participation fees.

(A)

Jurisdiction	Amount
Lake	1,022,963
Mendocino	1,654,999
Merced	2,033,729
Placer.....	1,338,330
San Luis Obispo	2,000,491
Santa Cruz	3,037,783
Yolo	1,475,620

(B) The amount of funds necessary to fully fund the anticipated costs for the county shall be determined by the CMSP Governing Board before a county is permitted to participate in the County Medical Services Program.

(4) For the 1994-95 and 1995-96 fiscal years, the specific amounts and method of apportioning risk to each participating county may be adjusted by the CMSP Governing Board.

(k) The Legislature hereby determines that an expedited contract process for contracts under this section is necessary. Contracts under this section shall be exempt from Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code. Contracts of the department pursuant to this section shall have no force or effect unless they are approved by the Department of Finance.

(l) The state shall not incur any liability except as specified in this section.

(m) Third-party recoveries for services provided under this section pursuant to Article 3.5 (commencing with Section 14124.70) of Chapter 7 of Part 3 may be pursued.

(n) Under the program provided for in this section, the department may reimburse hospitals for inpatient services at the rates negotiated for the Medi-Cal program by the California Medical Assistance Commission, pursuant to Article 2.6 (commencing with Section 14081) of Chapter 7 of Part 3, if the California Medical Assistance Commission determines that reimbursement to the hospital at the contracted rate will not have a detrimental fiscal impact on either the Medi-Cal program or the program provided for in this section. In negotiating and renegotiating contracts with hospitals, the commission may seek terms which allow reimbursement for patients receiving services under this section at contracted Medi-Cal rates.

(o) Any hospital which has a contract with the state for inpatient services under the Medi-Cal program and which has been approved by the commission to be reimbursed for patients receiving services under this section shall not deny services to these patients.

(p) Participating counties may conduct an independent program review to identify ways through which program savings may be generated. The counties and the department may collectively

pursue identified options for the realization of program savings.

(q) The Department of Finance may authorize a loan of up to thirty million dollars (\$30,000,000) for deposit into the program account to ensure that there are sufficient funds available to reimburse providers and counties pursuant to this section.

(r) Regulations adopted by the department pursuant to this section shall remain operative and shall be used to operate the County Medical Services Program until a contract with the County Medical Services Program Governing Board is executed and regulations, as appropriate, are adopted by the County Medical Services Program Governing Board. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, those regulations adopted under the County Medical Services Program shall become inoperative until July 1, 1996, except those regulations that the department, in consultation with the County Medical Services Program Governing Board, determines are needed to continue to administer the County Medical Services Program. The department shall notify the Office of Administrative Law as to those regulations the department will continue to use in the implementation of the County Medical Services Program.

(s) Moneys appropriated from the General Fund to meet the state risk as set forth in subparagraph (B) of paragraph (1) of subdivision (j) shall not be available for those counties electing to disenroll from the County Medical Services Program.

(t) This section shall become inoperative on July 1, 1996, and as of January 1, 1997, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1997, deletes or extends the date on which it becomes inoperative and is repealed.

SEC. 2. Section 16809 is added to the Welfare and Institutions Code, to read:

16809. (a) The board of supervisors of a county which contracted with the department pursuant to Section 16709 during the 1990-91 fiscal year and any county with a population under 300,000, as determined in accordance with the 1990 decennial census, may enter into a contract with the department and the department may enter into a contract with that county under which the department agrees to administer the program responsibilities for specified health services to county residents certified eligible for those services by the county.

(b) Each county intending to contract with the department pursuant to this section shall submit to the department a notice of intent to contract adopted by the board of supervisors no later than April 1 of the fiscal year preceding the fiscal year for which the agreement will be in effect in accordance with procedures established by the department.

(c) A county contracting with the department pursuant to this section shall not be relieved of its indigent health care obligation under Section 17000.

(d) The department shall establish the County Medical Services Program Account in the County Health Services Fund. The following amounts may be deposited in the account:

(1) Any interest earned upon money deposited in the account.

(2) Moneys provided by participating counties or appropriated by the Legislature to the account.

(3) Moneys loaned pursuant to subdivision (p).

(e) Moneys in the program account shall be used by the department to pay for health care services provided to the county residents meeting the eligibility criteria established pursuant to subdivision (j).

(f) (1) Moneys in this account shall be administered on an accrual basis and notwithstanding any other provision of law, except as provided in this section, shall not be transferred to any other fund or account in the State Treasury except for purposes of investment as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code.

(2) (A) All interest or other increment resulting from the investment shall be deposited in the program account, at the end of the 1982-83 fiscal year and every six months thereafter, notwithstanding Section 16305.7 of the Government Code.

(B) All interest deposited pursuant to subparagraph (A) shall be available to reimburse program-covered services, or for expenditures to augment the program's rates, benefits, or eligibility criteria pursuant to subdivision (j).

(g) The department shall establish a separate County Medical Services Program Reserve Account in the County Health Services Fund. Six months after the end of each fiscal year, any projected savings in the program account shall be transferred to the reserve account, with final settlement occurring no more than 12 months later. Moneys in this account shall be utilized when expenditures for health services made pursuant to subdivision (j) for a fiscal year exceed the amount of funds available in the program account for that fiscal year. When funds in the reserve account are estimated to exceed 10 percent of the budget for health services for all counties electing to contract with the department under this section for the fiscal year, the additional funds shall be available for expenditure to augment the rates, benefits, or eligibility criteria pursuant to subdivision (j) or for reducing the participation fees required by Section 16809.3.

(h) Moneys in the program account and the reserve account, except for moneys provided by the state in excess of the amount required to fund the state risk specified in subdivision (j), and any funds loaned pursuant to subdivision (p), shall not be transferred to any other fund or account in the State Treasury except for purposes of investment as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code. All interest or other increment resulting from investment shall be deposited in the program account,

notwithstanding Section 16705.7 of the Government Code.

(i) (1) Counties shall pay by the 15th of each month the agreed upon contract amount. In the event a county does not make the agreed upon monthly payment, the department may terminate the county's participation in the program.

(2) A county may request, due to financial hardship, the payments under paragraph (1) be delayed. The request shall be subject to approval by the Small County Advisory Committee.

(3) Payments made pursuant to this subdivision shall be deposited in the program account.

(4) Payments may be made as part of the deposits authorized by the county pursuant to Sections 17603.05 and 17604.05.

(j) (1) (A) For the 1991-92 fiscal year and all preceding fiscal years, the state shall be at risk for any costs in excess of the amounts deposited in the reserve fund.

(B) Beginning in the 1992-93 fiscal year and for each fiscal year thereafter, counties and the state shall share the risk for cost increases of the County Medical Services Program not funded through other sources. The state shall be at risk for any cost that exceed the cumulative annual growth in dedicated sales tax and vehicle license fee revenue, up to the amount of twenty million two hundred thirty-seven thousand four hundred sixty dollars (\$20,237,460) per fiscal year. Counties shall be at risk up to the cumulative annual growth in the Local Revenue Fund created by Section 17600 according to the table specified in paragraph (2) to the County Medical Services Program, plus additional cost increases in excess of twenty million two hundred thirty-seven thousand four hundred sixty dollars (\$20,237,460) per fiscal year.

(C) As a condition of the state assuming this risk, the department may require uniform eligibility criteria and benefits to be provided which shall be mutually established by participating counties in conjunction with the department. The department, in consultation with the counties, may revise these eligibility criteria and benefits or alter rates of payment in order to assure that expenditures do not exceed the funds available in the program account.

(2) For the 1991-92 fiscal year, jurisdictional risk limitations shall be as follows:

Jurisdiction	Amount
Alpine	\$ 13,150
Amador	620,264
Butte	5,950,593
Calaveras.....	913,959
Colusa	799,988
Del Norte	781,358
El Dorado	3,535,288
Glenn	787,933
Humboldt	6,883,182
Imperial.....	6,394,422

Inyo	1,100,257
Kings	2,832,833
Lassen	687,113
Madera	2,882,147
Marin	7,725,909
Mariposa	435,062
Modoc	469,034
Mono	369,309
Napa.....	3,062,967
Nevada.....	1,860,793
Plumas.....	905,192
San Benito	1,086,011
Shasta	5,361,013
Sierra	135,888
Siskiyou	1,372,034
Solano	6,871,127
Sonoma	13,183,359
Sutter	2,996,118
Tehama	1,912,299
Trinity	611,497
Tuolumne	1,455,320
Yuba	2,395,580

(3) Beginning in the 1991-92 fiscal year and in subsequent fiscal years, the jurisdictional risk limitation for the counties that did not contract with the department pursuant to Section 16709 during the 1990-91 fiscal year shall be the amount specified in paragraph (A) plus the amount determined pursuant to paragraph (B), minus the amount specified in Section 16809.3.

(A)

Jurisdiction	Amount
Lake	1,022,963
Mendocino	1,654,999
Merced	2,033,729
Placer.....	1,338,330
San Luis Obispo	2,000,491
Santa Cruz	3,037,783
Yolo	1,475,620

(B) The amount of funds necessary to fully fund the anticipated costs for the county shall be determined by the department. This amount shall be subject to the approval of both the Department of Finance and the Small County Advisory Committee before a county is permitted to contract back with the department.

(4) For the 1992-93 fiscal year and fiscal years thereafter, the amounts of the jurisdictional risk limitations shall be adjusted according to the provisions of paragraph (2).

(k) The Legislature hereby determines that an expedited contract process for contracts under this section is necessary.

Contracts under this section shall be exempt from the provisions of Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code. Contracts shall have no force and effect unless approved by the Department of Finance.

(l) The state shall not incur any liability except as specified in this section.

(m) The department may pursue third-party recoveries for services provided under this section pursuant to Article 3.5 (commencing with Section 14124.70) of Chapter 7 of Part 3.

(n) Under the program provided for in this section, the department shall reimburse hospitals for inpatient services at the rates negotiated for the Medi-Cal program by the California Medical Assistance Commission, pursuant to Article 2.6 (commencing with Section 14081) of Chapter 7 of Part 3, if the California Medical Assistance Commission determines that reimbursement to the hospital at the contracted rate will not have a detrimental fiscal impact on either the Medi-Cal program or the program provided for in this section. In negotiating and renegotiating contracts with hospitals, the commission may seek terms which allow reimbursement for patients receiving services under this section at contracted Medi-Cal rates.

(o) Any hospital which has a contract with the state for inpatient services under the Medi-Cal program and which has been approved by the commission to be reimbursed for patients receiving services under this section shall not deny services to these patients.

(p) Participating counties may conduct an independent program review to identify ways through which program savings may be generated. The counties and the department shall collectively pursue identified options for the realization of program savings.

(q) The Department of Finance may authorize a loan of up to thirty million dollars (\$30,000,000) for deposit into the program account to ensure that there are sufficient funds available to reimburse providers and counties pursuant to this section.

(r) This section shall become operative July 1, 1996.

SEC. 3. Section 16809.3 of the Welfare and Institutions Code is amended to read:

16809.3. (a) Beginning in the 1991-92 fiscal year, and in each fiscal year thereafter, a county shall pay the amount listed below to the department as a condition of participation in the County Medical Services Program administered pursuant to Section 16809:

Jurisdiction	Amount
Alpine	\$ 661
Amador	17,107
Butte	459,610
Calaveras	30,401
Colusa	28,997
Del Norte	39,424
El Dorado.....	233,492

Glenn.....	33,989
Humboldt.....	430,851
Imperial.....	249,786
Inyo.....	18,950
Kings.....	195,053
Lassen.....	17,206
Madera.....	151,434
Marin.....	576,233
Mariposa.....	5,649
Modoc.....	9,688
Mono.....	25,469
Napa.....	142,767
Nevada.....	42,051
Plumas.....	23,796
San Benito.....	37,018
Shasta.....	294,369
Sierra.....	6,183
Siskiyou.....	48,956
Solano.....	809,548
Sonoma.....	718,947
Sutter.....	188,781
Tehama.....	79,950
Trinity.....	8,319
Tuolumne.....	34,947
Yuba.....	101,907

(b) Beginning in the 1991-92 fiscal year and in each fiscal year thereafter, counties which did not contract with the department pursuant to Section 16709 during the 1990-91 fiscal year shall pay the following amount to the department as a condition of participation in the County Medical Services Program, administered pursuant to Section 16809:

Jurisdiction	Amount
Lake.....	\$150,278
Mendocino.....	247,578
Merced.....	488,954
Placer.....	247,193
San Luis Obispo.....	358,571
Santa Cruz.....	678,868
Yolo.....	532,510

(c) (1) County amounts specified in subdivisions (a) and (b) shall be paid to the department in 12 equal monthly payments according to the procedures specified by the department. Subject to paragraphs (2) and (3), a county that does not pay the amounts specified in subdivision (a) or (b) may be terminated from participation in the program.

(2) A county may request, due to financial hardship, that payments specified under subdivisions (a) and (b) be delayed. The

request shall be subject to the approval of the Small County Advisory Committee.

(3) For the 1991-92 fiscal year and subsequent fiscal years, counties that enter the County Medical Services Program shall pay the amount specified in subdivision (a) or (b), as applicable, on a prorated basis, for the number of contracted months of participation in the County Medical Services Program.

(d) The payments required by subdivision (c) shall not be paid for with funds from the health account of the local health and welfare trust fund established pursuant to Section 17600.10.

(e) The department shall reduce the amounts specified in subdivision (b) if the revenue authority provided for in either Section 29550 of the Government Code, or Section 97 of the Revenue and Taxation Code, or both, which is effective on or after September 1, 1991, is reduced by enactment of legislation or by judicial order, unless those county general purpose revenues are replaced in the 1991-92 fiscal year and subsequent fiscal years by county general purpose revenue authority which, when added to the remaining revenue authority, will be equal to the revenue authority made available to the counties during the 1991-92 fiscal year.

(f) This section shall become inoperative January 1, 1995, and shall become operative July 1, 1996.

SEC. 4. Section 16809.4 is added to the Welfare and Institutions Code, to read:

16809.4. (a) (1) Counties voluntarily participating in the County Medical Services Program pursuant to Section 16809 may establish the County Medical Services Program Governing Board pursuant to procedures contained in this section. The board shall govern the CMSP program.

(b) The membership of the board shall be comprised of all of the following:

(1) Three members who shall each be a member of a county board of supervisors.

(2) Three members who shall be county administrative officers.

(3) Two members who shall be county welfare directors.

(4) Two members who shall be county health officials.

(5) One member who shall be the Secretary of the Health and Welfare Agency, or his or her designee, and who shall serve as an ex officio, nonvoting member.

(c) The board may establish its own bylaws and operating procedures.

(d) The voting membership of the board shall meet all of the following requirements:

(1) All of the members shall hold office or employment in counties that participate in the CMSP program.

(2) The initial CMSP Governing Board shall be composed of the incumbent members of the Small County Advisory Committee holding office on the effective date of this section. Those members shall choose one additional county supervisor and one additional

county administrative officer. The initial CMSP Governing Board shall hold office until April 1, 1995.

(3) The initial CMSP Governing Board shall be succeeded on April 1, 1995, by a board chosen in the following order so as to ensure that no two representatives shall be from the same county.

Following the effective date of this section:

(A) The three county supervisor members shall be elected by the CMSP counties acting prior to February 1, 1995, with each county having one vote and convened at the call of the Chair of the CMSP Governing Board.

(B) The three county administrative officers shall be elected by the administrative officers of the CMSP counties convened at the call of the Chair of the CMSP Governing Board prior to February 15, 1995.

(C) The two county health officials shall be selected by the health officials of the CMSP counties convened at the call of the Chair of the CMSP Governing Board prior to March 1, 1995.

(D) The two county welfare directors shall be elected by the welfare directors of the CMSP counties convened at the call of the Chair of the CMSP Governing Board prior to March 15, 1995.

(4) Board members shall serve three-year terms.

(5) No two persons from the same county may serve as members of the board at the same time.

(e) (1) The board shall convene its first meeting at the call of the Chair of the Small County Advisory Committee, who shall serve as interim chairperson of the board.

(2) The board may elect a permanent chair.

(f) The CMSP Governing Board is hereby established with the following powers:

(1) Determine program eligibility and benefit levels.

(2) Establish reserves and participation fees.

(3) Establish procedures for the entry into, and disenrollment of counties from the CMSP program. Disenrollment procedures shall be fair and equitable.

(4) Establish cost containment and case management procedures.

(5) Sue and be sued in the name of the CMSP Governing Board.

(6) Apportion jurisdictional risk to each county.

(7) Utilize procurement policies and procedures of any of the participating counties as selected by the governing board.

(8) Make rules and regulations.

(9) Make and enter into contracts or stipulations of any nature with a public agency or person for the purposes of governing the CMSP.

(10) Purchase supplies, equipment, materials, property, or services.

(11) Appoint and employ staff to assist the CMSP Governing Board.

(12) Establish rules for its proceedings.

(13) Accept gifts, contributions, grants, or loans from any public

agency or person for the purposes of this program.

(14) Negotiate rates, charges, or fees with service providers.

(15) Establish methods of payment that are consistent with the administrative requirements of the department's fiscal intermediary.

(16) Use generally accepted accounting procedures.

(g) (1) The CMSP Governing Board shall not be considered a "state agency" for purposes of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and shall be exempt from that chapter.

(2) All regulations adopted by the CMSP Governing Board shall clearly specify by reference the statute, court decision, or other provision of law that the governing board is seeking to implement, interpret, or make specific by adopting, amending, or repealing the regulation.

(3) No regulation adopted by the governing board is valid and effective unless the regulation meets the standards of necessity, authority, clarity, consistency, and nonduplication, as defined in paragraph (4).

(4) The following definitions govern the interpretation of this subdivision:

(A) "Necessity" means the record of the regulatory proceeding that demonstrates by substantial evidence the need for the regulation. For purposes of this standard, evidence includes, but is not limited to, facts, studies, and expert opinion.

(B) "Authority" means the provision of law that permits or obligates the CMSP Governing Board or adopt, amend, or repeal a regulation.

(C) "Clarity" means that the regulation is written or displayed so that the meaning of the regulation can be easily understood by those persons directly affected by it.

(D) "Consistency" means being in harmony with, and not in conflict with, or contradictory to, existing statutes, court decisions, or other provisions of law.

(E) "Nonduplication" means that a regulation does not serve the same purpose as a state or federal statute or another regulation. This standard requires that the governing board identify any state or federal statute or regulation that is overlapped or duplicated by the proposed regulation and justify any overlap or duplication. This standard is not intended to prohibit the governing board from printing relevant portions of enabling legislation in regulations when the duplication is necessary to satisfy the clarity standard in subparagraph (C). This standard is intended to prevent the indiscriminate incorporation of statutory language in a regulation.

(h) The requirements of the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Part 1 of Division 3 of Title 2 of the Government Code) shall apply to the public meetings of the CMSP Governing Board. The governing board shall comply with the following procedures for public meetings held to

eliminate or reduce the level of services, restrict eligibility for services, or adopt regulations:

- (1) Provide prior public notice of those meetings.
- (2) Provide that notice not less than 30 days prior to those meetings.
- (3) Publish that notice in a newspaper of general circulation in each participating CMSP county.
- (4) Include in the notice, at a minimum, the amount and type of each proposed change, the expected savings, and the number of persons affected.
- (5) Hold those meetings in the county seats of at least four regionally distributed CMSP participating counties.
- (6) Locate those meetings so as to provide that each hearing will be within a four-hour one-way drive of one quarter of the target population so that the four meetings shall be held at locations in the state that will ensure that each member of the target population may reach at least one of the meetings by a one-way drive that does not exceed four hours.
 - (i) The following definitions shall govern the construction of this part, unless the context requires otherwise:
 - (1) "CMSP Governing Board" means the County Medical Services Program Governing Board established pursuant to this section.
 - (2) "Board" means the County Medical Services Program Governing Board established pursuant to this section.
 - (3) "CMSP program" means the program by which health care services are provided to eligible persons in those counties electing to participate in CMSP pursuant to Section 16809.
 - (4) "CMSP county" means a county that has elected to participate pursuant to Section 16809 in the CMSP program.
 - (j) Any references to the "County Medical Services Program" or "CMSP county" in this code shall be defined as set forth in this section.
 - (k) This section shall become inoperative on July 1, 1996, and, as of January 1, 1997, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1997, deletes or extends the dates on which it becomes inoperative and is repealed.

CHAPTER 1227

An act to amend Sections 40201, 40973, 41781.2, 41783, 41800, 41801, 41801.5, 41810, 41813, 41821.5, 41825, 41850, 42310.1, and 48000 of, and to add Sections 40106, 40183, 40184, 41783.1, 41810.1, and 41850.5 to, to add Article 1.5 (commencing with Section 41787) to Chapter 6 of Part 2 of Division 30 of, to add Chapter 5 (commencing with Section 44820) to Part 4 of Division 30 of, to repeal Section 40914 of, and to repeal and add Section 41782 of, the Public Resources Code, relating to solid waste.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 40106 is added to the Public Resources Code, to read:

40106. (a) "Biomass conversion" means the controlled combustion, when separated from other solid waste and used for producing electricity or heat, of the following materials:

- (1) Agricultural crop residues.
- (2) Bark, lawn, yard, and garden clippings.
- (3) Leaves, silvicultural residue, and tree and brush pruning.
- (4) Wood, wood chips, and wood waste.

(b) "Biomass conversion" does not include the controlled combustion of pulp or paper materials, or materials which contain sewage sludge, industrial sludge, medical waste, hazardous waste, or either high-level or low-level radioactive waste.

SEC. 2. Section 40183 is added to the Public Resources Code, to read:

40183. "Rural city" means either of the following:

(a) An incorporated city which has a geographic area of less than three square miles, has a waste generation rate of less than 100 cubic yards per day, or 60 tons per day, and which is located in a rural area.

(b) An incorporated city which has a population density of less than 1,500 people per square mile, has a waste generation rate of less than 100 cubic yards per day, or 60 tons per day, which is located in a rural area.

(c) Nothing in this section shall affect any reduction granted to a rural city or rural county by the board pursuant to Section 41787 prior to September 1, 1994.

SEC. 3. Section 40184 is added to the Public Resources Code, to read:

40184. (a) "Rural county" means any county which has a population of 200,000 or less and which is located in a rural area.

(b) For the purposes of this section and Section 40183, the board shall adopt regulations that define "rural area" in a manner that establishes criteria and conditions applicable only to cities and

counties located in those areas of the state that are rural in character. Those criteria shall include, but are not limited to, the requirement that those cities and counties are located in agricultural or mountainous areas of the state and are geographically distant from markets for recyclable materials.

(c) Nothing in this section shall affect any reduction granted to a rural city or rural county by the board pursuant to Section 41787 prior to September 1, 1994.

SEC. 4. Section 40201 of the Public Resources Code is amended to read:

40201. "Transformation" means incineration, pyrolysis, distillation, gasification, or biological conversion other than composting. "Transformation" does not include composting or biomass conversion.

SEC. 5. Section 40914 of the Public Resources Code is repealed.

SEC. 6. Section 40973 of the Public Resources Code is amended to read:

40973. (a) The regional agency, and not the cities or counties which are member agencies of the regional agency, may be responsible for compliance with Article 1 (commencing with Section 41780) of Chapter 6 if specified in the agreement pursuant to which the regional agency is formed.

(b) Notwithstanding Section 41782, except as provided in subdivision (c), if a regional agency has been specified in the regional agency formation agreement as the responsible party for compliance with Article 1 (commencing with Section 41780) of Chapter 6 of Part 1, neither the regional agency nor any member jurisdiction of the regional agency shall be eligible for a reduction of the diversion requirements of Section 41780.

(c) If all member jurisdictions of a regional agency are rural cities or rural counties, as defined, respectively, in Sections 40183 and 40184, the regional agency may be eligible for a reduction of the diversion requirements of Section 41780.

(d) (1) If, pursuant to subdivision (a), a regional agency is specified in the regional agency formation agreement as the responsible party for compliance with Article 1 (commencing with Section 41780) of Chapter 6, the regional agency shall not be comprised of more than two counties and all of the cities within those two counties, except as otherwise authorized by the board.

(2) The board may authorize the formation of a regional agency that exceeds two counties and all of the cities within those two counties, for purposes of compliance with Article 1 (commencing with Section 41780) of Chapter 6, if the board finds that the formation of such a regional agency will not adversely affect compliance with this part.

SEC. 7. Section 41781.2 of the Public Resources Code is amended to read:

41781.2. (a) (1) It is the intent of the Legislature in enacting this section not to require cities, counties, and regional agencies to revise

source reduction and recycling elements prior to their submittal to the board for review and approval, except as the elements would otherwise be required to be revised by the board pursuant to this part. Pursuant to Sections 41801.5 and 41811.5, compliance with this section shall be determined by the board when source reduction and recycling elements are submitted to the board pursuant to Section 41791.5. However, any city or county may choose to revise its source reduction and recycling element or any of its components prior to board review of the source reduction and recycling element for the purpose of complying with this section.

(2) It is further the intent of the Legislature in enacting this section to ensure that compliance with the diversion requirements of Section 41780 shall be accurately determined based upon a correlation between solid waste which was disposed of at permitted disposal facilities and diversion claims which are subsequently made for that solid waste.

(b) For the purposes of this section, the following terms have the following meaning:

(1) "Action by a city, county, regional, or local governing body" means franchise or contract conditions, rate or fee schedules, zoning or land use decisions, disposal facility permit conditions, or activities by a waste hauler, recycler, or disposal facility operator acting on behalf of a city, county, regional agency, or local governing body, or other action by the local governing body if the local government action is specifically related to the claimed diversion.

(2) "Scrap metal" includes ferrous metals, nonferrous metals, aluminum scrap, other metals, and auto bodies, but does not include aluminum cans, steel cans, or bimetal cans.

(3) "Inert solids" includes rock, concrete, brick, sand, soil, fines, asphalt, and unsorted construction and demolition waste.

(4) "Agricultural wastes" includes solid wastes of plant and animal origin, which result from the production and processing of farm or agricultural products, including manures, orchard and vineyard prunings, and crop residues, which are removed from the site of generation for solid waste management. Agriculture refers to SIC Codes 011 to 0291, inclusive.

(c) For purposes of determining the base amount of solid waste from which the diversion requirements of this article shall be calculated, "solid waste" does not include the diversion of agricultural wastes; inert solids, including inert solids used for structural fill; discarded, white-coated, major appliances; and scrap metals; unless all of the following criteria are met:

(1) The city, county, or regional agency demonstrates that the material was diverted from a permitted disposal facility through an action by the city, county, or regional agency which specifically resulted in the diversion.

(2) The city, county, or regional agency demonstrates that, prior to January 1, 1990, the solid waste which is claimed to have been diverted was disposed of at a permitted disposal facility in the

quantity being claimed as diversion. If historical disposal data is not available, that demonstration may be based upon information available to the city, county, or regional agency which substantiates a reasonable estimate of disposal quantities which is as accurate as is feasible in the absence of historical disposal data.

(3) The city, county, or regional agency is implementing, and will continue to implement, source reduction, recycling, and composting programs, as described in its source reduction and recycling element.

(d) If a city, county, or regional agency source reduction and recycling element submitted pursuant to this chapter includes the diversion of any of the wastes specified in subdivision (c) for years preceding the year commencing January 1, 1990, that diversion shall not apply to the diversion requirements of Section 41780, unless the criteria in subdivision (c) are met.

(e) If a city, county, or regional agency source reduction and recycling element submitted pursuant to this chapter does not contain information sufficient for the city, county, or regional agency to demonstrate to the board whether the criteria in subdivision (c) have been met, the city, county, or regional agency may provide additional information following board review of the source reduction and recycling element pursuant to Section 41791.5. In providing the additional information, Sections 41801.5 and 41811.5 shall apply.

(f) In demonstrating whether the requirements of paragraph (1) of subdivision (c) have been met, the city, county, or regional agency shall submit information to the board on local government programs which are specifically related to the claimed diversion.

(g) Notwithstanding any other provision of law, for purposes of determining the base amount of solid waste from which the diversion requirements of this article shall be calculated for a city, county, or regional agency which includes biomass conversion in its source reduction and recycling element pursuant to Section 41783.1, the base amount shall include those materials disposed of in the base year at biomass conversion facilities.

SEC. 8. Section 41782 of the Public Resources Code is repealed.

SEC. 9. Section 41782 is added to the Public Resources Code, to read:

41782. (a) The board may make adjustments to the amounts reported pursuant to subdivisions (a) and (c) of Section 41821.5, if the city, county, or regional agency demonstrates, and the board concurs, based on substantial evidence in the record, that achievement of the diversion requirements of Section 41780 is not feasible due to the fact that a medical waste treatment facility, as defined in subdivision (a) of Section 25025 of the Health and Safety Code, untreated medical waste, which was generated outside of the jurisdiction, for purposes of treatment, and the medical waste, when treated, becomes solid waste.

(b) If the board makes an adjustment pursuant to subdivision (a), the annual report required pursuant to Section 41821 by the

jurisdiction, within which a medical waste treatment facility described in subdivision (a) is located, shall include all of the following information:

(1) The total amount of residual solid waste produced at the facility.

(2) The waste types and amounts in the residual solid waste that cannot feasibly be diverted.

(3) The factors that continue to prevent the waste types from being feasibly diverted.

(4) Any changes since the petition for adjustment was granted or since the last annual report.

(5) The additional efforts undertaken by the jurisdiction to divert the waste produced at the facility.

(c) Based upon the information submitted pursuant to subdivision (b), if the board finds, as part of the biennial review pursuant to Section 41825, that the residual solid waste that previously could not be diverted can now be diverted, the board shall rescind the adjustment commensurate with the amount of diversion of the residual tonnages.

SEC. 10. Section 41783 of the Public Resources Code is amended to read:

41783. For any city, county, or regional agency source reduction and recycling element submitted to the board after January 1, 1995, the 50 percent diversion requirement specified in paragraph (2) of subdivision (a) of Section 41780 may include not more than 10 percent through transformation, as defined in Section 40201, if all of the following conditions are met:

(a) The transformation project is in compliance with Sections 21151.1 and 44150 of this code and Section 42315 of the Health and Safety Code.

(b) The transformation project uses front-end methods or programs to remove all recyclable materials from the waste stream prior to transformation to the maximum extent feasible.

(c) The ash or other residue generated from the transformation project is routinely tested at least once quarterly, or on a more frequent basis as determined by the agency responsible for regulating the testing and disposal of the ash or residue, and, notwithstanding Section 25143.5 of the Health and Safety Code, if hazardous wastes are present, the ash or residue is sent to a class 1 hazardous waste disposal facility.

(d) The board holds a public hearing in the city, county, or regional agency jurisdiction within which the transformation project is proposed, and, after the public hearing, the board makes both of the following findings, based upon substantial evidence on the record:

(1) The city, county, or regional agency is, and will continue to be, effectively implementing all feasible source reduction, recycling, and composting measures.

(2) The transformation project will not adversely affect public

health and safety or the environment.

(e) The transformation facility is permitted and operational on or before January 1, 1995.

(f) The city, county, or regional agency does not include biomass conversion, as authorized pursuant to Section 41783, in its source reduction and recycling element.

SEC. 11. Section 41783.1 is added to the Public Resources Code, to read:

41783.1. (a) For any city, county, or regional agency source reduction and recycling element submitted to the board after January 1, 1995, the 50 percent diversion requirement specified in paragraph (2) of subdivision (a) of Section 41780 may include not more than 10 percent through biomass conversion if all of the following conditions are met:

(1) The biomass conversion project exclusively processes biomass.

(2) The biomass conversion project is in compliance with all applicable air quality laws, rules, and regulations.

(3) The ash or other residue from the biomass conversion project is regularly tested to determine if it is hazardous waste and, if it is determined to be hazardous waste, the ash or other residue is sent to a class 1 hazardous waste disposal facility.

(4) The board determines, at a public hearing, based upon substantial evidence in the record, that the city, county, or regional agency is, and will continue to be, effectively implementing all feasible source reduction, recycling, and composting measures.

(5) The city, county, or regional agency does not include transformation, as authorized pursuant to Section 41783, in its source reduction and recycling element.

SEC. 12. Article 1.5 (commencing with Section 41787) is added to Chapter 6 of Part 2 of Division 30 of the Public Resources Code, to read:

Article 1.5. Rural Assistance

41787. (a) (1) The board may reduce the diversion requirements of Section 41780 for a rural city if the rural city demonstrates, and the board concurs, based on substantial evidence in the record, that achievement of the diversion requirements is not feasible due to both of the following conditions:

(A) The small geographic size or low population density of the rural city.

(B) The small quantity of solid waste generated within the rural city.

(2) The board may reduce the diversion requirements of Section 41780 for the unincorporated area of a rural county if the rural county demonstrates, and the board concurs, based on substantial evidence in the record, that achievement of the diversion requirements is not feasible due to both of the following conditions:

(A) The large geographic size or low population density of the

rural county.

(B) The small quantity of solid waste generated within the rural county.

(3) The board may grant a reduction in diversion requirements pursuant to this subdivision only if the rural city or the rural county demonstrates to the board, and the board concurs, based on substantial evidence in the record, that it has, at a minimum, implemented all of the following programs:

(A) A source reduction and recycling program designed to handle the predominant classes and types of solid waste generated within the rural city or rural county.

(B) A public sector diversion and procurement program.

(C) A public information and education program.

(b) If, as part of the review performed pursuant to Section 41825, the board finds that a rural city or a rural county, which previously qualified for a reduction in diversion requirements pursuant to subdivision (a), is no longer eligible for that reduction, the board shall issue an order requiring the rural city or rural county to comply with the diversion requirements of Section 41780.

41787.1. (a) Rural cities and rural counties may join to form rural regional agencies pursuant to Article 3 (commencing with Section 40970) of Chapter 1.

(b) A rural regional agency, and not the rural cities or rural counties which are member jurisdictions of the rural regional agency, may be responsible for compliance with Article 1 (commencing with Section 41780) of Chapter 6 if specified in the agreement pursuant to which the rural regional agency is formed.

(c) (1) The board may reduce the diversion requirements of Section 41780 for a rural regional agency, if the rural regional agency demonstrates, and the board concurs, based on substantial evidence in the record, that achievement of the diversion requirements is not feasible because adverse market or economic conditions beyond the control of the rural regional agency prevent it from meeting the requirements of Section 41780.

(2) Before a rural regional agency may be granted a reduction in diversion requirements pursuant to paragraph (1), it shall demonstrate that, at a minimum, it has established all of the following regionwide programs:

(A) A source reduction and recycling program or programs designed to handle the predominant classes and types of solid waste generated within the rural regional agency.

(B) A regional diversion and procurement program or programs.

(C) A regional public information and education program or programs.

41787.2. (a) A rural city or a rural county, which has received, or is eligible for, a reduction in diversion requirements pursuant to Section 41787, may become a member of a rural regional agency for the purpose of complying with the diversion requirements of Section 41780, in which case the region's maximum disposal tonnage

allowable shall be calculated as follows:

(1) Determining the regional maximum disposal tonnage allowable, excluding members with reduced diversion requirements.

(2) Determining the maximum disposal tonnage allowable for those members authorized to meet reduced diversion requirements.

(3) Adding the calculated maximum disposal tonnages determined pursuant to paragraphs (1) and (2) to determine the regional maximum disposal tonnage allowable.

(b) (1) A rural regional agency may not assume responsibility for compliance with diversion requirements upon formation pursuant to subdivision (b) of Section 41787.1, and for compliance with Article 1 (commencing with Section 41780), if the rural regional agency is comprised of more than two rural counties, unless authorized by the board pursuant to paragraph (2).

(2) The board may authorize the assumption of responsibility for compliance with diversion requirements by a rural regional agency upon formation, which is comprised of more than two rural counties, if the board finds that the rural regional agency's assumption of responsibility will not adversely affect compliance with this part.

41787.3. The board, in consultation with rural cities and rural counties, shall develop model programs and materials to assist rural cities and rural counties in complying with the requirements of Chapter 2 (commencing with Section 41000) and Chapter 3 (commencing with Section 41300). Those model programs and materials shall be designed to assist rural cities and rural counties in achieving the purposes of this division in a manner which minimizes, to the maximum extent feasible, the costs imposed on rural cities and rural counties to comply with this division.

41787.4. Notwithstanding Section 41820, the board may grant a two-year time extension from the diversion requirements of Section 41780 to a rural city, rural county, or rural regional agency if all of the following conditions are met:

(a) The board adopts written findings, based on substantial evidence in the record, that adverse market or economic conditions beyond the control of the rural city, rural county, or rural regional agency prevent the rural city, rural county, or rural regional agency from meeting the diversion requirements.

(b) The rural city, rural county, or rural regional agency submits a plan of correction that demonstrates how it will meet the diversion requirements before the time extension expires, which includes the source reduction, recycling, and composting programs it will implement and states how those programs will be funded.

(c) The rural city, rural county, or rural regional agency demonstrates that it is achieving the maximum feasible amount of source reduction, recycling, or composting of solid waste within its jurisdiction.

41787.5. Unless in conflict with the express provisions of this article, all other provisions of this division, as appropriate, shall apply to rural cities, rural counties, and rural regional agencies to the same

extent that those provisions apply to nonrural cities, counties, and regional agencies.

SEC. 13. Section 41800 of the Public Resources Code is amended to read:

41800. (a) Except as provided in subdivision (b), within 120 days from the date of receipt of a countywide or regional integrated waste management plan which the board has determined to be complete, or any element of the plan which the board has determined to be complete, the board shall determine whether the plan or element is in compliance with Article 2 (commencing with Section 40050) of Chapter 1 of Part 1, Chapter 2 (commencing with Section 41000), and Chapter 5 (commencing with Section 41750), and, based upon that determination, the board shall approve, conditionally approve, or disapprove the plan or element.

(b) (1) Within 120 days from the date of receipt of a city, county, or regional agency nondisposal facility element, which the board has determined to be complete, and within 60 days from the date of receipt of an amendment to a city, county, or regional agency nondisposal facility element, the board shall determine whether the element, which the board has determined to be complete, or amendment is in compliance with Chapter 4.5 (commencing with Section 41730) and Article 1 (commencing with Section 41780) of Chapter 6, and, based upon that determination, the board shall approve, conditionally approve, or disapprove the element or amendment within that time period.

(2) In reviewing the element or amendment, the board shall:

(A) Not consider the estimated capacity of the facility or facilities in the element or amendment unless the board determines that this information is needed to determine whether the element or amendment meets the requirements of Article 1 (commencing with Section 41780) of Chapter 6.

(B) Recognize that individual facilities represent portions of local plans or programs that are designed to achieve the diversion requirements of Section 41780 and therefore may not arbitrarily require new or expanded diversion at proposed facilities.

(C) Not disapprove an element or amendment that includes a transfer station or other facility solely because the facility does not contribute towards the jurisdiction's efforts to comply with Section 41780.

(c) If the board does not act to approve, conditionally approve, or disapprove an element which the board has determined to be complete within 120 days, or an amendment which the board has determined to be complete within 60 days, the board shall be deemed to have approved the element or amendment.

SEC. 14. Section 41801 of the Public Resources Code is amended to read:

41801. Before approving or conditionally approving a countywide or regional integrated waste management plan, or any element of the plan, pursuant to Section 41800, the board shall adopt

written findings, based on substantial evidence in the record, that implementing the plan or element will achieve the requirements established pursuant to this part, including the diversion requirements of Section 41780.

SEC. 15. Section 41801.5 of the Public Resources Code is amended to read:

41801.5. (a) If an element submitted to the board for final review includes the diversion of any solid wastes specified in subdivision (c) of Section 41781.2 for years preceding the year commencing January 1, 1990, and the board is unable to determine whether the requirements of Section 41781.2 have been met, the board shall notify the city, county, or regional agency that the diversion is excluded for purposes of calculating compliance with Section 41780. The board shall notify the city, county, or regional agency of the exclusion within 60 days from the date of receipt of the element for final review. If an element has been submitted to the board for final review prior to January 1, 1993, the board shall notify the submitting city, county, or regional agency of the exclusion on or before March 1, 1993.

(b) The notice shall be based upon a summary review undertaken solely for the purpose of determining whether the source reduction and recycling element includes any diversion of wastes excluded by Section 41781.2, and whether the element contains information sufficient for the board to determine whether the requirements of that section have been met. The summary review and notice shall be undertaken by the board concurrent with the board's review and approval, conditional approval, or disapproval of source reduction and recycling elements pursuant to Section 41800.

(c) The board shall approve or conditionally approve the source reduction and recycling element, if wastes have been excluded pursuant to Section 41781.2, if the board finds, pursuant to Section 41801, that, notwithstanding that exclusion, the element will achieve the requirements established pursuant to this part, including the diversion requirements of Section 41780.

(d) If the source reduction and recycling element is approved or conditionally approved pursuant to this section, the city, county, or regional agency shall revise the element to reflect the excluded wastes and shall submit any such revisions to the board pursuant to Section 41822.

SEC. 16. Section 41810 of the Public Resources Code is amended to read:

41810. (a) If the board conditionally approves a countywide or regional integrated waste management plan, or any element of the plan, the board shall issue a notice of conditional approval to the city, county, or regional agency which identifies the specific reasons for the conditional approval. The notice of conditional approval shall include specific recommendations on how to correct the remaining deficiencies in the plan or element.

(b) If the board disapproves a countywide or regional integrated

waste management plan, or any element of the plan, the board shall issue a notice of deficiency to the city, county, or regional agency which identifies the specific reasons for the disapproval. The notice of deficiency shall include specific recommendations on how to correct the deficiencies in the plan or element.

SEC. 17. Section 41810.1 is added to the Public Resources Code, to read:

41810.1. (a) Any city, county, or regional agency which receives a notice of conditional approval for a countywide or regional integrated waste management plan, or any element of the plan, pursuant to subdivision (a) of Section 41810, shall, within 60 days from the date of receipt of the notice of conditional approval, submit a compliance schedule to the board that demonstrates how the city, county, or regional agency will correct the deficiencies identified in the notice of conditional approval by the earliest feasible date, but in no event shall that correction take longer to make than one year from the date of submission of the compliance schedule.

(b) The board shall approve or disapprove a compliance schedule submitted pursuant to subdivision (a) within 60 days from the date of its receipt of the schedule.

(c) If the board determines, based on substantial evidence in the record, that a city, county, or regional agency is not in compliance with a compliance schedule approved pursuant to subdivision (b), the board may revoke the notice of conditional approval, and shall issue a notice of deficiency pursuant to subdivision (b) of Section 41810.

(d) It is the intent of the Legislature that a notice of conditional approval shall provide flexibility for a city, county, or regional agency to make substantial progress towards meeting the requirements of this part while ensuring full compliance with this part at the earliest feasible date.

SEC. 18. Section 41813 of the Public Resources Code is amended to read:

41813. (a) After conducting a public hearing pursuant to Section 41812, the board may impose administrative civil penalties of not more than ten thousand dollars (\$10,000) per day on any city or county, or, pursuant to Section 40974, on any city or county as a member of a regional agency, which fails to submit an adequate element or plan in accordance with the requirements of this chapter.

(b) The board shall not impose any penalty against a city or county pursuant to this section if the city or county is in substantial compliance with this part and if those aspects of a plan or element of a plan submitted by a city, county, or regional agency which is not in compliance with this part do not directly or substantially affect achievement of the diversion requirements of Section 41780.

(c) In determining whether a city, county, or regional agency is in substantial compliance, the board shall consider whether the city, county, or regional agency has made a good faith effort to implement all reasonable and feasible measures to comply.

(d) The board shall not use the money collected from the penalties imposed pursuant to subdivision (a) for administrative purposes. The board shall use the money collected from the penalties imposed pursuant to subdivision (a), to the extent possible, to assist local governments in meeting the requirements of this part.

SEC. 19. Section 41821.5 of the Public Resources Code is amended to read:

41821.5. (a) Disposal facility operators shall submit to counties information from periodic tracking surveys on the disposal tonnages by jurisdiction or region of origin, which are disposed of at each disposal facility. To enable disposal facility operators to provide that information, solid waste handlers and transfer station operators shall provide information to disposal facility operators on the origin of the solid waste that they deliver to the disposal facility.

(b) Recycling and composting facilities shall submit periodic information to counties on the types and quantities of materials which are disposed of, sold to end users, or which are sold to exporters or transporters for sale outside of the state, by county of origin. When materials are sold or transferred by one recycling or composting facility to another, for other than an end use of the material or for export, the seller or transferee of the material shall inform the buyer or transferee of the county of origin of the materials. The reporting requirements of this subdivision do not apply to entities which sell the byproducts of a manufacturing process.

(c) Each county shall submit periodic reports to the cities within the county, to any regional agency of which it is a member agency, and to the board, on the amounts of solid waste disposed by jurisdiction or region of origin, as specified in subdivision (a), and on the categories and amounts of solid waste diverted to recycling and composting facilities within the county or region, as specified in subdivision (b).

(d) The board may adopt regulations pursuant to this section requiring practices and procedures that are reasonable and necessary to perform the periodic tracking surveys required by this section, and that provide a representative accounting of solid wastes that are handled, processed, or disposed. Those regulations or periodic tracking surveys approved by the board shall not impose an unreasonable burden on waste handling, processing, or disposal operations or otherwise interfere with the safe handling, processing, and disposal of solid waste.

SEC. 20. Section 41825 of the Public Resources Code is amended to read:

41825. At least once every two years, the board shall review each city, county, or regional agency source reduction and recycling element and household hazardous waste element. If, after a public hearing, which, to the extent possible, is held in the local or regional agency's jurisdiction, the board finds that the city, county, or regional agency has failed to implement its source reduction and recycling

element or its household hazardous waste element, the board shall issue an order of compliance with a specific schedule for achieving compliance. The compliance order shall include those conditions which the board determines to be necessary for the local agency or regional agency to complete in order to implement its source reduction and recycling element or household hazardous waste element.

SEC. 21. Section 41850 of the Public Resources Code is amended to read:

41850. (a) (1) Except as specifically provided in Section 41813, if, after holding the public hearing and issuing an order of compliance pursuant to Section 41825, the board finds that the city, county, or regional agency has failed to implement its source reduction and recycling element or its household hazardous waste element, the board may impose administrative civil penalties upon the city or county or, pursuant to Section 40974, upon the city or county as a member of a regional agency of up to ten thousand dollars (\$10,000) per day until the city, county, or regional agency implements the element.

(b) In determining whether or not to impose any penalties, or in determining the amount of any penalties imposed under this section, including any penalties imposed due to the exclusion of solid waste pursuant to Section 41781.2 which results in a reduction in the quantity of solid waste diverted by a city, county, or regional agency, the board shall consider only those relevant circumstances which have prevented a city, county, or regional agency from meeting the requirements of this division, including the diversion requirements of paragraphs (1) and (2) of subdivision (a) of Section 41780, including, but not limited to, all of the following:

(1) Natural disasters.

(2) Budgetary conditions within a city, county, or regional agency which could not be remedied by the imposition or adjustment of solid waste fees.

(3) Work stoppages which directly prevent a city, county, or regional agency from implementing its source reduction and recycling element or household hazardous waste element.

(c) In addition, the board shall consider all of the following:

(1) The extent to which a city, county, or regional agency has made good faith efforts to implement its source reduction and recycling element or household hazardous waste element. For the purposes of this paragraph, "good faith efforts" means all reasonable and feasible efforts by a city, county, or regional agency to implement those programs or activities identified in its source reduction and recycling element or household hazardous waste element, or alternative programs or activities that achieve the same or similar results.

(2) The extent to which a city, county, or regional agency has implemented additional source reduction, recycling, and composting activities to comply with the diversion requirements of

paragraphs (1) and (2) of subdivision (a) of Section 41780.

(3) The extent to which a city, county, or regional agency is meeting the diversion requirements of paragraphs (1) and (2) of subdivision (a) of Section 41780.

SEC. 22. Section 41850.5 is added to the Public Resources Code, to read:

41850.5. Any administrative civil penalty imposed by the board pursuant to Section 41813 or 48150 shall be deposited in the Local Government Assistance Account, which is hereby created in the Integrated Waste Management Fund. Any funds deposited in that account shall be used solely for the purposes of assisting local governments in complying with the diversion requirements established under Section 41780, and shall not be used by the board for administrative purposes.

SEC. 23. Section 42310.1 of the Public Resources Code is amended to read:

42310.1. (a) Until January 1, 1997, the criteria specified in Section 42310 shall not apply to any rigid plastic packaging container that is manufactured for use with food or cosmetics, as defined in subdivisions (f) and (i) of Section 321 of Title 21 of the United States Code.

(b) Notwithstanding subdivision (a), rigid plastic packaging containers actually recycled shall be included in calculating the recycling rate pursuant to subdivision (b) or (c) of Section 42310.

(c) Every manufacturer of a product packaged in a rigid plastic packaging container described in subdivision (a), which is not in compliance with Section 42310, that is exempt from the criteria specified in Section 42310 pursuant to subdivision (a), shall do both of the following:

(1) On or before December 1, 1995, the manufacturer shall submit a report to the board which demonstrates that the manufacturer is taking, and will continue to take, all feasible actions consistent with Section 42310 to ensure the reduction, recycling, or reuse of the rigid plastic packaging containers described in subdivision (a) and the development and expansion of markets for rigid plastic packaging containers. Those actions may include, but are not limited to, all of the following:

(A) The use of postconsumer recycled plastic in rigid plastic packaging containers sold in this state.

(B) The use of postconsumer recycled plastic in other packaging materials sold or manufactured in this state.

(C) The use of postconsumer recycled plastic in other products sold or manufactured in this state.

(D) Arranging for the use of postconsumer recycled plastic collected for recycling in this state in the manufacture of nonrigid plastic packaging container products or packaging of another entity.

(E) The procurement of products containing postconsumer recycled plastic, including, but not limited to, trash bags, trash containers, pallets, carpeting, slip sheets, and shrink wrap.

(F) The demonstration of financial investment in recycled plastic collecting, processing, and remanufacturing activities in the state.

(2) On or before January 1, 1996, every manufacturer of rigid plastic packaging containers shall, for any rigid plastic packaging container that is exempt from, and not in compliance with, the criteria specified in Section 42310 pursuant to subdivision (a), diligently seek one or more "nonobjection letters" from the United States Food and Drug Administration which will permit the manufacturer of rigid plastic packaging containers to use recycled plastic in the manufacture of the rigid plastic packaging containers described in subdivision (a).

SEC. 24. Chapter 5 (commencing with Section 44820) is added to Part 4 of Division 30 of the Public Resources Code, to read:

CHAPTER 5. ASBESTOS CONTAINING WASTE

44820. Except as provided in subdivision (c), the board shall adopt, by regulation, a permitting, inspection, and enforcement program for the disposal of asbestos containing waste, as specified in Section 25143.7 of the Health and Safety Code, at any solid waste facility or disposal site subject to regulation pursuant to this part. The program may include, but is not limited to, standards and certification requirements for local enforcement agencies, pursuant to which the board may delegate authority for the regulation of asbestos containing waste to local enforcement agencies.

(b) On or before March 1, 1995, or the earliest feasible date thereafter, the board and the Department of Toxic Substances Control shall enter into a memorandum of understanding that defines the enforcement responsibilities of each agency for the disposal of asbestos containing waste at any solid waste disposal facility or disposal site subject to regulation pursuant to this part. The memorandum of understanding shall be periodically updated to be consistent with each agency's responsibilities pursuant to this section and Chapter 6.5 (commencing with Section 25100) of Division 30 of the Health and Safety Code.

(c) Until the board has adopted regulations pursuant to subdivision (a), the Department of Toxic Substances Control shall regulate asbestos containing waste at a solid waste facility or disposal site.

(d) Any regulations adopted pursuant to this section shall be deemed emergency regulations and shall be adopted in accordance with the Administrative Procedures Act (Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code.) The adoption of these regulations shall be deemed to be necessary for the immediate preservation of the public peace, health, safety, or general welfare.

SEC. 25. Section 48000 of the Public Resources Code is amended to read:

48000. (a) Each operator of a disposal facility shall pay a fee

quarterly to the State Board of Equalization which is based on the amount, by weight or volumetric equivalent, as determined by the board, of all solid waste disposed of at each disposal site.

(b) The fee for solid waste disposed of shall be one dollar and thirty-four cents (\$.34) per ton. Commencing with the 1995-96 fiscal year, the amount of the fee shall be established by the board at an amount that is sufficient to generate revenues equivalent to the approved budget for that fiscal year, including a prudent reserve, but shall not exceed one dollar and forty cents (\$.40) per ton.

(c) The board shall notify the State Board of Equalization on the first day of the period in which the rate shall take effect of any rate change adopted pursuant to this section.

SEC. 26. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because, for certain costs, the costs incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction, and, for certain other costs, the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1228

An act to amend Sections 17705, 17710, and 17785 of the Education Code, to amend Sections 14620, 15492, 65971, and 65974 of the Government Code, and to amend Section 24275 of the Health and Safety Code, relating to school facilities.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 17705 of the Education Code is amended to read:

17705. In addition to all other powers and duties as are granted the board by this chapter, other statute, or the Constitution, the board shall have power to:

(a) Establish any qualifications not in conflict with other provisions of this chapter, as it deems will best serve the purposes of this chapter, for determining the eligibility of school districts to lease projects under this chapter.

(b) Establish any procedures and policies in connection with the

administration of this chapter as it deems necessary.

(c) Adopt any rules and regulations for the administration of this chapter, requiring any procedure, forms, and information, as it may deem necessary.

(d) Construct and control any project.

(e) Fix rates, rents, or other charges for the use of any project acquired, constructed, rehabilitated, equipped, furnished, or for services rendered in connection with that project, and to alter, change, or modify the same at its pleasure, subject to any contractual obligation that may be entered into by the board with respect to the fixing of the rates, rents, or charges.

SEC. 2. Section 17710 of the Education Code is amended to read:

17710. The board may construct any project, and may acquire all property necessary therefor, on any terms and conditions as it may deem advisable. When any part of the work is to be done or performed by any public body or the United States jointly or in conjunction with the board, the portion of the cost of the project to be borne by the board may be turned over to the government of the United States or to any other public body, to be expended by it in the acquisition, construction or completion of the project.

SEC. 3. Section 17785 of the Education Code is amended to read:

17785. This chapter may be cited as the State Relocatable Classroom Law of 1979.

SEC. 4. Section 14620 of the Government Code is amended to read:

14620. There is in the department a general services planning officer, a procurement officer, and an executive officer of the Office of Public School Construction. Each officer or executive director may be appointed by the Governor, upon recommendation of the director, and shall serve at the pleasure of the director. His or her salary shall be fixed by the director in accordance with law. Each officer or executive officer shall have any duties that may be assigned to him or her by, and shall be responsible to, the director for the performance of those duties. It is the intent of the Legislature that this section is not to result in an increase in the number of positions in the department.

SEC. 5. Section 15492 of the Government Code is amended to read:

15492. (a) The Department of General Services shall assign one full-time position within the Office of Public School Construction to the performance of the following functions:

(1) Providing advisory assistance to school districts regarding the process of site acquisition for projects for which the State Allocation Board has approved funding under Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

(2) Formulating recommendations for administrative or statutory revision to the manner in which school sites are acquired under Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code, and submitting those recommendations to the State

Allocation Board.

(b) The Department of General Services shall establish a screening unit or other mechanism within the Office of Public School Construction to ensure that the office responds in a timely manner to any inquiry regarding the status of an application for project funding under Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

(c) The requirements set forth in this section shall not increase the staffing level of the Office of Public School Construction, as that staffing level existed on the operative date of this section.

SEC. 6. Section 65971 of the Government Code is amended to read:

65971. (a) The governing body of a school district which operates an elementary or high school shall notify the city council or board of supervisors of the city or county within which the school district is located if the governing body makes both of the following findings supported by clear and convincing evidence:

(1) That conditions of overcrowding exist in one or more attendance areas within the district which will impair the normal functioning of educational programs including the reason for the existence of those conditions.

(2) That all reasonable methods of mitigating conditions of overcrowding have been evaluated and no feasible method for reducing those conditions exist.

(b) The notice of findings sent to the city or county pursuant to subdivision (a) shall specify the mitigation measures considered by the school district. The notice of findings shall include a completed application to the Office of Public School Construction for preliminary determination of eligibility under the Leroy F. Greene State School Building Lease-Purchase Law of 1976 (Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code). The city council or board of supervisors shall take no action on the notice of findings sent to the city or county pursuant to subdivision (a) until the findings have been made available to the public for 60 days after the date of receipt by the city or county. The city council or board of supervisors shall either concur or not concur in the notice of findings within 61 days to 150 days after the date of receipt of the findings. The city council or board of supervisors may extend the period to concur or not to concur for one 30-day period. The failure of the city council or board of supervisors to either concur or not concur within the time period prescribed in this subdivision shall not be deemed as an act of concurrence in the notice of findings by the council or board.

The date of receipt of the notice of findings is the date when all of the materials required by this section are completed and filed by the school district with the city council or board of supervisors.

If the city council or board of supervisors concurs in those findings, Section 65972 shall be applicable to actions taken on residential development by the city council or board of supervisors.

SEC. 7. Section 65974 of the Government Code is amended to read:

65974. (a) For the purpose of establishing an interim method of providing classroom facilities where overcrowded conditions exist, as determined necessary pursuant to Section 65971, and notwithstanding Section 66478, a city, county, or city and county may, by ordinance, require the dedication of land, the payment of fees in lieu thereof, or a combination of both, for classroom and related facilities for elementary or high schools as a condition to the approval of a residential development, if all of the following occur:

(1) The general plan provides for the location of public schools.
(2) The ordinance has been in effect for a period of 30 days prior to the implementation of the dedication or fee requirement.

(3) The land or fees, or both, transferred to a school district shall be used only for the purpose of providing interim elementary or high school classroom and related facilities. If fees are paid in lieu of the dedication of land and those fees are utilized to purchase land, no more land shall be purchased than is necessary for the placement thereon of interim facilities.

(4) The location and amount of land to be dedicated or the amount of fees to be paid, or both, shall bear a reasonable relationship and be limited to the needs of the community for interim elementary or high school facilities and shall be reasonably related and limited to the need for schools caused by the development. However, the value of the land to be dedicated or the amount of fees to be paid, or both, shall not exceed the amount necessary to pay five annual lease payments for the interim facilities. In lieu of the dedication of land or the payment of fees, or both, the builder of a residential development may, at his or her option and at his or her expense, provide interim facilities, owned or controlled by the builder, at the place designated by the school district, and at the conclusion of the fifth school year the builder shall, at the builder's expense, remove the interim facilities from that place.

(5) A finding is made by the city council or board of supervisors that the facilities to be constructed from the fees or the land to be dedicated, or both, is consistent with the general plan.

(b) The ordinance may specify the methods for mitigating the conditions of overcrowding which the school district shall consider when making the finding required by paragraph (2) of subdivision (a) of Section 65971.

(c) If the payment of fees is required, the payment shall be made at the time the building permit is issued or at a later time as may be specified in the ordinance.

(d) Only the payment of fees may be required in subdivisions containing 50 parcels or less.

(e) Notwithstanding any other provision of this chapter, contracts entered into or contracts to be entered into pursuant to a school facilities master plan administered by a joint powers authority created under Chapter 5 (commencing with Section 6500) of

Division 7 of Title 1 of the Government Code for a designated community plan area adopted by a city, county, or city and county, whether general law or chartered, on or before September 1, 1986, that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of residential development shall not be subject to the provisions of subdivision (b) of Section 65995. However, in determining developer fees under that school facilities master plan, the cost and maximum building area standards for school buildings prescribed by Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code shall apply, and the school district or districts involved are required to have on file with the Office of Public School Construction, and actively pursue in good faith, an application for preliminary determination of eligibility for project funding under that chapter, and shall actively pursue in good faith the establishment of a community capital facilities district or other permanent financing mechanisms to reduce or eliminate developer fees.

Any fees collected or land dedicated after September 1, 1986, pursuant to this section, and not used to avoid overcrowding of the facilities to be built pursuant to the school facilities master plan, shall be subject to disposition in accordance with subdivision (b) of Section 65979.

Fees collected in excess of the limitations set forth in subdivision (b) of Section 65995 for schools constructed under that school facilities master plan shall neither advantage nor disadvantage a school district's application for project funding under Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

SEC. 8. Section 24275 of the Health and Safety Code is amended to read:

24275. (a) The State Department of Health Services, in conjunction with the study required pursuant to Chapter 116 of the Statutes of 1986, shall report to the Legislature by January 1, 1987, and periodically thereafter, on the most effective air monitoring standard for the airborne concentration of asbestos in any public school building that is both economically and technologically feasible. If the department believes that the air monitoring standard for asbestos in public school buildings as specified in Section 49410.7 of the Education Code should be revised, it shall promulgate a regulation to that effect.

(b) The department shall provide the Office of Public School Construction with appropriate sampling methodology for use in taking air samples in public school buildings.

CHAPTER 1229

An act to amend Section 21157 of the Public Resources Code, relating to environmental quality.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 21157 of the Public Resources Code is amended to read:

21157. (a) A master environmental impact report may be prepared for any one of the following projects:

(1) A general plan, element, general plan amendment, or specific plan.

(2) A project that consists of smaller individual projects which will be carried out in phases.

(3) A rule or regulation which will be implemented by subsequent projects.

(4) Projects which will be carried out or approved pursuant to a development agreement.

(5) Public or private projects which will be carried out or approved pursuant to, or in furtherance of, a redevelopment plan.

(6) A state highway project or mass transit project which will be subject to multiple stages of review or approval.

(7) A plan proposed by a local agency for the reuse of a federal military base or reservation that has been closed or that is proposed for closure.

(b) When a lead agency prepares a master environmental impact report, the document shall include all of the following:

(1) A detailed statement as required by Section 21100.

(2) A description of anticipated subsequent projects that would be within the scope of the master environmental impact report, that contains sufficient information with regard to the kind, size, intensity, and location of the subsequent projects, including, but not limited to, all of the following:

(A) The specific type of project anticipated to be undertaken.

(B) The maximum and minimum intensity of any anticipated subsequent project, such as the number of residences in a residential development, and, with regard to a public works facility, its anticipated capacity and service area.

(C) The anticipated location and alternative locations for any development projects.

(D) A capital outlay or capital improvement program, or other scheduling or implementing device that governs the submission and approval of subsequent projects.

(3) A description of potential impacts of anticipated subsequent projects for which there is not sufficient information reasonably

available to support a full assessment of potential impacts in the master environmental impact report. This description shall not be construed as a limitation on the impacts which may be considered in a focused environmental impact report.

(c) Lead agencies may develop and implement a fee program in accordance with applicable provisions of law to generate the revenue necessary to prepare a master environmental impact report.

SEC. 2. Section 21157 of the Public Resources Code is amended to read:

21157. (a) A master environmental impact report may be prepared for any one of the following projects:

(1) A general plan, element, general plan amendment, or specific plan.

(2) A project that consists of smaller individual projects which will be carried out in phases.

(3) A rule or regulation which will be implemented by subsequent projects.

(4) Projects which will be carried out or approved pursuant to a development agreement.

(5) Public or private projects which will be carried out or approved pursuant to, or in furtherance of, a redevelopment plan.

(6) A state highway project or mass transit project which will be subject to multiple stages of review or approval.

(7) A plan proposed by a local agency for the reuse of a federal military base or reservation that has been closed or that is proposed for closure.

(8) A regional transportation plan or congestion management plan.

(b) When a lead agency prepares a master environmental impact report, the document shall include all of the following:

(1) A detailed statement as required by Section 21100.

(2) A description of anticipated subsequent projects that would be within the scope of the master environmental impact report, that contains sufficient information with regard to the kind, size, intensity, and location of the subsequent projects, including, but not limited to, all of the following:

(A) The specific type of project anticipated to be undertaken.

(B) The maximum and minimum intensity of any anticipated subsequent project, such as the number of residences in a residential development, and, with regard to a public works facility, its anticipated capacity and service area.

(C) The anticipated location and alternative locations for any development projects.

(D) A capital outlay or capital improvement program, or other scheduling or implementing device that governs the submission and approval of subsequent projects.

(3) A description of potential impacts of anticipated subsequent projects for which there is not sufficient information reasonably

available to support a full assessment of potential impacts in the master environmental impact report. This description shall not be construed as a limitation on the impacts which may be considered in a focused environmental impact report.

(c) Lead agencies may develop and implement a fee program in accordance with applicable provisions of law to generate the revenue necessary to prepare a master environmental impact report.

SEC. 3. Section 2 of this bill incorporates amendments to Section 21157 of the Public Resources Code proposed by this bill and AB 314. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1995, (2) each bill amends Section 21157 of the Public Resources Code, and (3) this bill is enacted after AB 314, in which case Section 21157 of the Public Resources Code, as amended by AB 314, shall remain operative only until the operative date of this bill, at which time Section 2 of this bill shall become operative, and Section 1 of this bill shall not become operative.

CHAPTER 1230

An act to amend Sections 21002.1, 21005, 21064.5, 21065, 21080, 21080.1, 21081.6, 21100, 21100.1, and 21167.6 of, and to add Section 21080.14 to, the Public Resources Code, relating to environmental quality, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 21002.1 of the Public Resources Code is amended to read:

21002.1. In order to achieve the objectives set forth in Section 21002, the Legislature hereby finds and declares that the following policy shall apply to the use of environmental impact reports prepared pursuant to this division:

(a) The purpose of an environmental impact report is to identify the significant effects on the environment of a project, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided.

(b) Each public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so.

(c) If economic, social, or other conditions make it infeasible to mitigate one or more significant effects on the environment of a project, the project may nonetheless be carried out or approved at

the discretion of a public agency if the project is otherwise permissible under applicable laws and regulations.

(d) In applying the policies of subdivisions (b) and (c) to individual projects, the responsibility of the lead agency shall differ from that of a responsible agency. The lead agency shall be responsible for considering the effects, both individual and collective, of all activities involved in a project. A responsible agency shall be responsible for considering only the effects of those activities involved in a project which it is required by law to carry out or approve. This subdivision applies only to decisions by a public agency to carry out or approve a project and does not otherwise affect the scope of the comments that the public agency may wish to make pursuant to Section 21104 or 21153.

(e) To provide more meaningful public disclosure, reduce the time and cost required to prepare an environmental impact report, and focus on potentially significant effects on the environment of a proposed project, lead agencies shall, in accordance with Section 21100, focus the discussion in the environmental impact report on those potential effects on the environment of a proposed project which the lead agency has determined are or may be significant. Lead agencies may limit discussion on other effects to a brief explanation as to why those effects are not potentially significant.

SEC. 2. Section 21005 of the Public Resources Code is amended to read:

21005. (a) The Legislature finds and declares that it is the policy of the state that noncompliance with the information disclosure provisions of this division which precludes relevant information from being presented to the public agency, or noncompliance with substantive requirements of this division, may constitute a prejudicial abuse of discretion within the meaning of Sections 21168 and 21168.5, regardless of whether a different outcome would have resulted if the public agency had complied with those provisions.

(b) It is the intent of the Legislature that, in undertaking judicial review pursuant to Sections 21168 and 21168.5, courts shall continue to follow the established principle that there is no presumption that error is prejudicial.

(c) It is further the intent of the Legislature that any court, which finds, or, in the process of reviewing a previous court finding, finds, that a public agency has taken an action without compliance with this division, shall specifically address each of the alleged grounds for noncompliance.

SEC. 3. Section 21064.5 of the Public Resources Code is amended to read:

21064.5. "Mitigated negative declaration" means a negative declaration prepared for a project when the initial study has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or

mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.

SEC. 4. Section 21065 of the Public Resources Code is amended to read:

21065. "Project" means an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following:

- (a) An activity directly undertaken by any public agency.
- (b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.
- (c) An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

SEC. 5. Section 21080 of the Public Resources Code is amended to read:

21080. (a) Except as otherwise provided in this division, this division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits, and the approval of tentative subdivision maps unless the project is exempt from this division.

(b) This division shall not apply to any of the following activities:
(1) Ministerial projects proposed to be carried out or approved by public agencies.

(2) Emergency repairs to public service facilities necessary to maintain service.

(3) Projects undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(4) Specific actions necessary to prevent or mitigate an emergency.

(5) Projects which a public agency rejects or disapproves.

(6) Actions undertaken by a public agency relating to any thermal powerplant site or facility, including the expenditure, obligation, or encumbrance of funds by a public agency for planning, engineering, or design purposes, or for the conditional sale or purchase of equipment, fuel, water (except groundwater), steam, or power for a thermal powerplant, if the powerplant site and related facility will be the subject of an environmental impact report, negative declaration, or other document, prepared pursuant to a regulatory

program certified pursuant to Section 21080.5, which will be prepared by the State Energy Resources Conservation and Development Commission, by the Public Utilities Commission, or by the city or county in which the powerplant and related facility would be located if the environmental impact report, negative declaration, or document includes the environmental impact, if any, of the action described in this paragraph.

(7) Activities or approvals necessary to the bidding for, hosting or staging of, and funding or carrying out of, an Olympic games under the authority of the International Olympic Committee, except for the construction of facilities necessary for the Olympic games.

(8) The establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, or other charges by public agencies which the public agency finds are for the purpose of (A) meeting operating expenses, including employee wage rates and fringe benefits, (B) purchasing or leasing supplies, equipment, or materials, (C) meeting financial reserve needs and requirements, (D) obtaining funds for capital projects necessary to maintain service within existing service areas, or (E) obtaining funds necessary to maintain those intracity transfers as are authorized by city charter. The public agency shall incorporate written findings in the record of any proceeding in which an exemption under this paragraph is claimed setting forth with specificity the basis for the claim of exemption.

(9) All classes of projects designated pursuant to Section 21084.

(10) A project for the institution or increase of passenger or commuter services on rail or highway rights-of-way already in use, including modernization of existing stations and parking facilities.

(11) A project for the institution or increase of passenger or commuter service on high-occupancy vehicle lanes already in use, including the modernization of existing stations and parking facilities.

(12) Facility extensions not to exceed four miles in length which are required for the transfer of passengers from or to exclusive public mass transit guideway or busway public transit services.

(13) A project for the development of a regional transportation improvement program or the state transportation improvement program.

(14) Any project or portion thereof located in another state which will be subject to environmental impact review pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.) or similar state laws of that state. Any emissions or discharges that would have a significant effect on the environment in this state are subject to this division.

(15) Projects undertaken by a local agency to implement a rule or regulation imposed by a state agency, board, or commission under a certified regulatory program pursuant to Section 21080.5. Any site-specific effect of the project which was not analyzed as a significant effect on the environment in the plan or other written

documentation required by Section 21080.5 is subject to this division.

(c) If a lead agency determines that a proposed project, not otherwise exempt from this division, would not have a significant effect on the environment, the lead agency shall adopt a negative declaration to that effect. The negative declaration shall be prepared for the proposed project in either of the following circumstances:

(1) There is no substantial evidence in light of the whole record before the lead agency that the project may have a significant effect on the environment.

(2) An initial study identifies potentially significant effects on the environment, but (A) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (B) there is no substantial evidence in light of the whole record before the lead agency that the project, as revised, may have a significant effect on the environment.

(d) If there is substantial evidence in light of the whole record before the lead agency that the project may have a significant effect on the environment, an environmental impact report shall be prepared.

(e) Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment, is not substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.

(f) As a result of the public review process for a mitigated negative declaration, including administrative decisions and public hearings, the lead agency may conclude that certain mitigation measures identified pursuant to paragraph (2) of subdivision (c) are infeasible or otherwise undesirable. In those circumstances, the lead agency, prior to approving the project, may delete those mitigation measures and substitute for them other mitigation measures that the lead agency finds, after holding a public hearing on the matter, are equivalent or more effective in mitigating significant effects on the environment to a less than significant level and that do not cause any potentially significant effect on the environment. If those new mitigation measures are made conditions of project approval or are otherwise made part of the project approval, the deletion of the former measures and the substitution of the new mitigation measures shall not constitute an action or circumstance requiring recirculation of the mitigated negative declaration.

(g) Nothing in this section shall preclude a project applicant or any other person from challenging, in an administrative or judicial proceeding, the legality of a condition of project approval imposed by the lead agency. If, however, any condition of project approval set

aside by either an administrative body or court was necessary to avoid or lessen the likelihood of the occurrence of a significant effect on the environment, the lead agency's approval of the negative declaration and project shall be invalid and a new environmental review process shall be conducted before the project can be reapproved, unless the lead agency substitutes a new condition that the lead agency finds, after holding a public hearing on the matter, is equivalent to, or more effective in, lessening or avoiding significant effects on the environment and that does not cause any potentially significant effect on the environment.

SEC. 6. Section 21080.1 of the Public Resources Code is amended to read:

21080.1. (a) The lead agency shall be responsible for determining whether an environmental impact report, a negative declaration, or a mitigated negative declaration shall be required for any project which is subject to this division. That determination shall be final and conclusive on all persons, including responsible agencies, unless challenged as provided in Section 21167.

(b) In the case of a project described in subdivision (c) of Section 21065, the lead agency shall, upon the request of a potential applicant, provide for consultation prior to the filing of the application regarding the range of actions, potential alternatives, mitigation measures, and any potential and significant effects on the environment of the project.

SEC. 7. Section 21080.14 is added to the Public Resources Code, to read:

21080.14. (a) Except as provided in subdivision (c), this division does not apply to any development project which consists of the construction, conversion, or use of residential housing consisting of not more than 45 units in an urbanized area that is affordable to lower income households, as defined in Section 50079.5 of the Health and Safety Code, if the developer of the development project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for lower income households for a period of at least 15 years, or that is affordable to low- and moderate-income households, as defined in paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code, if the developer of the development project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for low- and moderate-income households at monthly housing costs as determined pursuant to paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code, and the development project meets all of the following requirements:

(1) The development project is consistent with the jurisdiction's general plan as it existed on the date the application was deemed complete.

(2) The development project is consistent with the zoning designation, as specified in the zoning ordinance as it existed on the

date the application was deemed complete, unless the zoning is inconsistent with the general plan because the local agency has not rezoned the property to bring it into conformity with the general plan.

(3) The project site has been previously developed for urban uses, or the immediately contiguous properties surrounding the project site are, or previously have been, developed for urban uses.

(4) The project site is not more than two acres in area.

(5) The project site can be adequately served by utilities.

(6) The project site has no value as a wildlife habitat.

(7) The project site is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.

(8) The project site is subject to an assessment prepared by a California registered environmental assessor to determine the presence of hazardous contaminants on the site and the potential for exposure of site occupants to significant health hazards from nearby properties and activities. If hazardous contaminants on the site are found, the contaminants must be removed or any significant effects of those contaminants must be mitigated to a level of insignificance. If the potential for exposure to significant health hazards from surrounding properties or activities is found to exist, the effects of the potential exposure must be mitigated to a level of insignificance.

(9) The project will not involve the demolition of, or any substantial adverse change in, any district, landmark, object, building, structure, site, area, or place that is listed, or determined to be eligible for listing, in the California Register of Historical Resources.

(b) As used in subdivision (a), "urbanized area" means an area that has a population density of at least 1,000 persons per square mile.

(c) Notwithstanding subdivision (a), this division does apply to a development project described in subdivision (a) if there is a reasonable possibility that the development project would have a significant effect on the environment due to unusual circumstances or due to related or cumulative impacts of reasonably foreseeable projects in the vicinity of the development project.

SEC. 8. Section 21081.6 of the Public Resources Code is amended to read:

21081.6. (a) When making the findings required by subdivision (a) of Section 21081 or when adopting a mitigated negative declaration pursuant to paragraph (2) of subdivision (c) of Section 21080, the following requirements shall apply:

(1) The public agency shall adopt a reporting or monitoring program for the changes made to the project, or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment. The reporting or monitoring program shall be designed to ensure compliance during project implementation. For those changes which have been required or incorporated into the project at the request of a responsible agency or a public agency having jurisdiction by law over natural resources affected by the

project, that agency shall, if so requested by the lead agency or a responsible agency, prepare and submit a proposed reporting or monitoring program.

(2) The lead agency shall specify the location and custodian of the documents or other material which constitute the record of proceedings upon which its decision is based.

(b) If there is a project for which mitigation is adopted, a public agency shall comply with subdivision (a) by, among other things, adopting mitigation measures as conditions of project approval. Those conditions of project approval may be set forth in referenced documents which address required mitigation measures or, in the case of the adoption of a plan, policy, regulation, or other public project, by incorporating the mitigation measures into the plan, policy, regulation, or project design.

(c) Prior to the close of the public review period for a draft environmental impact report or mitigated negative declaration, a responsible agency, or a public agency having jurisdiction over natural resources affected by the project, shall either submit to the lead agency complete and detailed performance objectives for mitigation measures which would address the significant effects on the environment identified by the responsible agency or agency having jurisdiction over natural resources affected by the project, or refer the lead agency to appropriate, readily available guidelines or reference documents. Any mitigation measures submitted to a lead agency by a responsible agency or an agency having jurisdiction over natural resources affected by the project shall be limited to measures which mitigate impacts to resources which are subject to the statutory authority of, and definitions applicable to, that agency. Compliance or noncompliance by a responsible agency or agency having jurisdiction over natural resources affected by a project with that requirement shall not limit the authority of the responsible agency or agency having jurisdiction over natural resources affected by a project, or the authority of the lead agency, to approve, condition, or deny projects as provided by this division or any other provision of law.

SEC. 8.5. Section 21081.6 of the Public Resources Code is amended to read:

21081.6. (a) When making the findings required by paragraph (1) of subdivision (a) of Section 21081 or when adopting a mitigated negative declaration pursuant to paragraph (2) of subdivision (c) of Section 21080, the following requirements shall apply: (1) The public agency shall adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment. The reporting or monitoring program shall be designed to ensure compliance during project implementation. For those changes which have been required or incorporated into the project at the request of a responsible agency or a public agency having jurisdiction by law over natural resources affected by the

project, that agency shall, if so requested by the lead agency or a responsible agency, prepare and submit a proposed reporting or monitoring program.

(2) The lead agency shall specify the location and custodian of the documents or other material which constitute the record of proceedings upon which its decision is based.

(b) A public agency shall provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures. Conditions of project approval may be set forth in referenced documents which address required mitigation measures or, in the case of the adoption of a plan, policy, regulation, or other public project, by incorporating the mitigation measures into the plan, policy, regulation, or project design.

(c) Prior to the close of the public review period for a draft environmental impact report or mitigated negative declaration, a responsible agency, or a public agency having jurisdiction over natural resources affected by the project, shall either submit to the lead agency complete and detailed performance objectives for mitigation measures which would address the significant effects on the environment identified by the responsible agency or agency having jurisdiction over natural resources affected by the project, or refer the lead agency to appropriate, readily available guidelines or reference documents. Any mitigation measures submitted to a lead agency by a responsible agency or an agency having jurisdiction over natural resources affected by the project shall be limited to measures which mitigate impacts to resources which are subject to the statutory authority of, and definitions applicable to, that agency. Compliance or noncompliance by a responsible agency or agency having jurisdiction over natural resources affected by a project with that requirement shall not limit the authority of the responsible agency or agency having jurisdiction over natural resources affected by a project, or the authority of the lead agency, to approve, condition, or deny projects as provided by this division or any other provision of law.

SEC. 9. Section 21100 of the Public Resources Code is amended to read:

21100. (a) All lead agencies shall prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on any project which they propose to carry out or approve that may have a significant effect on the environment. Whenever feasible, a standard format shall be used for environmental impact reports.

(b) The environmental impact report shall include a detailed statement setting forth all of the following:

(1) All significant effects on the environment of the proposed project.

(2) In a separate section:

(A) Any significant effect on the environment that cannot be

avoided if the project is implemented.

(B) Any significant effect on the environment that would be irreversible if the project is implemented.

(3) Mitigation measures proposed to minimize significant effects on the environment, including, but not limited to, measures to reduce the wasteful, inefficient, and unnecessary consumption of energy.

(4) Alternatives to the proposed project.

(5) The growth-inducing impact of the proposed project.

(c) The report shall also contain a statement briefly indicating the reasons for determining that various effects on the environment of a project are not significant and consequently have not been discussed in detail in the environmental impact report.

(d) For purposes of this section, any significant effect on the environment shall be limited to substantial, or potentially substantial, adverse changes in physical conditions which exist within the area as defined in Section 21060.5.

(e) Previously approved land use documents, including, but not limited to, general plans, specific plans, and local coastal plans, may be used in cumulative impact analysis.

SEC. 10. Section 21100.1 of the Public Resources Code is amended to read:

21100.1. The information described in subparagraph (B) of paragraph (2) of subdivision (b) of Section 21100 shall be required only in environmental impact reports prepared in connection with the following:

(a) The adoption, amendment, or enactment of a plan, policy, or ordinance of a public agency.

(b) The adoption by a local agency formation commission of a resolution making determinations.

(c) A project which will be subject to the requirement for preparing an environmental impact statement pursuant to the requirements of the National Environmental Policy Act of 1969.

SEC. 11. Section 21167.6 of the Public Resources Code is amended to read:

21167.6. Notwithstanding any other provision of law, in all actions or proceedings brought pursuant to Section 21167, except those involving the Public Utilities Commission, all of the following shall apply:

(a) At the time that the action or proceeding is filed, the plaintiff or petitioner shall file a request that the respondent public agency prepare the record of proceedings relating to the subject of the action or proceeding. The request, together with the complaint or petition, shall be served upon the public agency not later than 10 business days from the date that the action or proceeding was filed.

(b) (1) The public agency shall prepare and certify the record of proceedings not later than 60 days from the date that the request specified in subdivision (a) was served upon the public agency. Upon certification, the public agency shall lodge a copy of the record of

proceedings with the court and shall serve on the parties notice that the record of proceedings has been certified and lodged with the court. The parties shall pay any costs or fees imposed for the preparation of the record of proceedings in conformance with any law or rule of court.

(2) The plaintiff or petitioner may elect to prepare the record of proceedings or the parties may agree to an alternative method of preparation of the record of proceedings, subject to certification of its accuracy by the public agency, within the time limit specified in this subdivision.

(c) The time limit established by subdivision (b) may be extended only upon the stipulation of all parties who have been properly served in the action or proceeding or upon order of the court. Extensions shall be liberally granted by the court when the size of the record of proceedings renders infeasible compliance with that time limit. There is no limit on the number of extensions which may be granted by the court, but no single extension shall exceed 60 days unless the court determines that a longer extension is in the public interest.

(d) If the public agency fails to prepare and certify the record within the time limit established in subdivision (b), or any continuances of that time limit, the plaintiff or petitioner may move for sanctions, and the court may, upon that motion, grant appropriate sanctions.

(e) The record of proceedings shall include, but is not limited to, all of the following items:

(1) All project application materials.

(2) All staff reports and related documents prepared by the respondent public agency with respect to its compliance with the substantive and procedural requirements of this division and with respect to the action on the project.

(3) All staff reports and related documents prepared by the respondent public agency and written testimony or documents submitted by any person relevant to any findings or statement of overriding considerations adopted by the respondent agency pursuant to this division.

(4) Any transcript or minutes of the proceedings at which the decisionmaking body of the respondent public agency heard testimony on, or considered any environmental document on, the project, and any transcript or minutes of proceedings before any advisory body to the respondent public agency which were presented to the decisionmaking body prior to action on the environmental documents or on the project.

(5) All notices issued by the respondent public agency to comply with this division or with any other law governing the processing and approval of the project.

(6) All written comments received in response to, or in connection with, environmental documents prepared for the project, including responses to the notice of preparation.

(7) All written evidence or correspondence submitted to, or transferred from, the respondent public agency with respect to compliance with this division or with respect to the project.

(8) Any proposed decisions or findings submitted to the decisionmaking body of the respondent public agency by its staff, or the project proponent, project opponents, or other persons.

(9) The documentation of the final public agency decision, including the final environmental impact report, mitigated negative declaration, or negative declaration, and all documents, in addition to those referenced in paragraph (3), cited or relied on in the findings or in a statement of overriding considerations adopted pursuant to this division.

(10) Any other written materials relevant to the respondent public agency's compliance with this division or to its decision on the merits of the project, including the initial study, any drafts of any environmental document, or portions thereof, which have been released for public review, and copies of studies or other documents relied upon in any environmental document prepared for the project and either made available to the public during the public review period or included in the respondent public agency's files on the project, and all internal agency communications, including staff notes and memoranda related to the project or to compliance with this division.

(11) The full written record before any inferior administrative decisionmaking body whose decision was appealed to a superior administrative decisionmaking body prior to the filing of litigation.

(f) In preparing the record of proceedings, the party preparing the record shall strive to do so at reasonable cost in light of the scope of the record.

(g) The clerk of the superior court shall prepare and certify the clerk's transcript on appeal not later than 60 days from the date that the notice designating the papers or records to be included in the clerk's transcript was filed with the superior court, if the party or parties pay any costs or fees for the preparation of the clerk's transcript imposed in conformance with any law or rules of court. Nothing in this subdivision precludes an election to proceed by appendix, as provided in Rule 5.1 of the California Rules of Court.

(h) Extensions of the period for the filing of any brief on appeal may be allowed only by stipulation of the parties or by order of the court for good cause shown. Extensions for the filing of a brief on appeal shall be limited to one 30-day extension for the preparation of an opening brief, and one 30-day extension for the preparation of a responding brief, except that the court may grant a longer extension or additional extensions if it determines that there is a substantial likelihood of settlement that would avoid the necessity of completing the appeal.

(i) At the completion of the filing of briefs on appeal, the appellant shall notify the court of the completion of the filing of briefs, whereupon the clerk of the reviewing court shall set the

appeal for hearing on the first available calendar date.

SEC. 12. (a) In the next scheduled review of the guidelines pursuant to Section 21087 of the Public Resources Code, the Office of Planning and Research shall (1) review the impact of Article 3 (commencing with Section 21158) of Chapter 4.5 of Division 13 of the Public Resources Code and provide further development of the concept of using a focused environmental impact report, and (2) provide recommendations for revising the definition of "project" in the guidelines to conform to Section 21065 of the Public Resources Code, as amended by Section 4 of this act.

(b) The Legislature hereby declares that the amendment of Section 21065 of the Public Resources Code by Section 4 of this act is intended to clarify the definition of "project" as currently set forth in subdivision (a) of Section 15378 of Title 14 of the California Code of Regulations, as adopted by the Secretary of the Resources Agency. The primary purpose of the change is to codify the holdings of *Kaufman & Broad-South Bay, Inc. v. Morgan Hill Unified School District* (1992), 9 Cal. App. 4th 464, and *City of Livermore v. Local Agency Formation Com.* (1986), 184 Cal. App. 3d 531.

SEC. 13. (a) The Office of Planning and Research may include in its annual survey questions relating to the impact of the exemption to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) for specified types of residential housing that is provided pursuant to Section 21080.14 of the Public Resources Code, as added by Section 7 of this act, on lead agencies that are considering the approval of housing development projects that are intended for lower income households or that are affordable to low- and moderate-income households.

(b) It is the intent of the Legislature that the survey questions shall include an analysis of the ability of the lead agency to address potential significant effects on the environment that may result from the proposed development project, including the conversion of agricultural lands to urban uses, to impose conditions on the construction of the proposed development project, and to shorten the amount of time within which the proposed development project may be considered and acted upon.

SEC. 14. If this bill and AB 314 are both chaptered, the provisions of this bill that amend Sections 21100, 21100.1, and 21167.6 of the Public Resources Code shall prevail over the provisions of AB 314 that amend those sections of the Public Resources Code regardless of which bill is chaptered last.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution to the extent that the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

Moreover, no reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with

Section 17500) of Division 4 of Title 2 of the Government Code for other costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law for those other costs.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 16. The changes to subdivision (e) of Section 21100 of the Public Resources Code made by this bill shall not become operative until January 1, 1995.

SEC. 17. Section 8.5 of this bill incorporates amendments to Section 21080.6 of the Public Resources Code proposed by this bill and AB 314. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1995, (2) each bill amends Section 21080.6 of the Public Resources Code, and (3) this bill is enacted after AB 314, in which case Section 21080.6 of the Public Resources Code, as amended by AB 314, shall remain operative only until the operative date of this bill, at which time Section 8.5 of this bill shall become operative, and Section 8 of this bill shall not become operative.

SEC. 18. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure, as soon as possible, the efficient review of projects subject to the California Environmental Quality Act, thereby protecting the environment and improving the economy of the state, it is necessary that this act take effect immediately.

CHAPTER 1231

An act to add Section 71.7 to the Harbors and Navigation Code, relating to Spud Point Marina, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. The Legislature finds and declares as follows:

(a) On May 1, 1994, the United States Department of Commerce issued regulations that drastically reduced catch levels and areas open to salmon fishing in the Pacific northwestern United States, including off the coast of northern California.

(b) On May 20, 1994, the Governor of California declared a state of emergency for the Counties of Sonoma, Mendocino, Humboldt, and Del Norte due to the devastating economic loss associated with the 50 to 90 percent decline in commercial salmon fishing over the last several years. The Governor declared that conditions of extreme peril to the salmon fishing industry exist because of drought, water diversion, degraded stream conditions, and the natural phenomenon known as the El Niño ocean current.

(c) On May 26, 1994, in response to the Governor's declaration, the United States Secretary of Commerce, under the authority of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. Sec. 4101 et seq.), determined that a fishing disaster exists because of the collapse of salmon stocks in the Pacific northwestern United States.

(d) Because the devastated northern California salmon industry faces the worst year in its history, Sonoma County's Spud Point Marina, at Bodega Bay in northern California, faces a similar plight. Commercial fishing vessel owners comprise over 80 percent of those persons using the Spud Point Marina. This industry generates revenues for the marina by paying berth rental fees and by purchasing fuel, ice, and other services. Without the income from commercial salmon fishing, many fishermen have been forced to remove their vessels from that marina. Only 73 percent of the berths in that marina are occupied, and that number is declining. Many commercial fishing vessels are for sale.

(e) Sonoma County's ability to serve the commercial fishing industry and to generate sufficient revenues from the operation of Spud Point Marina to make debt service payments to the Department of Boating and Waterways has been devastated, along with the commercial fishing industry the marina was designed to serve. This impact is likely to continue as long as the commercial fishing industry continues to suffer disastrous economic losses, which is likely to be indefinitely.

SEC. 2. Section 71.7 is added to the Harbors and Navigation Code, to read:

71.7. Notwithstanding any other provision of this chapter, Section 82, or any contract or agreement to the contrary, loan payments on the loan on behalf of Spud Point Marina in the County of Sonoma, as authorized by Schedule (b) (8) of Item 3680-101-516 of Section 2.00 of the Budget Act of 1982, and administered by the department, may be renegotiated by the department and the County of Sonoma, with the advice and consent of the commission, to solve the fiscal problems involving the marina existing on the effective date of the act enacting this section during the 1994 portion of the 1993-94 Regular Session.

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

The reduction in revenues available from the loss of the

commercial salmon season off the northern California coast has hampered the ability of the County of Sonoma to repay certain loans to the State of California for the construction of the Spud Point Marina. In order to prevent the default of the loans and the loss of the commercial fishing fleet in Bodega Bay, it is necessary that this act take effect immediately.

CHAPTER 1232

An act to amend Section 19702.3 of the Government Code, relating to state civil service.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 19702.3 of the Government Code is amended to read:

19702.3. (a) An appointing authority shall not refuse to hire, and shall not discharge, suspend, expel, or discriminate against, any individual because of any of the following:

(1) An individual's exercise of the right to family care leave provided by subdivision (a) of Section 12945.2.

(2) An individual's giving information or testimony as to his or her own family care leave, or another person's family care leave, in any inquiry or proceeding related to rights guaranteed under Section 12945.2.

(b) This section shall not be construed to require any changes in existing collective bargaining agreements during the life of the contract, or until January 1, 1993, whichever occurs first.

CHAPTER 1233

An act to add Sections 71.7 and 72.75 to the Harbors and Navigation Code, to amend and Supplement the Budget Act of 1994 by augmenting Item 3790-301-786 thereof, and by adding Item 3790-492 thereto, relating to fiscal affairs, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. In accordance with Provision 1 thereof, the funds appropriated pursuant to Schedule (d) of Item 3680-101-516 of

Section 2.00 of the Budget Act of 1994 (Ch. 139, Stats. 1994) to the Department of Boating and Waterways for local assistance for the 1994-95 fiscal year are allocated as follows:

Schedule:

Boating Facilities	\$15,431,000
Launching Facility Grants.....	(4,384,000)
(1) Casitas Lake.....	(780,000)
(2) Coyote Point Marina.....	(26,000)
(3) Crescent City Harbor.....	(120,000)
(4) Lemon Hill/Lake Kaweah	(652,000)
(5) Pass Creek-Jackson Meadows Reservoir	(100,000)
(6) San Antonio Lake	(250,000)
(7) Scotts Flat Reservoir	(330,000)
(8) Whiskeytown Reservoir.....	(303,000)
(9) Woodson Bridge Sacramento River	(130,000)
(10) Woodward Reservoir Bayview Point	(200,000)
(11) Yosemite Lake ..	(150,000)
(12) Little Rock Reservoir	(393,000)
(13) Floating Restrooms.....	(150,000)
(14) Lake Elsinore	(800,000)
Small Craft Harbor Loans	(7,867,000)
(1) Jack London Square Marina.....	(2,750,000)
(2) Martinez Marina..	(1,057,000)
(3) San Leandro Marina.....	(500,000)
(4) Santa Cruz Harbor	(590,000)
(5) Woodley Island Marina	(1,000,000)
(6) Suisun City Marina.....	(1,700,000)
(7) Long Beach Marina.....	(100,000)
(8) Planning Loans	(120,000)
(9) Sacramento Boat Harbor.....	(50,000)

Private Marina Loans (3,180,000)

SEC. 2. In accordance with Provision 1 thereof, the funds appropriated pursuant to Item 3680-301-516 of Section 2.00 of the Budget Act of 1994 (Ch. 139, Stats. 1994) to the Department of Boating and Waterways for capital outlay for expenditure during the 1994-95, 1995-96, and 1996-97 fiscal years are appropriated as follows:

Schedule:

For capital outlay..... \$2,828,000

- (1) 50.04.020-Lake
Oroville SRA: Boat
Launching Facility-
Preliminary plans,
working drawings,
and construction..... (1,535,000)
- (2) 50.38.020-Candlestick
Point SRA: Boat
launching Facility-
construction (1,293,000)

SEC. 3. (a) Notwithstanding any other provisions of law, the funds appropriated by Schedule (a) of Item 3680-101-516 of Section 2.00 of the Budget Act of 1994 (Ch. 139, Stats. 1994) for "Small Craft Harbor Loans 1) Emergency Loans" shall be encumbered to provide for repairs of damage caused by emergency conditions, including, but not limited to, tidal waves or severe storms, at small craft harbor facilities constructed pursuant to Sections 70.2 and 71.4 of the Harbors and Navigation Code. These repairs may be authorized by the Director of Boating and Waterways.

(b) Notwithstanding any other provision of law, no further loans shall be made from the Harbors and Watercraft Revolving Fund for the development of the Suisun City Marina until such time as the boat slips financed through the 1993-94 fiscal year are 90 percent occupied.

SEC. 4. Item 3790-301-786 of Section 2.00 of the Budget Act of 1994 is amended to read:

3790-301-786—For capital outlay, Department of Parks and Recreation, payable from the California Wildlife, Coastal, and Park Land Fund of 1988 6,402,000

Schedule:

- (1) 90.EU.110-Bolsa Chica SB: Camp-
ing Facilities—Construction 900,000
- (2) 90.9H.605-Colonel Allensworth
SHP: Baptist Church Reconstruc-

	tion—Preliminary Plans and Working Drawings	137,000
(3)	90.CB.600-Morro Bay SP: Camp-ground Rehabilitation and Day Use Area—Study and Preliminary Plans	215,000
(4)	90.CG.605-Pfeiffer Big Sur SP: Improve Sewage Treatment Plant—Study, Preliminary Plans and Working Drawings	227,000
(5)	90.C1.110-Santa Cruz Mission SHP: Public Use Facilities—Construction	651,000
(6)	90.RS.605-statewide: Budget Package/Schematic Planning	200,000
(7)	90.RS.605-Statewide: CEQA Filing Fees—Planning	30,000
(8)	90.RS.205-Statewide: Park System—Minor Projects	2,500,000
(9)	90.RS.230-statewide: Stewardship Program—Minor Projects	750,000
(10)	90.RS.610-Statewide: Topographic Surveys—Planning	200,000
(11)	90.RS.235-Statewide: Volunteer Program—Minor Projects	152,000
(12)	90.5Y.110-Candlestick Point SRA: Boat launch facilities—Construction	232,000
(13)	90.RS.401-Statewide: acquisition costs—Planning	100,000
(14)	90.RS.404-Statewide: Pre-budget appraisals—Planning	60,000
(15)	90.AN.610-Empire Mine SHP: Mine Shaft Adit—Working Drawings	96,000
(16)	Reimbursements	-48,000

Provisions:

1. Funds appropriated in category (6) of this item shall be used to develop design information or cost information for new projects for which funds have not been appropriated previously, but which are anticipated to be included in the 1995-96 or 1996-97 Governor's Budget.
2. Funds appropriated in category (9) of this item shall be available for expenditure until June 30, 1997.

SEC. 5. Item 3790-492 is added to Section 2.00 of the Budget Act of 1994, to read:

3790-492—Reappropriation, Department of Parks and Recreation. Notwithstanding any other provision of law, the balance of the appropriation provided in the following citation is reappropriated for the purposes, unless otherwise specified (and subject to the limitations unless otherwise specified), provided for in the appropriation and shall be available for expenditure until June 30, 1995:

722-Parklands Fund of 1984

- (1) Item 3790-101-722(a) (42), Budget Act of 1986, County of Sierra, RV Disposal Station, provided that these funds shall be used for the Downieville Community Park project.

SEC. 6. The Legislature finds and declares as follows:

(a) On May 1, 1994, the United States Department of Commerce issued regulations that drastically reduced catch levels and areas open to salmon fishing in the Pacific northwestern United States, including off the coast of northern California.

(b) On May 20, 1994, the Governor of California declared a state of emergency for the Counties of Sonoma, Mendocino, Humboldt, and Del Norte due to the devastating economic losses associated with the 50 to 90 percent decline in commercial salmon fishing over the last several years. The Governor declared that conditions of extreme peril to the salmon fishing industry exist because of drought, water diversion, degraded stream conditions, and the natural phenomenon known as the El Niño ocean current.

(c) On May 26, 1994, in response to the Governor's declaration, the United States Secretary of Commerce, under the authority of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. Sec. 4101 et seq.), determined that a fishing disaster exists because of the collapse of salmon stocks in the Pacific northwestern United States.

(d) Because the devastated northern California salmon industry faces the worst year in its history, Sonoma County's Spud Point Marina, at Bodega Bay in northern California, faces a similar plight. Commercial fishing vessel owners comprise over 80 percent of those persons using the Spud Point Marina. This industry generates revenues for the marina by paying berth rental fees and by purchasing fuel, ice, and other services. Without the income from commercial salmon fishing, many fishermen have been forced to remove their vessels from that marina. Only 73 percent of the berths in that marina are occupied, and that number is declining. Many commercial fishing vessels are for sale.

(e) Sonoma County's ability to serve the commercial fishing industry and to generate sufficient revenues from the operation of Spud Point Marina to make debt service payments to the Department of Boating and Waterways has been devastated, along with the

commercial fishing industry the marina was designed to serve. This impact is likely to continue as long as the commercial fishing industry continues to suffer disastrous economic losses, which is likely to continue indefinitely.

SEC. 7. Section 71.7 is added to the Harbors and Navigation Code, to read:

71.7. Notwithstanding any other provision of this chapter, Section 82, or any contract or agreement to the contrary, loan payments on the loan on behalf of Spud Point Marina in the County of Sonoma, as authorized by Schedule (b) (8) of Item 3680-101-516 of Section 2.00 of the Budget Act of 1982, and administered by the department, may be renegotiated by the department and the County of Sonoma, with the advice and consent of the commission, to solve the fiscal problems involving the marina existing on the effective date of this section as enacted during the 1994 portion of the 1993-94 Regular Session.

SEC. 8. Section 72.75 is added to the Harbors and Navigation Code, to read:

72.75. (a) The department may grant funds to any public agency for the construction or procurement of vessel pumpout or dump stations and ancillary items.

(b) The department shall establish general policies for determining appropriate bodies of water and locations thereon for placing vessel pumpout or dump stations. The department may adopt rules and regulations that it finds necessary to carry out this section.

(c) The Legislature finds and declares that the purpose of this section is to furnish vessel pumpout or dump station facilities on bodies of water where needed to meet the needs of boaters and where the presence of the vessel pumpout or dump stations may lessen environmental degradation of those bodies of water.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to commence the construction of state and local boating, waterway, and community facilities and to provide for the lending of funds in an orderly manner during this fiscal year, it is necessary that this act take effect immediately.

CHAPTER 1234

An act to amend Section 100.4 of the Streets and Highways Code, relating to freeway construction.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 100.4 of the Streets and Highways Code is amended to read:

100.4. Notwithstanding Section 100.2, the department may construct a freeway, without an agreement with a county or city, on the route determined by the commission, if all of the following conditions have been met:

(a) The freeway is included within the California freeway and expressway system and a route has been adopted.

(b) Construction has commenced, but has not been completed, leaving an existing gap between the constructed portions of the freeway.

(c) In addition to the adopted route, there is at least one feasible alternative route as determined by the department.

(d) A draft environmental impact report or statement has been prepared on the unconstructed portion of the freeway.

(e) The affected freeway segment is within the jurisdiction of the Los Angeles County Metropolitan Transportation Authority.

(f) An agreement with one or more counties and cities pursuant to Section 100.2 is not possible because an impasse, as evidenced by the lack of freeway agreements by all affected jurisdictions, has existed for 10 or more years after an initial route was adopted.

(g) Under the conditions set forth in subdivisions (a) to (f), inclusive, the commission shall hold public hearings as it may deem necessary, review the draft or final environmental impact report or statement, and consider the recommendation and records of the authority and other documents as it may deem advisable. The commission shall take into consideration all the traditional factors of route selection by the state, including the question of least adverse economic and physical impact on the communities involved, but any previous selection by the commission or its predecessor shall not be considered binding.

(h) The environmental impact report or statement shall examine the potential impacts of alternative route alignments on the communities involved. The definition and scope of these communities shall reflect the sense of community of residents within and immediately adjacent to the adopted route and alternate route location.

(i) The department shall prepare a draft environmental impact report or statement. The commission may hold public hearings on

the draft environmental impact report or statement as it deems necessary. The department shall prepare a final environmental impact report or statement after the completion of the public review period of the draft environmental impact report or statement. The commission shall select a route after the completion of the environmental impact report or statement.

(j) If the route selected by the commission differs from a prior route adopted by the commission or a prior recommendation by the authority, the commission shall set forth, as a part of its decision statement, the reasons for the route selected.

(k) For any freeway constructed pursuant to this section, the department shall establish an outreach program to maximize the participation of businesses and professionals from within the county in which the freeway segment is located in the construction of the freeway segment.

(l) As used in this section, "authority" means the Los Angeles County Metropolitan Transportation Authority, or its predecessor, the Los Angeles County Transportation Commission.

CHAPTER 1235

An act to amend Section 65400 of, and to add Section 65584.5 to, the Government Code, relating to housing.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 65400 of the Government Code is amended to read:

65400. After the legislative body has adopted all or part of a general plan, the planning agency shall do both of the following:

(a) Investigate and make recommendations to the legislative body regarding reasonable and practical means for implementing the general plan or element of the general plan, so that it will serve as an effective guide for orderly growth and development, preservation and conservation of open-space land and natural resources, and the efficient expenditure of public funds relating to the subjects addressed in the general plan.

(b) (1) Provide an annual report to the legislative body on the status of the plan and progress in its implementation, including the progress in meeting its share of regional housing needs determined pursuant to Section 65584 and local efforts to remove governmental constraints to the maintenance, improvement, and development of housing pursuant to paragraph (3) of subdivision (c) of Section 65583.

(2) The annual report required pursuant to this subdivision shall

be prepared through the use of forms and definitions adopted by the Department of Housing and Community Development pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of, Chapter 4 (commencing with Section 11370) of, and Chapter 5 (commencing with Section 11500) of, Part 1 of Division 3 of Title 2). This report shall be provided to the legislative body on or before July 1 of each year.

SEC. 2. Section 65584.5 is added to the Government Code, to read:

65584.5. (a) A city or county may transfer a percentage of its share of the regional housing needs to another city or county, if all of the following requirements are met:

(1) Both the receiving city or county and the transferring city or county comply with all of the conditions specified in subdivision (b).

(2) The council of governments or the department reviews the findings made pursuant to paragraph (2) of subdivision (c).

(3) The transfer does not occur more than once in a five-year housing element interval pursuant to subdivision (b) of Section 65588.

(4) The procedures specified in subdivision (c) are met.

(b) (1) Except as provided in paragraph (5) of subdivision (c) of Section 65584, a city or county transferring a share of its regional housing needs shall first have met, in the current or previous housing element cycle, at least 15 percent of its existing share of the region's affordable housing needs, as defined in Section 65584, in the very low and lower income category of income groups defined in Section 50052.5 of the Health and Safety Code if it proposes to transfer not more than 15 percent. In no event, however, shall the city or county transfer more than 500 dwelling units in a housing element cycle.

(2) A city or county shall transfer its regional housing needs in the same proportion by income group as the jurisdiction has met its regional housing needs.

(3) The transfer shall be only between jurisdictions that are contiguously situated or between a receiving city or county that is within 10 miles of the territory of the community of the donor city or county. If both the donor community and receiving community are counties, the donor county shall be adjacent to, in the same council of governments region as, and in the same housing market as, the receiving county. The sites on which any transferred housing units will be constructed shall be in the receiving city or county, and within the same housing market area as the jurisdiction of the donor city or county.

(4) The transferring and receiving city or county shall have adopted, and shall be implementing, a housing element in substantial compliance with Section 65583.

(5) The transferring city or county and the receiving city or county shall have completed, and provided to the department, the annual report required by subdivision (b) of Section 65400.

(c) (1) The donor city or county and the receiving city or county

shall, at least 45 days prior to the transfer, hold a public hearing, after providing notice pursuant to Section 6062, to solicit public comments on the draft contract, including its terms, conditions, and determinations.

(2) The transferring and the receiving city or county shall do all of the following:

(A) Adopt a finding, based on substantial evidence on the record, that the transfer of the regional housing need pursuant to the terms of the agreement will not cause or exacerbate racial, ethnic, or economic segregation and will not create a detrimental financial impact upon the receiving city or county.

(B) Adopt a finding, based on substantial evidence on the record, that the transfer of the regional housing need will result in the construction of a greater number of similar type dwelling units than if the transfer does not occur.

(3) (A) The transferring city or county and the receiving city or county shall enter into an agreement to transfer units eligible under subdivision (b). A copy of this agreement shall be sent to the council of governments and the department to be kept on file for public examination.

(B) The agreement shall include a plan and schedule for timely construction of dwelling units, including, in addition to site identification, identification of and timeframes for applying for sufficient subsidy or mortgage financing if the units need a subsidy or mortgage financing, and a finding that sufficient services and public facilities will be provided.

(4) At least 60 days prior to the transfer, the receiving city or county planning agency and the transferring city or county planning agency shall submit to the department a draft amendment to reflect the identified transferred units. A transferring agency may reduce its housing needs only to the extent that it had not previously reduced its housing needs pursuant to paragraph (2) of subdivision (b) of Section 65583. A county planning agency that has its share of the regional housing need reduced pursuant to paragraph (5) of subdivision (c) of Section 65584 shall comply with this section. A receiving city or county shall, in addition to any other provisions of the article, identify in its housing element sufficient sites to meet its initial low- and moderate-income housing needs and sufficient sites to meet all transferred housing needs.

(5) The department shall review the draft amendment and report its written findings to the planning agency within 45 days of its receipt.

(6) The department's review shall follow the same procedure, requirements, and responsibilities of Sections 65583, 65585, 65587, and 65589.3. The court shall consider any written findings submitted by the department.

(d) No transfer made pursuant to this section shall affect the plans for a development that have been submitted to a city or county for approval 45 days prior to the adoption of the amendment to the

housing element.

(e) No transfer made pursuant to this section shall be counted toward any ordinance or policy of a locality that specifically limits the number of units that may be constructed.

(f) The Attorney General or any other interested person shall have authority to enforce the terms of the agreement and the provisions of this section.

(g) For a period of five years after the transfer occurs, the report required by subdivision (b) of Section 65400 shall include information on the status of transferred units, implementation of the terms and conditions of the transfer contract, and information on any dwelling units actually constructed, including the number, type, location, and affordability requirements in place for these units.

(h) (1) At least 60 days prior to the proposed transfer, the donor city or county shall submit the proposed agreement to the council of governments, or to the department if there is no council of governments that serves the city or county, for review. The governing board of the council or the director shall determine whether there is substantial evidence to support the terms, conditions, and determinations of the agreement and whether the agreement complies with the substantive and procedural requirements of this section. If the council or the director finds that there is substantial evidence to support the terms, conditions, and determinations of the agreement, and that the agreement complies with the substantive and procedural requirements of this section, the participating jurisdictions may proceed with the agreement. If the governing board or the director finds that there is not substantial evidence to support the terms, conditions, and findings of the agreement, or that the agreement does not comply with the substantive and procedural requirements of this section, the board or the director may make recommendations for revising or terminating the agreement. The participating jurisdictions shall then include those revisions, if any, or terminate the agreement.

(2) The council or the director may convene a committee to advise the council or the director in conducting this review. The donor city or county and the receiving community shall pay the council's or the department's costs associated with the committee. Neither the donor city or county, nor the receiving city or county, may expend moneys in its Low and Moderate Income Housing Fund of its redevelopment agency for costs associated with the committee.

(3) Membership of the committee appointed pursuant to paragraph (2) shall include all of the following:

- (A) One representative appointed by the director.
- (B) One representative appointed by the donor agency.
- (C) One representative appointed by the receiving community.
- (D) Two low- and moderate-income housing advocates, appointed by the director, who represent those persons in that region.

(i) (1) The receiving city or county shall construct the housing

units within three years of the date that the transfer contract is entered into pursuant to this section. This requirement shall be met by documenting that a building permit has been issued and all fees have been paid.

(2) Any portion of a regional share allocation that is transferred to another jurisdiction, and that is not constructed within the three-year deadline set forth in paragraph (1), shall be reallocated by the council of governments to the transferring city or county, and the transferring city or county shall modify its zoning ordinance, if necessary, and amend its housing element to reflect the reallocated units.

(3) If, at the end of the five-year housing element planning period, any portion of a regional share allocation that is transferred to another jurisdiction is not yet constructed, the council of governments shall add the unbuilt units to the normal regional fair share allocation and reallocate that amount to either of the following:

(A) The receiving city, if the three-year deadline for construction has not yet occurred; or

(B) The transferring city, if the three-year deadline for construction has occurred.

(4) If the transferred units are not constructed within three years, the nonperforming jurisdictions participating in the transfer of regional share allocations shall be precluded from transferring their regional shares, pursuant to this section, for the planning period of the next periodic update of the housing element.

(j) On or after January 1, 2000, no transferring city or county shall enter into an agreement pursuant to this section unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

(k) If Article XXXIV of the California Constitution is applicable, the receiving city or county shall certify that it has sufficient authority under Article XXXIV of the California Constitution to allow development of units transferred pursuant to this section.

(l) The receiving city or county shall not, within three years of the date of the transfer agreement entered into pursuant to this section, or until transferred units are constructed, whichever is longer, enter into a contract to transfer units outside the territorial jurisdiction of the agency pursuant to this section.

(m) Communities that have transferred a portion of their share of the regional housing need to another city or county pursuant to this section shall comply with all other provisions of law for purposes of meeting the remaining regional housing need not transferred, including compliance with the provisions of Section 65589.5.

(n) As used in this section, "housing market area" means the area determined by a council of governments or the department pursuant to Section 65584, and based upon market demand for housing, employment opportunities, the availability of suitable sites and public facilities, and commuting patterns.

(o) This section shall not be construed to interfere with the right

of counties to transfer shares of regional housing needs pursuant to paragraph (5) of subdivision (c) of Section 65584.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1236

An act to amend Section 8880.4 of the Government Code, relating to the state lottery.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 8880.4 of the Government Code is amended to read:

8880.4. Revenues of the state lottery shall be allocated as follows:

(a) Not less than 84 percent of the total annual revenues from the sale of state lottery tickets or shares shall be returned to the public in the form of prizes and net revenues to benefit public education.

(1) Fifty percent of the total annual revenues shall be returned to the public in the form of prizes as described in this chapter.

(2) At least 34 percent shall be allocated to the benefit of public education as specified in Section 8880.5.

(3) All unclaimed prize money shall revert to the benefit of public education as provided for in subdivision (e) of Section 8880.32.

(4) All of the interest earned upon funds held in the State Lottery Fund shall be allocated to the benefit of public education as specified in Section 8880.5. This interest is in addition to, and shall not be considered as any part of, the 34 percent that is required to be allocated for the benefit of public education as specified in the second sentence of this section.

(5) No more than 16 percent of the total annual revenues shall be allocated for payment of expenses of the lottery as described in this chapter. To the extent that expenses of the lottery are less than 16 percent of the total annual revenues, any surplus funds shall also be allocated to the benefit of public education as specified in this section

or Section 8880.5.

(b) Funds allocated for the benefit of public education pursuant to subdivision (a) are in addition to other funds appropriated or required under existing constitutional reservations for educational purposes. No program shall have the amount appropriated to support that program reduced as a result of funds allocated pursuant to subdivision (a). Funds allocated for the benefit of public education pursuant to subdivision (a) shall not supplant funds committed for child development programs.

SEC. 2. The Legislature finds and declares that this act furthers the purposes of the California State Lottery Act of 1984.

CHAPTER 1237

An act to amend Sections 13352, 23246, and 23247 of, and to repeal and add Article 4 (commencing with Section 23235) of Chapter 12 of Division 11 of, the Vehicle Code, relating to vehicles, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 13352 of the Vehicle Code is amended to read:

13352. (a) The department shall immediately suspend or revoke, or record the court-administered suspension or revocation of, the privilege of any person to operate a motor vehicle upon receipt of a duly certified abstract of the record of any court showing that the person has been convicted of a violation of Section 23152 or 23153 or subdivision (a) of Section 23109, or upon receipt of a report of a judge of the juvenile court, a juvenile traffic hearing officer, or a referee of a juvenile court showing that the person has been found to have committed a violation of Section 23152 or 23153 or subdivision (a) of Section 23109. If any offense in this section occurs in a vehicle defined in Section 15210, the suspension or revocation specified below shall apply to the noncommercial driving privilege. The commercial driving privilege shall be disqualified as specified in Section 15300. For purposes of this section, suspension or revocation shall be as follows:

(1) Upon a conviction or finding of a violation of Section 23152 punishable under Section 23160, the privilege shall be suspended for a period of six months if the court orders the department to suspend the privilege, or if the court does not grant probation. If the person gives proof of ability to respond in damages as defined in Section 16430, the department shall issue the restricted license upon receipt of an abstract of record from the court pursuant to Section 1803

certifying that the court has granted probation to the person on conditions which include the condition specified in subdivision (b) of Section 23161. The privilege shall not be reinstated until the person gives proof of ability to respond in damages and gives proof satisfactory to the department of successful completion of a program described in Section 23161.

(2) Upon a conviction or finding of a violation of Section 23153 punishable under Section 23180, the privilege shall be suspended for a period of one year. The privilege shall not be reinstated until the person gives proof of ability to respond in damages and gives proof satisfactory to the department of successful completion of a program described in Section 23161.

(3) Except as provided in Section 13352.5, upon a conviction or finding of a violation of Section 23152 punishable under Section 23165, the privilege shall be suspended for 18 months. The privilege shall not be reinstated until the person gives proof of ability to respond in damages and gives proof satisfactory to the department of successful completion of a program described in Section 23166.

(4) Except as provided in Section 13352.5, upon a conviction or finding of a violation of Section 23153 punishable under Section 23185, the privilege shall be revoked for a period of three years. The privilege shall not be reinstated until evidence satisfactory to the department establishes that no grounds exist which would authorize the refusal to issue a license and until the person gives proof of ability to respond in damages, and until the person gives proof satisfactory to the department of successful completion of a program described in Section 23166.

(5) Upon a conviction or finding of a violation of Section 23152 punishable under Section 23170, the privilege shall be revoked for a period of three years. The privilege shall not be reinstated until the person files proof of ability to respond in damages and gives proof satisfactory to the department of successful completion, subsequent to the most recent underlying conviction, of one of the following programs: an 18-month program or, if available in the county of the person's residence or employment, a 30-month program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, or a program specified in Section 8001 of the Penal Code. The court shall advise the person at the time of sentencing that completion of one of the programs authorized by this paragraph is required in order to become eligible for a California driver's license. The court shall also advise the person that after the completion of 24 months of the revocation period, the person may apply to the court for an order granting a restricted driver's license, subject to the following conditions:

(A) The person has satisfactorily completed, subject to the current underlying conviction, either of the following:

(i) A licensed 18-month program pursuant to Section 11836 of the Health and Safety Code.

(ii) The initial 18 months of a licensed 30-month program, if

available in the county of the person's residence or employment, pursuant to Section 11836 of the Health and Safety Code.

(B) The person agrees, as a condition of the restriction, to continue satisfactory participation in the 30-month program, if applicable, and to have installed and maintained, as described in Section 23246, an ignition interlock device. The court shall require proof of installation of the device before issuing an order granting a restricted license. Once the order granting a restricted license is issued, all maintenance requirements in Section 23246 apply and the driver becomes subject to the prohibitions and penalties provided in Section 23247.

(C) The person provides proof of responsibility to respond in damages.

(D) The person has not applied for and received an order in conjunction with the current underlying conviction or a prior conviction for violation of Section 23103, 23152, or 23153, if the prior conviction was within the previous seven years.

(E) Any individual convicted of a violation of Section 23152 punishable under Section 23170 may also, at any time after sentencing, petition the court for referral to an 18-month program or, if available in the county of the person's residence or employment, a 30-month program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code. Unless good cause is shown, the court shall order the referral.

(6) Upon a conviction or finding of a violation of Section 23153 punishable under Section 23190, the privilege shall be revoked for a period of five years. The privilege shall not be reinstated until evidence satisfactory to the department establishes that no grounds exist which would authorize the refusal to issue a license and until the person gives proof of ability to respond in damages and gives proof satisfactory to the department of successful completion, subsequent to the most recent underlying conviction, of one of the following programs: a 30-month program, if available in the county of the person's residence or employment or, if not available, an 18-month program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, or a program specified in Section 8001 of the Penal Code. The court shall advise the person at the time of sentencing that completion of one of the programs authorized by this paragraph is required in order to become eligible for a California driver's license. The court shall also advise the person that after the completion of 24 months of the revocation period, the person may apply to the court for an order granting a restricted driver's license, subject to the following conditions:

(A) (i) The person has satisfactorily completed, subject to the current underlying conviction, the 18-month program or the initial 18 months of a licensed 30-month program, as applicable, pursuant to Section 11836 of the Health and Safety Code.

(ii) The person agrees, as a condition of the restriction, to continue satisfactory participation in the 30-month program, if applicable, and to have installed and maintained, as described in Section 23246, an ignition interlock device. The court shall require proof of installation of the device before issuing an order granting a restricted license. Once the order granting a restricted license is issued, all maintenance requirements in Section 23246 apply and the driver becomes subject to the prohibitions and penalties provided in Section 23247.

(iii) The person provides proof of responsibility to respond in damages.

(iv) The person has not applied for and received an order in conjunction with the current underlying conviction or a prior conviction for a violation of Section 23103, 23152, or 23153, if the prior conviction was within the previous seven years.

(B) Any individual convicted of a violation of Section 23153 punishable under Section 23190 may also, at any time after sentencing, petition the court for referral to an 18-month program or, if available in the county of the person's residence or employment, a 30-month program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code. Unless good cause is shown, the court shall order the referral.

(7) Upon a conviction or finding of a violation of Section 23152 punishable under Section 23175, the privilege shall be revoked for a period of four years. The privilege shall not be reinstated until evidence satisfactory to the department establishes that no grounds exist which would authorize the refusal to issue a license and until the person gives proof of ability to respond in damages and gives proof satisfactory to the department of successful completion, subsequent to the most recent underlying conviction, of one of the following programs: an 18-month program or, if available in the county of the person's residence or employment, a 30-month program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, or a program specified in Section 8001 of the Penal Code. The court shall advise the person at the time of sentencing that completion of one of the programs authorized by this paragraph is required in order to become eligible for a California driver's license. The court shall also advise the person that after the completion of 24 months of the revocation period, the person may apply to the court for an order granting a restricted driver's license, subject to the following conditions:

(A) The person has satisfactorily completed, subject to the current underlying conviction, the initial 18 months of a licensed 30-month program pursuant to Section 11836 of the Health and Safety Code.

(B) The person agrees, as a condition of the restriction, to continue satisfactory participation in the 30-month program, if

applicable, and to have installed and maintained, as described in Section 23246, an ignition interlock device. The court shall require proof of installation of the device before issuing an order granting a restricted license. Once the order granting a restricted license is issued, all maintenance requirements in Section 23246 apply and the driver becomes subject to the prohibitions and penalties provided in Section 23247.

(C) The person provides proof of responsibility to respond in damages.

(D) The person has not applied for and received an order in conjunction with the current underlying conviction or a prior conviction for violation of Section 23103, 23152, or 23153, if the prior conviction was within the previous seven years.

(E) Any individual convicted of a violation of Section 23152 punishable under Section 23175 may also, at any time after sentencing, petition the court for referral to an 18-month program or, if available in the county of the person's residence or employment, a 30-month program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code. Unless good cause is shown, the court shall order the referral.

(8) Upon a conviction or finding of a violation of subdivision (a) of Section 23109 punishable under subdivision (e) of that section, the privilege shall be suspended for a period of 90 days to six months, if and as ordered by the court.

(9) Upon a conviction or finding of a violation of subdivision (a) of Section 23109 punishable under subdivision (f) of that section, the privilege shall be suspended for a period of six months, if the court orders the department to suspend the privilege. The privilege shall not be reinstated until the person gives proof of ability to respond in damages.

(b) For the purpose of paragraphs (2) to (9), inclusive, of subdivision (a), the finding of the juvenile court judge, the juvenile traffic hearing officer, or the referee of a juvenile court of a commission of a violation of Section 23152 or 23153 or subdivision (a) of Section 23109, as specified in subdivision (a) of this section, is a conviction.

(c) Each judge of a juvenile court, juvenile traffic hearing officer, or referee of a juvenile court shall immediately report the findings specified in subdivision (a) to the department.

(d) A conviction of an offense in any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or Canada which, if committed in this state, would be a violation of Section 23152, is a conviction of Section 23152 for purposes of this section, and a conviction of an offense which, if committed in this state, would be a violation of Section 23153, is a conviction of Section 23153 for purposes of this section. The department shall suspend or revoke the privilege to operate a motor vehicle pursuant to this section upon receiving notice of that

conviction.

(e) Whenever the driving privilege is restricted, suspended, or revoked pursuant to this section, the department shall not issue a restricted driver's license or reinstate the driving privilege unless the person gives proof of ability to respond in damages and maintains that proof for three years. If, at any time during that three-year period, a person who is required to maintain that proof fails to maintain that proof, the department shall suspend that person's driving privilege until the proof of ability to respond in damages is again given to the department.

SEC. 2. Article 4 (commencing with Section 23235) of Chapter 12 of Division 11 of the Vehicle Code is repealed.

SEC. 3. Article 4 (commencing with Section 23235) is added to Chapter 12 of Division 11 of the Vehicle Code, to read:

Article 4. Ignition Interlock Device

23235. (a) The Department of Motor Vehicles shall certify or cause to be certified ignition interlock devices required by this article and publish a list of approved devices.

(b) The Department of Motor Vehicles shall utilize information from an independent laboratory to certify ignition interlock devices on or off the premises of the manufacturer or manufacturer's agent, in accordance with the guidelines. The cost of certification shall be borne by the manufacturers of interlock ignition devices. If the certification of a device is suspended or revoked, the manufacturer of the device shall be responsible for, and shall bear the cost of, the removal of the device and the replacement of a certified device of the manufacturer or another manufacturer.

(c) No model of ignition interlock device shall be certified unless it meets the accuracy requirements and specifications provided in the guidelines adopted by the National Highway Traffic Safety Administration.

(d) All manufacturers of ignition interlock devices that meet the requirements of subdivision (c) and are certified in a manner approved by the Department of Motor Vehicles, who intend to market the devices in this state, first shall apply to the Department of Motor Vehicles on forms provided by that department. The application shall be accompanied by a fee in an amount not to exceed the amount necessary to cover the costs incurred by the Department of Motor Vehicles in carrying out this section.

(e) The Administrative Office of the Courts shall ensure that standard forms and procedures are developed for documenting decisions and compliance and communicating results to relevant agencies. These forms shall include all of the following:

(1) An "Order to Install," to be issued to the probationer at the time of sentencing. This shall include the conditions of the sentence and be accompanied by a toll-free telephone number for each manufacturer of a certified ignition interlock device. Information

regarding approved installation locations shall be provided to drivers by manufacturers with ignition interlock devices that have been certified in accordance with this section. Copies of the "Order to Install" shall be provided for the court, the probationer, and the probation department, or other monitoring agency.

(2) A "Verification of Installation" form to be returned to the court by the probationer within a specified time period. Copies shall be provided for the court, the probationer, the manufacturer or manufacturer's agent, and the probation department or other monitoring agency.

(3) Verification of calibration, and compliance, forms and procedures to ensure continued use of the interlock device during the probation period and to ensure compliance with maintenance requirements. The maintenance period shall be standardized at 60 days to maximize monitoring checks for equipment tampering.

SEC. 4. Section 23246 of the Vehicle Code is amended to read:

23246. (a) In addition to any other provisions of law, the court may prohibit any person who is convicted of a first offense violation of Section 23152 or Section 23153 from operating a motor vehicle unless that vehicle is equipped with a functioning, certified ignition interlock device as provided in this article.

(1) Notwithstanding any other provision of law, if any person is convicted of a violation of Section 23152 or 23153, and the offense occurred within seven years of a separate violation of Section 23152 or 23153 which resulted in a conviction, the court shall, subject to this article, prohibit the person from operating a motor vehicle unless that vehicle is equipped with a functioning ignition interlock device, certified pursuant to Section 23235, unless the court finds that to do so would not be in the interest of justice, as prescribed by the rules adopted pursuant to subdivision (c), and enters the grounds for its finding on the record.

(2) Nothing in this section permits a person to drive without a valid driver's license. The court shall advise the person that installation of an ignition interlock device on a vehicle does not allow the person to drive without a valid driver's license.

(b) The court shall order the installation of an ignition interlock device on any vehicle that a person subject to subdivision (a) owns or operates. The court shall determine which owned or operated vehicles shall be subject to the installation order and may order that the person shall not operate a vehicle that is owned by the person, thereby permitting the court to exempt that vehicle from the installation order. The court shall order the device to remain installed on the vehicle for a period of one to three years following the restoration of the person's driving privileges. The court shall make a determination as to whether the person has the ability to pay for the ignition interlock device and, if the person claims inability to pay for the installation, the court shall determine the person's ability to pay in accordance with subdivision (b) of Section 1203.1b of the Penal Code. If the court determines that the person is unable to pay,

the court may order a payment plan. The plan may defer payment over a period that exceeds the period of the court's ignition interlock device installation order. The person shall pay the manufacturer of the ignition interlock device, or the manufacturer's agent, directly for the cost of the device and its installation, in accordance with any payment schedule ordered by the court. If the court determines that there is no feasible way for the person to pay for the device, or if the manufacturer declines the person's application for a payment plan, or if the court exempts the person in the interest of justice in accordance with subdivision (a), the court shall not order an ignition interlock device installed, but may order the defendant to perform an appropriate amount of community service.

(c) The Judicial Council shall adopt rules for exemptions granted pursuant to paragraph (1) of subdivision (a) on or before January 1, 1995. Those rules shall further the goal of installing an ignition interlock device in as many cases as possible. The Judicial Council shall authorize exemptions under all of the following circumstances:

- (1) The defendant is an out-of-state resident.
- (2) The defendant's residence is located 50 miles or more from, or it is necessary for the defendant to drive at least two hours to arrive at, the nearest ignition interlock installation or service facility.
- (3) If the defendant is the sole proprietor of a business which requires two or more vehicles to be registered in his or her name and the court determines that a single vehicle is the defendant's primary vehicle, the court may order the installation of the ignition interlock device on that one vehicle only.
- (4) The defendant's prior driving conviction occurred six years and nine months or more prior to the date of the offense for which he or she is being sentenced and the defendant shows proof to the court of enrollment in an alcohol rehabilitation program.
- (5) The defendant provides proof to the court that the vehicle, which is registered in the defendant's name, is inoperable and the defendant is unable to comply with the requirements relating to the transfer of title of the vehicle.

(d) The court shall require the person to provide proof of installation to the court or the probation officer within 30 days of the conviction, or within 30 days of the person's release from county jail, state prison, or a locked residential treatment program, on a form prescribed pursuant to Section 23235. If the driving privilege of the person is not also suspended or revoked, the court shall require the person to surrender his or her driver's license to the court until that proof is submitted and verified by the court or probation officer. If the person fails to provide proof of installation within that period, absent a finding by the court of good cause for that failure which is entered in the court record, the court shall notify the Department of Motor Vehicles, which shall revoke the person's driving privilege for a period of one year. The period of revocation for failure to provide proof of installation shall be added to any previously ordered suspension or revocation.

(e) A person whose driving privilege is restored prior to the end of the period ordered in subdivision (b), may petition the court to review whether it is necessary to continue the ignition interlock order.

(f) A person whose driving privilege is restricted pursuant to this section shall arrange for each vehicle with an ignition interlock device to be serviced by the installer at least once every 60 days in order for the installer to recalibrate the device and monitor the operation of the device. The installer shall notify the court or probation officer if the person fails to return for recalibration or if the device indicates that the person has attempted to bypass or tamper with the device or has attempted to start the vehicle while intoxicated. Unless so ordered by the court, there shall be no obligation on the part of the installer to notify the court or probation officer if the person has complied with all of the requirements of this article.

(g) The court shall immediately suspend the privilege to operate a motor vehicle of, and issue a bench warrant for, any person who fails to comply with any notice from the court or probation officer to comply with the installation period ordered pursuant to subdivision (b) or with the reporting requirement of subdivision (f), or who three or more times fails to comply with any requirement for the maintenance or calibration of the ignition interlock device.

(h) The court shall include on the abstract of conviction or violation submitted to the Department of Motor Vehicles under Section 1803 or 1816, the requirement for, and the period of, the use of a certified ignition interlock device under this section. The records of the Department of Motor Vehicles shall reflect mandatory use of the device.

(i) If a person has a medical problem that does not permit the person to breathe with sufficient strength to activate the device, and provides the court with a physician's report that documents this condition to the satisfaction of the court, the court shall not order an ignition interlock device installed but may order the defendant to perform an appropriate amount of community service. The court may delay the installation of the device if the physician's report indicates that the person's condition may improve sufficiently to permit use of the device. The court shall enter on the record that it has granted a permanent or temporary medical exception as documented by a physician and surgeon's report.

(j) The owner of a vehicle that has an ignition interlock device installed shall notify the court of a pending sale of the vehicle prior to transfer of the vehicle to the new owner. The court shall determine whether there is a replacement vehicle and shall order installation of the ignition interlock device in the replacement vehicle for the duration of the sentence. If the court determines that there is no replacement vehicle, the court may suspend the restriction or order the person to perform an appropriate amount of community service. The Department of Motor Vehicles shall

crossmatch, on a weekly basis, driver's license records of persons who have violated either Section 23152 or 23153 with records of those persons applying for a change of ownership or transfer of title and report any matched records to the appropriate court.

(k) This article does not restrict a court from requiring installation of an ignition interlock device for any persons to whom subdivision (a) does not apply.

(l) For purposes of this section, "vehicle" does not include a motorcycle until the state certifies an ignition interlock device that can be installed on a motorcycle. However, a court shall order a person subject to this section not to operate a motorcycle for the duration of the ignition interlock order.

(m) For purposes of this section, "owned" means solely owned or owned in conjunction with another person or legal entity. For purposes of this section, "operates" includes operating vehicles that are not owned by the person subject to this section.

SEC. 5. Section 23247 of the Vehicle Code is amended to read:

23247. (a) It is unlawful for a person to knowingly rent, lease, or lend a motor vehicle to another person known to have had his or her driving privilege restricted as provided in Section 23246, unless the vehicle is equipped with a functioning, certified ignition interlock device. Any person, whose driving privilege is restricted pursuant to Section 23246 shall notify any other person who rents, leases, or loans a motor vehicle to him or her of the driving restriction imposed under that section.

(b) It is unlawful for any person whose driving privilege is restricted pursuant to Section 23246 to request or solicit any other person to blow into an ignition interlock device or to start a motor vehicle equipped with the device for the purpose of providing the person so restricted with an operable motor vehicle.

(c) It is unlawful to blow into an ignition interlock device or to start a motor vehicle equipped with the device for the purpose of providing an operable motor vehicle to a person whose driving privilege is restricted pursuant to Section 23246.

(d) It is unlawful to tamper with, or circumvent the operation of, an ignition interlock device.

(e) It is unlawful for any person whose driving privilege is restricted pursuant to Section 23246 to operate any vehicle not equipped with a functioning ignition interlock device or any vehicle that a court orders him or her not to operate.

(f) Any person convicted of a violation of this section shall be punished by imprisonment in the county jail for not more than six months or by a fine of not more than five thousand dollars (\$5,000), or by both that fine and imprisonment.

(g) If any person who is restricted pursuant to Section 23246 violates this section, the court shall notify the Department of Motor Vehicles, which shall revoke the person's driving privilege for one year from the date the court finds that the person violated this section. Immediately upon revocation, the order for installation

imposed in accordance with subdivision (b) of Section 23246 shall be deemed extended for a period equal to the period of revocation and until the person has petitioned the court for review of a continued restriction, pursuant to subdivision (d) of Section 23246.

(h) If any person who is restricted pursuant to Section 23246 violates subdivision (e), by operating a vehicle that the court has ordered him or her not to operate, the court shall order the installation of an ignition interlock device on the vehicle that the person used in violating subdivision (e). The order shall be consistent with the provisions of Section 23246.

(i) It is an affirmative defense to a criminal prosecution, with the exception of a prosecution for violation of Section 12500, 12951, 14601, 14601.1, 14601.2, 14601.3, or 14601.4, or a probation violation under this article if the defendant or violator can show either of the following circumstances:

(1) If he or she had his or her valid driving privilege restricted pursuant to Section 23246 and leased, rented, or borrowed a vehicle for an emergency use when no other feasible alternative was available, or for a bona fide business purpose when he or she was away from his or her regular place of business.

(2) If he or she rented, leased, or loaned a vehicle to another person, whose valid driving privilege was restricted pursuant to Section 23246, for an emergency use when no other feasible alternative was available, or for a bona fide business purpose when the person subject to the restriction was away from his or her regular place of business.

(j) Nothing in this section permits a person to drive without a valid driver's license. The court shall advise the person that installation of an ignition interlock device on a vehicle does not allow the person to drive without a valid driver's license.

SEC. 6. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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

The provisions of the Vehicle Code relating to the mandatory installation of ignition interlock devices on motor vehicles are not being consistently enforced. From July 1, 1993, to January 1, 1994, the

first six months during which those provisions have been operative, less than 1,000 ignition interlock devices have been installed on the vehicles of over 35,000 persons convicted of repeat drunk driving offenses. Because those provisions are intended to be mandatory, this level of compliance is insufficient to carry out the intent of the Legislature. In order to ensure timely compliance with the intent of the Legislature regarding the mandatory installation of ignition interlock devices on motor vehicles, it is necessary that this act take effect immediately.

CHAPTER 1238

An act to add Section 170.9 to the Code of Civil Procedure, relating to judges.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 170.9 is added to the Code of Civil Procedure, to read:

170.9. (a) No judge shall accept gifts from any single source in any calendar year with a total value of more than two hundred fifty dollars (\$250). This section shall not be construed to authorize the receipt of gifts that would otherwise be prohibited by the California Code of Judicial Conduct adopted by the California Judges Association or any other provision of law.

(b) This section shall not prohibit or limit the following:

(1) Payments, advances, or reimbursements for travel and related lodging and subsistence permitted by subdivision (e).

(2) Wedding gifts and gifts exchanged between individuals on birthdays, holidays and other similar occasions, provided that the gifts exchanged are not substantially disproportionate in value.

(c) For purposes of this section, "judge" means judges of the justice, municipal, or superior courts, and justices of the courts of appeal or the Supreme Court.

(d) The gift limitation amounts in this section shall be adjusted biennially by the Commission on Judicial Performance to reflect changes in the Consumer Price Index, rounded to the nearest ten dollars (\$10).

(e) Payments, advances, or reimbursements, for travel, including actual transportation and related lodging and subsistence which is reasonably related to a judicial or governmental purpose, or to an issue of state, national, or international public policy, is not prohibited or limited by this section if any of the following apply:

(1) The travel is in connection with a speech, practice demonstration, or group or panel discussion given or participated in

by the judge, the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech, demonstration, or discussion, and the travel is within the United States.

(2) The travel is provided by a government, a governmental agency or authority, a foreign government, a foreign bar association, an international service organization, a bona fide public or private educational institution, as defined in Section 203 of the Revenue and Taxation Code, or a nonprofit charitable or religious organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person domiciled outside the United States who substantially satisfies the requirements for tax exempt status under Section 501(c)(3) of the Internal Revenue Code.

For purposes of this section, "foreign bar association" means an association of attorneys located outside the United States (A) that performs functions substantially equivalent to those performed by state or local bar associations in this state and (B) that permits membership by attorneys in that country representing various legal specialties and does not limit membership to attorneys generally representing one side or another in litigation. "International service organization" means a bona fide international service organization of which the judge is a member. A judge who accepts travel payments from an international service organization pursuant to this subdivision shall not preside over or participate in decisions affecting that organization, its state or local chapters, or its local members.

(3) The travel is provided by a state or local bar association or judges professional association in connection with testimony before a governmental body or attendance at any professional function hosted by the bar association or judges professional association, the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the professional function.

(f) Payments, advances, and reimbursements for travel not described in subdivision (e) are subject to the limit in subdivision (a).

(g) No judge shall accept any honorarium.

(h) "Honorarium" means any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal or like gathering.

(i) "Honorarium" does not include earned income for personal services which are customarily provided in connection with the practice of a bona fide business, trade, or profession, such as teaching or writing for a legal publisher, and does not include fees or other things of value received pursuant to Section 94.5 of the Penal Code for performance of a marriage. "Legal publisher" for purposes of this subdivision means a bona fide publisher of legal treatises or other publications to educate lawyers or judges concerning the practice of law.

(j) Subdivision (a) and (e) shall apply to all payments, advances, reimbursements for travel and related lodging and subsistence.

(k) This section does not apply to any honorarium that is not used and, within 30 days after receipt, is either returned to the donor or delivered to the Controller for deposit in the General Fund without being claimed as a deduction from income for tax purposes.

(l) "Gift" means any payment to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status. Any person, other than a defendant in a criminal action, who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value. However, the term "gift" does not include:

(1) Informational material such as books, reports, pamphlets, calendars, or periodicals. No payment for travel or reimbursement for any expenses shall be deemed "informational material."

(2) Gifts which are not used and which, within 30 days after receipt, are returned to the donor or delivered to a charitable organization without being claimed as a charitable contribution for tax purposes.

(3) Gifts from a judge's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin or the spouse of any such person; provided that a gift from any such person shall be considered a gift if the donor is acting as an agent or intermediary for any person not covered by this paragraph.

(4) Campaign contributions required to be reported under Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code.

(5) Any devise or inheritance.

(6) Personalized plaques and trophies with an individual value of less than two hundred fifty dollars (\$250).

(m) The Commission on Judicial Performance shall enforce the prohibitions of this section.

CHAPTER 1239

An act to amend Sections 8802, 8803, 8804, 8805, and 8807 of, and to add Section 8804.5 to, the Education Code, relating to healthy start support services for children.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 8802 of the Education Code is amended to read:

8802. For the purposes of this chapter, the following definitions apply:

- (a) "Consortium" means two or more local educational agencies.
- (b) "Cooperating agency" means any federal, state, or local public or private nonprofit agency that agrees to offer support services at a schoolsite through a program implemented under this chapter.
- (c) "Council" means the Healthy Start Support Services for Children Program Council.
- (d) "Lead agency" means the State Department of Education.
- (e) "Local educational agency" means a school district or county office of education.

(f) "Private partner" means a private business or foundation that provides financial assistance or otherwise assists a support services program operated under this chapter.

(g) "Qualifying school" means a school that is any of the following:

(1) A school that maintains kindergarten or any of grades 1 to 6, inclusive, in which 50 percent or more of the enrolled pupils either (A) are from families that receive Aid to Families with Dependent Children program benefits, have limited English proficiency, as identified pursuant to Section 52163, or both, or (B) are eligible to receive free or reduced-price meals under Section 49552.

(2) A school that maintains any of grades 7 to 12, inclusive, in which 35 percent or more of the enrolled pupils either (A) are from families that receive Aid to Families with Dependent Children program benefits, have limited English proficiency, as identified pursuant to Section 52163, or both, or (B) are eligible to receive free or reduced-price meals under Section 49552.

(3) A school that does not satisfy the criteria in paragraph (1) or (2) but that demonstrates other factors that warrant its consideration, including, for example, exceptional need, potential to serve as a model program, or service to a particular target population. No more than 10 percent of the schools that participate in the program established by this chapter may be schools that qualify under this paragraph. A school that receives a grant under this paragraph shall ensure that the following pupils in that school are given priority to receive services provided with the grant money:

(A) are from families that receive Aid to Families with Dependent Children program benefits, have limited English proficiency, as identified pursuant to Section 52163, or both, or (B) are eligible to receive free or reduced-price meals under Section 49552.

(h) "Secretary" means the Secretary of Child Development and Education.

(i) "Agency secretary" means the Secretary of the Health and Welfare Agency.

(j) "Superintendent" means the Superintendent of Public Instruction.

(k) "Support services" means services that will enhance the physical, social, emotional, and intellectual development of children and their families.

SEC. 2. Section 8803 of the Education Code is amended to read: 8803. In order to encourage the integration of children's services, it is the intent of the Legislature to promote interagency coordination and collaboration among the state agencies responsible for the provision of support services to children and their families.

Therefore, the Legislature hereby establishes the Healthy Start Support Services for Children Program Council, as follows:

(a) Members of the council shall include the superintendent, the agency secretary, the secretary, and the directors of the State Department of Health Services, the State Department of Social Services, the State Department of Alcohol and Drug Programs, and the State Department of Mental Health.

(b) Duties of the council shall include:

(1) Developing, promoting, and implementing policy supporting the Healthy Start Support Services for Children Grant Program.

(2) Assisting the lead agency in reviewing grant applications submitted to the lead agency and providing the lead agency with recommendations for awarding grants pursuant to Section 8804.

(3) Soliciting input regarding program policy and direction from individuals and entities with experience in the integration of children's services.

(4) Assisting the lead agency in fulfilling its responsibilities under this chapter.

(5) Providing recommendations to the Governor, the Legislature, and the lead agency regarding the Healthy Start Support Services for Children Grant Program.

(6) At the request of the superintendent, assisting the local educational agency or consortium in planning and implementing this program, including assisting with local technical assistance, and developing agency collaboration.

SEC. 3. Section 8804 of the Education Code is amended to read: 8804. The superintendent shall award grants to a local educational agency or consortium to pay the costs of planning and operating, on behalf of one or more qualifying schools within the local educational agency or consortium, programs that provide support services to pupils and their families at or near the school, as

follows:

(a) Grants shall be awarded by the superintendent based upon the recommendations of the council and pursuant to this section.

(b) Two types of grants may be awarded to applicant local educational agencies or consortia, depending upon the level of readiness of that applicant to implement a program pursuant to this chapter. The superintendent shall issue requests for applications for awarding the grants, which shall specify maximum dollar amounts for which each type of grant may be awarded. The requests for applications also shall specify other criteria, as required by this article. The superintendent shall award those grants as follows:

(1) Planning grants may be awarded to local educational agencies or consortia that have demonstrated a need to implement a program, but that are not ready to begin the operation of the program, or that are in need of additional planning to expand existing support services programs. Planning grants shall be no more than fifty thousand dollars (\$50,000) and shall be awarded for a period not to exceed two years. Upon completion of the planning phase, the local educational agency or consortium shall be eligible to apply for and may receive an operational grant.

(2) Operational grants may be awarded to local educational agencies or consortia that have demonstrated readiness to begin operation of a program or to expand existing support services programs. Operational grants shall supplement, not supplant, existing services and funds, and shall be awarded for a period not to exceed three years.

(A) Operational grants may include one-time startup grants, which may be used for, among other things, purchasing equipment, hiring staff, designing a program evaluation, or hiring a consultant. Startup grants shall be awarded for no more than one hundred thousand dollars (\$100,000).

(B) Operational grants shall be awarded for no more than three hundred thousand dollars (\$300,000). No more than 50 percent of each grant shall be available for expenditure on direct services, as long as the grant application contains a three-year plan to significantly reduce or to eliminate agency reliance on funding provided under this article for direct services. Direct services do not include salaries for staff who are developing or implementing the program.

(3) If a local educational agency or consortium submits an application for an operational grant that does not meet the criteria specified in subdivision (g), (h), (i), or (j), the superintendent may offer the applicant a planning grant, provided that the local educational agency or consortium has not received previously a planning grant.

(c) All grants awarded under this article shall be matched by the participating local educational agency or consortium and its cooperating agencies with one dollar (\$1) for each four dollars (\$4) awarded. The match shall be contributed in cash or as services or

resources of comparable value. It is the intent of the Legislature that participants seek and utilize private funds or resources for this purpose. The superintendent may waive the match requirement upon verifying that the local educational agency or consortium made a substantial effort to secure a match but was unable to secure the required match.

(d) The superintendent shall award grants pursuant to this article to local educational agencies or consortia in northern, central, and southern California, in urban, suburban, and rural areas. To the extent possible, the grants shall be awarded for programs representative of the ethnic and linguistic diversity of schoolage pupils and their families. Further, to the extent possible, 50 percent of the grants shall be awarded to schools serving elementary school pupils and 50 percent to schools serving junior and senior high school pupils.

(e) Of the schools that receive grants each year, not more than 10 percent may be selected based on the criteria identified in paragraph (3) of subdivision (g) of Section 8802.

(f) A local educational agency or consortium is eligible for a grant under this article, on behalf of one or more schools operated by the agency or consortium, if it demonstrates in its program plan that it:

(1) Will give priority for services provided under this chapter to pupils from low-income families.

(2) Will assist families in responding to support services needs of pupils.

(3) Has established the local agency collaboration process described in Article 4 (commencing with Section 8806), including a mechanism for sharing governance with cooperating agencies and entities, and for integrating or redirecting existing resources and other school support services.

(4) Has submitted or is submitting an application to the State Department of Education and the State Department of Health Services for certification as a Medi-Cal provider, pursuant to Section 14000, and following, of the Welfare and Institutions Code.

(5) Involves parents or guardians and teachers in the process of identifying pupils' service needs and in the planning for and provision of support services.

(g) For purposes of this chapter, support services shall include case-managed health, mental health, social, and academic support services benefiting children and their families, and may include, but are not limited to:

(1) Health care, including:

(A) Immunizations.

(B) Vision and hearing testing and services.

(C) Dental services.

(D) Physical examinations, diagnostic, and referral services.

(E) Prenatal care.

(2) Mental health services, including primary prevention, crisis intervention, assessments, and referrals, and training for teachers in

the detection of mental health problems.

(3) Substance abuse prevention and treatment services.

(4) Family support and parenting education, including child abuse prevention and schoolage parenting programs.

(5) Academic support services, including tutoring, mentoring, employment, and community service internships, and inservice training for teachers and administrators. However, grants for these purposes shall supplement, not supplant, existing resources in these areas.

(6) Counseling, including family counseling and suicide prevention.

(7) Services and counseling for children who experience violence in their communities.

(8) Nutrition services.

(9) Youth development services, including tutoring, mentoring, recreation, career development, and job placement.

(10) Case management services.

(11) Provision of onsite Medi-Cal eligibility workers.

(h) A local educational agency or consortium may contract with other entities, including county agencies and private nonprofit organizations or private partners, to provide services to pupils and their families.

(i) Each local educational agency or consortium seeking a grant under this article shall submit an application to the superintendent at a time and manner, and with any appropriate information, as the superintendent may reasonably require.

Each grant application submitted shall include all of the following:

(1) A description of the proposed programs, including four or more support services expected to be provided at the schoolsite or at a site near, or adjacent to, the school.

(2) Documentation of need for participation in the Healthy Start Support Services for Children Grant Program.

(3) Documentation of need for planning assistance, program operation support, or both.

(4) As to any operational grant application, a description of the objectives of the program, the amount and sources of required funding, the existing resources to be used or redirected, the priorities for development and timing of the program, the agencies responsible for the implementation of the program, and the procedures for the evaluation of the program.

The program plan submitted with an operational grant application shall include all of the following:

(A) Provisions for data collection and recordkeeping, including records of the population served, the components of the service, the results of the service, and costs, including startup, direct, and indirect costs, including those to other agencies, and cost savings.

(B) A service evaluation component, including input, process, and outcome indicators, quality assessment, and the process by which these measures will be taken. In addition, the plan shall

include specific targets and outcome measures.

(C) A specific governing mechanism by which the plan will be implemented, including local decisionmaking responsibilities, organizational needs, anticipated problems and procedures to solve them, and incentives for collaboration and participation incentives to personnel.

(D) A specific system for the provision of case management services, including procedures for implementation, identification of the target population, anticipated outcomes, and a list of existing services, resources, and programs that will be used as components of the program.

(5) In the case of a consortium, a list of its members.

(6) The grant application also shall document any procedures that have been, or will be, taken to designate the local educational agency as a Medi-Cal provider pursuant to Section 14000, and following, of the Welfare and Institutions Code.

(7) A description of technical assistance, professional growth, and development needs, if any.

(8) A description of the proposed plan for family involvement in the program.

(9) A description of the population anticipated to be served.

(10) As to any planning grant application, a plan describing how the proposed program will be implemented after the grant has expired.

(j) Grants awarded pursuant to this article may be used for salaries of staff responsible for developing or implementing the program plan and administrative support staff, equipment and supplies, training, and insurance, pursuant to subdivision (b).

(k) No more than 10 percent of the amount appropriated in a fiscal year for the purposes of this chapter may be used by the superintendent for state-level administration of this chapter, including evaluation and technical assistance. Technical assistance includes, but is not limited to, establishing interagency collaboration, providing information dissemination and referrals, including information about appropriate program models, conducting site visits, and convening workshops to assist in the implementation of a program developed pursuant to this chapter.

(1) Of the amount provided in the annual Budget Act for state-level administration, up to 75 percent may be used for the purpose of outreach and technical assistance to local educational agencies. The remainder shall be used for state-level program administration.

(2) The superintendent shall ensure that adequate resources are available to conduct an evaluation pursuant to subdivision (b) of Section 8805.

(l) Commencing in the 1992 calendar year, and each subsequent year for which funding is available, grants shall be awarded according to the following schedule:

(1) The superintendent shall issue requests for applications on or

before November 1.

(2) Grant applications shall be submitted to the superintendent on or before March 1.

(3) The superintendent shall award grants on or before May 15.

SEC. 3.5. Section 8804 of the Education Code is amended to read:

8804. The superintendent shall award grants to a local educational agency or consortium to pay the costs of planning and operating, on behalf of one or more qualifying schools within the local educational agency or consortium, programs that provide support services to pupils and their families at or near the school, as follows:

(a) Grants shall be awarded by the superintendent based upon the recommendations of the council and pursuant to this section.

(b) Two types of grants may be awarded to applicant local educational agencies or consortia, depending upon the level of readiness of that applicant to implement a program pursuant to this chapter. The superintendent shall issue requests for applications for awarding the grants, which shall specify maximum dollar amounts for which each type of grant may be awarded. The requests for applications also shall specify other criteria, as required by this article. The superintendent shall award those grants as follows:

(1) Planning grants may be awarded to local educational agencies or consortia that have demonstrated a need to implement a program, but that are not ready to begin the operation of the program, or that are in need of additional planning to expand existing support services programs. Planning grants shall be no more than fifty thousand dollars (\$50,000) and shall be awarded for a period not to exceed two years. Upon completion of the planning phase, the local educational agency or consortium shall be eligible to apply for and may receive an operational grant.

(2) Operational grants may be awarded to local educational agencies or consortia that have demonstrated readiness to begin operation of a program or to expand existing support services programs. Operational grants shall supplement, not supplant, existing services and funds, and shall be awarded for a period not to exceed three years.

(A) Operational grants may include one-time startup grants, which may be used for, among other things, purchasing equipment, hiring staff, designing a program evaluation, or hiring a consultant. Startup grants shall be awarded for no more than one hundred thousand dollars (\$100,000).

(B) Operational grants shall be awarded for no more than three hundred thousand dollars (\$300,000). No more than 50 percent of each grant shall be available for expenditure on direct services, as long as the grant application contains a three-year plan to significantly reduce or to eliminate agency reliance on funding provided under this article for direct services. Direct services do not include salaries for staff who are developing or implementing the program.

(3) If a local educational agency or consortium submits an application for an operational grant that does not meet the criteria specified in subdivision (h), (i), (j), or (k), the superintendent may offer the applicant a planning grant, provided that the local educational agency or consortium has not received previously a planning grant.

(c) All grants awarded under this article shall be matched by the participating local educational agency or consortium and its cooperating agencies with one dollar (\$1) for each four dollars (\$4) awarded. The match shall be contributed in cash or as services or resources of comparable value. It is the intent of the Legislature that participants seek and utilize private funds or resources for this purpose. The superintendent may waive the match requirement upon verifying that the local educational agency or consortium made a substantial effort to secure a match but was unable to secure the required match.

(d) For the purposes of the local matching funds required by paragraph (c), the participating local education agency or consortium may use funds provided directly by the local health department from funds distributed by the State Department of Health Services pursuant to Section 3315 of the Health and Safety Code, subject to a memorandum of understanding or other agreement of the local health department. These funds may be applied only to plans or the portion of plans that proposed to provide or coordinate services for tuberculosis testing, treatment, or referral under the direction of the local health department.

(e) The superintendent shall award grants pursuant to this article to local educational agencies or consortia in northern, central, and southern California, in urban, suburban, and rural areas. To the extent possible, the grants shall be awarded for programs representative of the ethnic and linguistic diversity of schoolage pupils and their families. Further, to the extent possible, 50 percent of the grants shall be awarded to schools serving elementary school pupils and 50 percent to schools serving junior and senior high school pupils.

(f) Of the schools that receive grants each year, not more than 10 percent may be selected based on the criteria identified in paragraph (3) of subdivision (g) of Section 8802.

(g) A local educational agency or consortium is eligible for a grant under this article, on behalf of one or more schools operated by the agency or consortium, if it demonstrates in its program plan that it:

(1) Will give priority for services provided under this chapter to pupils from low-income families.

(2) Will assist families in responding to support services needs of pupils.

(3) Has established the local agency collaboration process described in Article 4 (commencing with Section 8806), including a mechanism for sharing governance with cooperating agencies and entities, and for integrating or redirecting existing resources and

other school support services.

(4) Has submitted or is submitting an application to the State Department of Education and the State Department of Health Services for certification as a Medi-Cal provider, pursuant to Section 14000, and following, of the Welfare and Institutions Code.

(5) Involves parents or guardians and teachers in the process of identifying pupils' service needs and in the planning for and provision of support services.

(h) For purposes of this chapter, support services shall include case-managed health, mental health, social, and academic support services benefiting children and their families, and may include, but are not limited to:

(1) Health care, including:

(A) Immunizations.

(B) Vision and hearing testing and services.

(C) Dental services.

(D) Physical examinations, diagnostic, and referral services.

(E) Prenatal care.

(F) Tuberculosis testing, treatment, and referral services.

(2) Mental health services, including primary prevention, crisis intervention, assessments, and referrals, and training for teachers in the detection of mental health problems.

(3) Substance abuse prevention and treatment services.

(4) Family support and parenting education, including child abuse prevention and schoolage parenting programs.

(5) Academic support services, including tutoring, mentoring, employment, and community service internships, and inservice training for teachers and administrators. However, grants for these purposes shall supplement, not supplant, existing resources in these areas.

(6) Counseling, including family counseling and suicide prevention.

(7) Services and counseling for children who experience violence in their communities.

(8) Nutrition services.

(9) Youth development services, including tutoring, mentoring, recreation, career development, and job placement.

(10) Case management services.

(11) Provision of onsite Medi-Cal eligibility workers.

(i) A local educational agency or consortium may contract with other entities, including county agencies and private nonprofit organizations or private partners, to provide services to pupils and their families.

(j) Each local educational agency or consortium seeking a grant under this article shall submit an application to the superintendent at a time and manner, and with any appropriate information, as the superintendent may reasonably require.

Each grant application submitted shall include all of the following:

(1) A description of the proposed programs, including four or

more support services expected to be provided at the schoolsite or at a site near, or adjacent to, the school.

(2) Documentation of need for participation in the Healthy Start Support Services for Children Grant Program.

(3) Documentation of need for planning assistance, program operation support, or both.

(4) As to any operational grant application, a description of the objectives of the program, the amount and sources of required funding, the existing resources to be used or redirected, the priorities for development and timing of the program, the agencies responsible for the implementation of the program, and the procedures for the evaluation of the program.

The program plan submitted with an operational grant application shall include all of the following:

(A) Provisions for data collection and recordkeeping, including records of the population served, the components of the service, the results of the service, and costs, including startup, direct, and indirect costs, including those to other agencies, and cost savings.

(B) A service evaluation component, including input, process, and outcome indicators, quality assessment, and the process by which these measures will be taken. In addition, the plan shall include specific targets and outcome measures.

(C) A specific governing mechanism by which the plan will be implemented, including local decisionmaking responsibilities, organizational needs, anticipated problems and procedures to solve them, and incentives for collaboration and participation incentives to personnel.

(D) A specific system for the provision of case management services, including procedures for implementation, identification of the target population, anticipated outcomes, and a list of existing services, resources, and programs that will be used as components of the program.

(5) In the case of a consortium, a list of its members.

(6) The grant application also shall document any procedures that have been, or will be, taken to designate the local educational agency as a Medi-Cal provider pursuant to Section 14000, and following, of the Welfare and Institutions Code.

(7) A description of technical assistance, professional growth, and development needs, if any.

(8) A description of the proposed plan for family involvement in the program.

(9) A description of the population anticipated to be served.

(10) As to any planning grant application, a plan describing how the proposed program will be implemented after the grant has expired.

(k) Grants awarded pursuant to this article may be used for salaries of staff responsible for developing or implementing the program plan and administrative support staff, equipment and supplies, training, and insurance, pursuant to subdivision (b).

(l) No more than 10 percent of the amount appropriated in a fiscal year for the purposes of this chapter may be used by the superintendent for state-level administration of this chapter, including evaluation and technical assistance. Technical assistance includes, but is not limited to, establishing interagency collaboration, providing information dissemination and referrals, including information about appropriate program models, conducting site visits, and convening workshops to assist in the implementation of a program developed pursuant to this chapter.

(1) Of the amount provided in the annual Budget Act for state-level administration, up to 75 percent may be used for the purpose of outreach and technical assistance to local educational agencies. The remainder shall be used for state-level program administration.

(2) The superintendent shall ensure that adequate resources are available to conduct an evaluation pursuant to subdivision (b) of Section 8805.

(m) Commencing in the 1992 calendar year, and each subsequent year for which funding is available, grants shall be awarded according to the following schedule:

(1) The superintendent shall issue requests for applications on or before November 1.

(2) Grant applications shall be submitted to the superintendent on or before March 1.

(3) The superintendent shall award grants on or before May 15.

SEC. 4. Section 8804.5 is added to the Education Code, to read: 8804.5. (a) The Legislature finds and declares that, as the number of planning and operational grants awarded pursuant to this chapter increases, additional local planning and coordinating efforts will be necessary among school districts, county offices of education, county governments, community organizations, and nonprofit organizations for all of the following reasons:

(1) To avoid the duplication of efforts among agencies that administer the grants.

(2) To develop linkages between several school districts, individual county agencies, statewide organizations, or nonprofit organizations.

(3) To disseminate training and technical assistance materials developed by the department and other involved organizations.

(4) To plan for, and ensure, the continued ability of local educational agencies or consortia to provide support services with an operational grant, including planning and supporting the funding of those services beyond the three-year grant period through such means as Medi-Cal.

(5) To plan for, and ensure, the expansion of support services provided with an operational grant through creative refinancing options and the provision of comprehensive, integrated school-linked services to sites that do not receive planning or operational grants.

(b) From funds appropriated in the annual Budget Act for the Healthy Start Support Services for Children Act, the department may award county or regional planning and coordinating grants to no more than 11 local educational agencies or consortia each year, to be used for the purposes enumerated in subdivision (a). Each grant shall be for an amount not to exceed fifty thousand dollars (\$50,000). The total amount of grants awarded annually pursuant to this section shall not exceed five hundred fifty thousand dollars (\$550,000). The duration of each grant shall be mutually agreed upon by the grantee and the department.

(c) In awarding grants for the purposes of this section, the department shall give priority to local educational agencies or consortia that possess one or more of the following:

(1) An established capacity for leadership in the community and an ability to engage in local problem solving and to creatively approach the restructuring of service delivery methods.

(2) A demonstrated ability to work with and among service delivery agencies and systems, including county mental health, health, probation, and social service systems.

(3) The capacity to support county and regional planning and coordination efforts to be more responsive to the needs of children and their families in providing support services.

(4) Knowledge of the most effective strategies for refinancing grants and for integrating services between and among agencies.

(d) A local educational agency or consortia shall collaborate with local service delivery agencies and existing collaborative councils in implementing a grant received pursuant to this section.

SEC. 5. Section 8805 of the Education Code is amended to read:

8805. The Legislature finds that an evaluation of plan effectiveness is both desirable and necessary, and accordingly requires the following:

(a) No later than January 1 of the year following a full year of operation, each local educational agency or consortium that receives an operational grant under this chapter shall submit a report to the superintendent that includes:

(1) An assessment of the effectiveness of that local educational agency or consortium in achieving stated goals in the planning and/or operational phase.

(2) Problems encountered in the design and operation of the Healthy Start Support Services for Children Grant Program plan, including identification of any federal, state, or local statute or regulation that will impede program implementation.

(3) Recommendations for ways to improve delivery of support services to pupils.

(4) The number of pupils who will receive support services who previously have not been served.

(5) The potential impact of the program on the local educational agency or the consortium, including any anticipated increase in school retention and achievement rates of pupils who receive

support services.

(6) An accounting of anticipated local budget savings, if any, resulting from the implementation of the program.

(7) Client and practitioner satisfaction.

(8) The ability, or anticipated ability, to continue to provide services in the absence of future funding under this chapter, by allocating resources in ways that are different from existing methods.

(9) Increased access to services for pupils and their families.

(10) The degree of increased collaboration among participating agencies and private partners.

(11) If the local educational agency or consortium received certification as a Medi-Cal provider, the extent to which the certification improved access to needed services.

(b) Additional annual evaluations may be required as designated by the superintendent.

(c) The superintendent shall cause an evaluation to be conducted by an independent organization of the effectiveness of grants awarded under this chapter in assisting local educational agencies and consortia in planning and implementing Healthy Start Support Services for Children programs. No later than June 1, 1994, the superintendent shall submit to the Governor, the secretary, the agency secretary, and the Legislature the results of that evaluation and a summary of the reports submitted under subdivision (a).

(1) The evaluation shall focus on education, health, and social outcome measures as appropriate. These shall include, but not be limited to, attendance, academic performance, dropout rates, pupil grades, postsecondary education or training, immunizations, birth weights, diagnostic screening, self-esteem, out-of-home placement rates, child protective services referrals, family functioning, and school staff and administration participation.

(2) Additional independent evaluations may be conducted subject to additional funding being made available for purposes of this chapter in subsequent fiscal years.

SEC. 6. Section 8807 of the Education Code is amended to read:

8807. (a) The State Department of Education is required to implement this chapter only to the extent that funds are apportioned for that purpose under the annual Budget Act, or are made available to the department for the purposes of this chapter from federal sources. It is the intent of the Legislature that the superintendent, in consultation with the secretary and the agency secretary, seek and utilize any federal funds that may be made available for the purposes of this chapter.

(b) All money appropriated by the Legislature to the superintendent for purposes of the Healthy Start Support Services for Children Act, shall be allocated by the superintendent to local educational agencies or consortia that have been selected to participate in the grant program. Any amount not allocated during a fiscal year may be carried over to the subsequent fiscal year. In order to ensure that those local educational agencies or consortia that

receive planning grants will be eligible to receive operational grants, a portion of any funds appropriated during a fiscal year may be reserved for allocation as operational grants in future fiscal years.

(c) Any funds that are not expended by a local educational agency or consortium by the end of the three-year period of the grant shall be returned to the state, except under the following circumstances:

(1) A local educational agency or consortium that received an operational grant in the 1992 calendar year may retain up to fifty thousand dollars (\$50,000) of any amount not expended within the three-year period of the grant.

(2) A local educational agency or consortium that received an operational grant in the 1993 calendar year or any calendar year thereafter, may retain up to twenty-five thousand dollars (\$25,000) of any amount not expended within the three-year period of the grant.

(3) The expenditure of any funds retained pursuant to paragraph (1) or (2) shall be for a one-year period and shall be used exclusively to continue the program operations consistent with the original grant. Retention of funds pursuant to paragraph (1) or (2) shall be contingent on approval by the department of an expenditure plan submitted by the local educational agency or consortium.

(d) To the extent permitted by federal law, any funding made available to a local educational agency or consortium shall be subject to all of the following conditions:

(1) The program is open to children without regard to any child's religious beliefs or any other factor related to religion.

(2) No religious instruction is included in the program.

(3) The space in which the program is operated is not used in any manner to foster religion during the time used for operation of the program.

SEC. 6.5. Section 8807 of the Education Code is amended and renumbered to read:

8808. (a) The State Department of Education is required to implement this chapter only to the extent that funds are apportioned for that purpose pursuant to the annual Budget Act, or are made available to the department for the purposes of this chapter from federal sources. It is the intent of the Legislature that the superintendent, in consultation with the secretary and the agency secretary, seek and utilize any federal funds that may be made available for the purposes of this chapter.

(b) All money appropriated by the Legislature to the superintendent for purposes of the Healthy Start Support Services for Children Act, shall be allocated by the superintendent to local educational agencies or consortia that have been selected to participate in the grant program. Any amount not allocated during a fiscal year may be carried over to the subsequent fiscal year. In order to ensure that those local educational agencies or consortia that receive planning grants will be eligible to receive operational grants, a portion of any funds appropriated during a fiscal year may be

reserved for allocation as operational grants in future fiscal years.

(c) Any funds that are not expended by a local educational agency or consortium by the end of the three-year period of the grant shall be returned to state, except under the following circumstances:

(1) A local educational agency or consortium that received an operational grant in the 1992 calendar year may retain up to fifty thousand dollars (\$50,000) of any amount not expended within the three-year period of the grant.

(2) A local educational agency or consortium that received an operational grant in the 1993 calendar year or any calendar year thereafter, may retain up to twenty-five thousand dollars (\$25,000) of any amount not expended within the three-year period of the grant.

(3) The expenditure of any funds retained pursuant to paragraph (1) or (2) shall be for a one-year period and shall be used exclusively to continue the program operations consistent with the original grant. Retention of funds pursuant to paragraph (1) or (2) shall be contingent on approval by the department of an expenditure plan submitted by the local educational agency or consortium.

(d) To the extent permitted by federal law, any funding made available to a local educational agency or consortium shall be subject to all of the following conditions:

(1) The program is open to children without regard to any child's religious beliefs or any other factor related to religion.

(2) No religious instruction is included in the program.

(3) The space in which the program is operated is not used in any manner to foster religion during the time used for operation of the program.

SEC. 7. Section 3.5 of this bill incorporates amendments to Section 8804 of the Education Code proposed by both this bill and AB 2682. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 8804 of the Education Code, and (3) this bill is enacted after AB 2682, in which case Section 3 of this bill shall not become operative.

SEC. 8. Section 6.5 of this bill incorporates amendments to Section 8807 of the Education Code proposed by both this bill and AB 3618. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends or amends and renumbers Section 8807 of the Education Code, and (3) this bill is enacted after AB 3618, in which case Section 6 of this bill shall not be operative.

CHAPTER 1240

An act to add Chapter 2.8 (commencing with Section 7286.40) and Chapter 2.9 (commencing with Section 7286.45) to Part 1.7 of Division 2 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Chapter 2.8 (commencing with Section 7286.40) is added to Part 1.7 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 2.8. LAKEPORT TRANSACTIONS AND USE TAX

7286.40. (a) Subject to subdivision (b), the City of Lakeport may levy a transactions and use tax at a rate of 0.25 percent, or a multiple thereof, not to exceed 1 percent, if an ordinance or resolution proposing that tax is approved by a majority vote of all the members of the city council and the tax is approved by a two-thirds vote of the qualified voters of the city voting in an election on the issue.

(b) (1) Any transactions and use tax levied under this section shall be levied pursuant to the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)).

(2) The net revenues derived from a tax levied under this section shall be expended only for the repair, replacement, construction, or reconstruction of the city's streets and roads system.

SEC. 2. Chapter 2.9 (commencing with Section 7286.45) is added to Part 1.7 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 2.9. CLEARLAKE TRANSACTIONS AND USE TAX

7286.45. (a) Subject to subdivision (b), the City of Clearlake may levy a transactions and use tax at a rate of 0.25 or 0.5 percent, if an ordinance or resolution proposing that tax is approved by a majority vote of all the members of the city council and the tax is approved by a two-thirds vote of the qualified voters of the city voting in an election on the issue.

(b) (1) Any transactions and use tax levied under this section shall be levied pursuant to the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)).

(2) The net revenues derived from a tax levied under this section shall be expended only for the provision of public safety services, as defined in Section 30052 of the Government Code.

SEC. 3. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution

because of the uniquely difficult fiscal pressures being experienced by the cities of Lakeport and Clearlake is providing essential services with respect to public safety and transportation.

CHAPTER 1241

An act to add Section 14085.51 to the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 14085.51 is added to the Welfare and Institutions Code, to read:

14085.51. (a) A disproportionate share hospital that qualifies under Section 14085.5 that has submitted final plans for an eligible capital project in accordance with subparagraph (C) of paragraph (1) of subdivision (b) of Section 14085.5 may submit substitute final plans and shall qualify for supplemental reimbursement under Section 14085.5 for the revised capital project as described in the substitute final plans if all of the following conditions are met:

(1) The substituted capital project continues to meet the requirements for eligible projects as specified in Section 14085.5.

(2) The substitute final plans are submitted to the Office of the State Architect and the Office of Statewide Health Planning and Development prior to June 30, 1995.

(3) The revisions in the substitute final plan serve to replace buildings that are not in compliance with current seismic safety standards.

(b) The supplemental reimbursement under Section 14085.5 for the revised capital project shall be no greater than the supplemental reimbursement for the original capital project as evidenced by the architects' and engineers' certified cost estimate of the original plan submission and the substitute plan submission.

CHAPTER 1242

An act to amend Sections 13960, 13961, 13961.1, 13964, 13965, and 13966 of the Government Code, to amend Section 1463.001 of the Penal Code, and to amend Section 19566 of, to amend and renumber Section 19531 of, and to add and repeal Article 6 (commencing with Section 19280) of Chapter 5 of Part 10.2 of Division 2 of, the Revenue and Taxation Code, relating to crimes, and making an appropriation therefor.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 13960 of the Government Code is amended to read:

13960. As used in this article:

(a) (1) "Victim" means a resident of the State of California, a member of the military stationed in California, or a family member living with a member of the military stationed in California who sustains injury or death as a direct result of a crime.

(2) "Derivative victim" means a resident of California who is one of the following:

(A) At the time of the crime was the parent, sibling, spouse, or child of the victim.

(B) At the time of the crime was living in the household of the victim.

(C) A person who had previously lived in the household of the victim for a period of not less than two years in a relationship substantially similar to a relationship listed in subparagraph (A).

(D) Is another family member of the victim, including the victim's fiancé, and witnessed the crime.

(b) "Injury" includes physical or emotional injury, or both. However, this article does not apply to emotional injury unless that injury is incurred by a victim who also sustains physical injury or threat of physical injury. For purposes of this article, a victim of a crime committed in violation of Section 261, 270, 270a, 270c, 271, 272, 273a, 273b, 273d, 285, 286, 288, 288.1, 288a, or 289 of the Penal Code, who sustains emotional injury is presumed to have sustained physical injury.

(c) "Crime" means a crime or public offense that would constitute a misdemeanor or a felony if committed in California by a competent adult which results in injury to a resident of this state, including a crime or public offense, wherever it may take place, when the resident is temporarily absent from the state. No act involving the operation of a motor vehicle, aircraft, or water vehicle which results in injury or death constitutes a crime for the purposes of this article, except that a crime shall include any of the following:

(1) Injury or death intentionally inflicted through the use of a motor vehicle, aircraft, or water vehicle.

(2) Injury or death caused by a driver in violation of Section 20001 of the Vehicle Code.

(3) Injury or death caused by a person who is under the influence of any alcoholic beverage or drug.

(4) Injury or death caused by a driver of a motor vehicle in the immediate act of fleeing the scene of a crime in which he or she knowingly and willingly participated.

For the purpose of the limitations imposed by this article, a crime shall mean one act or series of related acts arising from the same course of conduct with the same perpetrator or perpetrators.

(d) "Pecuniary loss" means the following expenses for which the victim or derivative victim has not been and will not be reimbursed from any other source:

(1) The amount of medical or medical-related expenses incurred by the victim, including in-patient psychological or psychiatric expenses, and including, but not limited to, eyeglasses, hearing aids, dentures, or any prosthetic device taken, lost, or destroyed during the commission of the crime, or the use of which became necessary as a direct result of the crime.

(2) The amount of out-patient mental health counseling related expenses which became necessary as a direct result of the crime. These counseling services may be provided by a person licensed as a clinical social worker or a person licensed as a marriage, family, and child counselor practicing within the scope of licensure, or within the scope of his or her respective practice acts.

(3) The loss of income that the victim or the loss of support that the derivative victim has incurred or will incur as a direct result of an injury or death.

(4) Pecuniary loss also includes nonmedical remedial care and treatment rendered in accordance with a religious method of healing recognized by state law.

(5) The amount of family psychiatric, psychological, or mental health counseling expenses necessary as a direct result of the crime for the successful treatment of the victim, provided to family members of the victim in the presence of the victim, whether or not the family member relationship existed at the time of the crime.

(e) "Board" means the State Board of Control.

(f) "Victim centers" means those centers as specified in Section 13835.2 of the Penal Code.

(g) "Peer counselor" means a provider of mental health counseling services who has completed a specialized course in rape crisis counseling skills development, participates in continuing education in rape crisis counseling skills development, and provides rape crisis counseling in consultation with a mental health practitioner licensed within the State of California.

SEC. 2. Section 13961 of the Government Code is amended to read:

13961. (a) A victim or derivative victim may file an application for assistance with the board.

(b) The board shall supply and make available an application form for this purpose. The form shall be in one part, in laymen's terms, and shall be accompanied by information including, but not limited to, the following:

(1) The eligibility of applicants, the types of claims covered, and the maximum amount payable for these claims.

(2) Information explaining the procedure to be used to evaluate an applicant's claims.

(3) Other information pertinent to the applicant as deemed necessary by the board.

(4) Information about the existence and location of local victim centers.

(c) The period prescribed for the filing of an application for assistance shall be one year after the date of the crime or one year after the victim attains the age of 18 years, whichever is later. The board may for good cause grant an extension of this time period not to exceed three years after the date of the crime or three years after the victim attains the age of 18 years.

(d) The application for assistance shall be verified under penalty of perjury by the victim or derivative victim. If the victim or derivative victim is a minor or is incompetent, the application shall be verified under penalty of perjury or on information and belief by the parent with legal custody or the legal guardian of the victim or derivative victim for whom the application is made.

The application shall contain the following:

(1) A description of the date, nature, and circumstances of the crime or public offense.

(2) A complete financial statement including but not limited to the cost of medical care or burial expense and the loss of wages that the victim or the loss of support that the derivative victim has incurred or will incur and the extent to which the applicant has been or will be indemnified for these expenses from any source.

(3) When appropriate, a statement indicating the extent of any disability resulting from the injury incurred.

(4) An authorization permitting the board or a local victim center, or both, to verify the contents of the application.

(5) Any other information as the board may require.

SEC. 3. Section 13961.1 of the Government Code is amended to read:

13961.1. (a) An emergency award shall be available for a victim or derivative victim if either of the following occur as a result of the crime:

(1) The victim incurs loss of income or the derivative victim incurs loss of support.

(2) The victim requires emergency medical treatment.

(b) Emergency award application forms shall be provided by the board upon request of the applicant. The board shall make available

the application forms through all means at its disposal.

(c) The board may grant an emergency award based solely on the application of the victim or derivative victim. Disbursements of funds for emergency awards shall be made within 30 business days of application. The board may refuse to grant an emergency award where it has reason to believe that the applicant will not qualify for an award for assistance under this article. The board may delegate authority to designated staff persons, who will use guidelines established by the board, to grant emergency awards. By mutual agreement between the staff of the board and the applicant or the applicant's representative, the staff of the board or the applicant's representative may take additional 10-day periods to verify the emergency award claim and make payment.

(d) An applicant for an emergency award is not entitled to a hearing before the board to contest a denial of an emergency award. However, the applicant may submit an application for a regular award and is entitled to a hearing pursuant to Section 13963 if that application is recommended for denial.

(e) The application for an emergency award shall notify the applicant that he or she must complete the regular application within one year of the date of the crime or certify that he or she does not anticipate claiming reimbursements in addition to those claimed in the application for an emergency award.

(f) If the applicant certifies that no expenses will be claimed beyond those claimed in the emergency award, the board shall subsequently verify the emergency award application upon receipt of the crime report or any other information the board may require. Such other information shall include statements signed by the applicant authorizing the release of information to the board necessary for the verification of the claimed losses, and authorizing a lien in favor of the board against any recovery by the applicant by judgment, settlement, or otherwise as a result of any injury to the victim.

(g) If upon final disposition of the regular application or verification of the emergency award, it is found that the applicant is not eligible for assistance from the board, the applicant shall reimburse the board for the emergency award pursuant to an agreed upon repayment schedule. If upon a final disposition of the application, the board grants assistance to the applicant, the amount of the emergency award shall be deducted from the final award of compensation granted; and, if the amount of the grant is less than the amount of the emergency award, the excess amount shall be repaid according to an agreed upon repayment schedule. Final disposition for the purposes of this section shall mean the final decision of the board with respect to the victim's or derivative victim's application for assistance, before any appellate action is instituted. If an application for an emergency award is denied, the board shall notify the applicant in writing of the reasons for the denial.

(h) The amount of the emergency award shall be dependent

upon the immediate needs of the victim or derivative victim, as evidenced by the victim's loss of income or the derivative victim's loss of support and other losses incurred as a direct result of the crime before filing or reasonably anticipated during the first 90 days after the initial filing of an application. In no event shall the amount of the emergency award exceed two thousand dollars (\$2,000).

(i) The emergency award application shall require only the following:

(1) The name, address, and telephone number of the victim or derivative victim on whose behalf the application is made.

(2) A brief description of the nature and circumstances of the crime, including the date and location.

(3) The date the crime was reported to a law enforcement agency and the name and address of the agency.

(4) The name, address, and telephone number of the employer or self-employing entity, the loss of income or support to date and estimate of future loss.

(5) The nature of the injury and the name, address, and telephone number of medical providers and the cost of medical care incurred to date.

(6) A statement that in the event the applicant is later found ineligible for assistance under this article or the final award is less than the emergency award, the applicant will be required to repay the excess amount.

(7) The applicant's signature and a statement that the information is supplied under penalty of perjury, violation of which is punishable by six months in the county jail.

SEC. 4. Section 13964 of the Government Code is amended to read:

13964. (a) After having heard the evidence relevant to the application for assistance, the board shall approve the application if a preponderance of the evidence shows that as a direct result of the crime the victim or derivative victim incurred an injury which resulted in a pecuniary loss.

(b) An application for assistance may be denied, in whole or in part, if the board finds that denial is appropriate because of the nature of the victim's or other applicant's involvement in the events leading to the crime or the involvement of the persons whose injury or death give rise to the application.

(c) No victim shall be eligible for assistance under this article under any of the following circumstances:

(1) The board finds that the victim knowingly and willingly participated in the commission of the crime.

(2) The board finds that the victim failed to cooperate with a law enforcement agency in the apprehension and conviction of a criminal committing the crime.

(d) No derivative victim shall be eligible for assistance under this article under any of the following circumstances:

(1) The board finds that the victim or derivative victim knowingly

and willingly participated in the commission of the crime.

(2) The board finds that the victim or derivative victim failed to cooperate with a law enforcement agency in the apprehension and conviction of a criminal committing the crime.

(e) No application shall be denied solely because no criminal complaint has been filed, unless the complaint has not been filed for one of the reasons stated in subdivision (c) or (d). Moreover, no application shall be denied because a criminal complaint is filed, but later dismissed, if the dismissal is not for the reasons stated in subdivision (c) or (d).

(f) Once an application has been accepted by the board pursuant to subdivision (b) of Section 13962, as the application pertains to medical or medical-related expenses, the claim shall continue to be processed and either awarded or denied pursuant to this article in the event of the death of the applicant.

SEC. 5. Section 13965 of the Government Code is amended to read:

13965. (a) If the application for assistance is approved, the board shall determine what type of state assistance will best aid the victim or derivative victim. The board may take any or all of the following actions:

(1) Reimburse the following persons for the expense of their out-patient mental health counseling when that mental health counseling is necessary as a direct result of the crime:

(A) A victim in an amount not to exceed ten thousand dollars (\$10,000).

(B) A derivative victim who is the surviving parent, sibling, child, spouse, or fiance of a victim of a crime which directly resulted in the death of the victim in an amount not to exceed ten thousand dollars (\$10,000).

(C) A derivative victim who is the primary caretaker of a minor victim of sexual or physical abuse whose claim is not denied or reduced pursuant to subdivision (b) or (c) of Section 13964 in a total amount not to exceed ten thousand dollars (\$10,000) for not more than two derivative victims described in this subparagraph.

(D) A derivative victim not eligible for reimbursement pursuant to subparagraph (B) or (C) in an amount not to exceed three thousand dollars (\$3,000).

The board may authorize a direct cash payment to a provider of psychological or psychiatric treatment or mental health counseling services, including peer counseling services provided by a rape crisis center as defined by Section 13837 of the Penal Code or to either the victim or the derivative victim, equal to the pecuniary loss attributable to medical or medical-related expenses, including counseling, directly resulting from the injury. Reimbursement on the initial claim for any psychological, psychiatric, or mental health counseling services, including peer counseling services provided by a rape crisis center, shall, if the application has been approved, be paid by the board within 90 days of the date of receipt of the claim

for payment, with subsequent payments to be made to the provider within one month of the receipt of a claim for payment. However, the board may not authorize without good cause a direct cash payment to a licensed health care provider or rape crisis center over the objection of the applicant.

When a public agency, including a court or district attorney or a police, county child protective services, or other state or local governmental agency, refers a victim of crime to a private nonprofit agency for treatment for that victim, the private nonprofit agency shall be reimbursed for those services at the level of the normal and customary fee charged by the private nonprofit agency to clients with adequate means of payment for its services, except that this reimbursement shall not exceed the maximum reimbursement rates set by the board and may be made only to the extent that the victim otherwise qualifies for services under the victims of crime program and that other reimbursement or direct subsidies are not available to serve the victim.

Payments authorized pursuant to this paragraph for peer counseling services provided by a rape counseling center shall not exceed fifteen dollars (\$15) for each hour of services provided. Those services shall be limited to individual, in-person counseling on a face-to-face basis for a period not to exceed 10 weeks plus one series of facilitated support group counseling sessions.

(2) Authorize a cash payment to the victim equal to the pecuniary loss resulting from loss of wages directly resulting from the injury. Loss of wages shall not be paid by the board for more than two years following the crime. However, loss of wages may be extended for one additional year if the victim is either enrolled in a program of retraining or other rehabilitation approved by the board or has established to the satisfaction of the board that because of his or her disability arising from the crime he or she is unable to participate in any retraining or rehabilitation. If the board determines, after review of an application for assistance, including the evaluation of a qualified provider, that pecuniary loss for which payment may be made under this paragraph is expected to continue more than six months after the date of approval of the victim's application for assistance, disbursement shall commence and continue on a monthly basis for the period of time pecuniary loss is expected to continue.

(3) Authorize a cash payment to a derivative victim described in subparagraphs (A) and (B) of paragraph (2) of subdivision (a) of Section 13960 who was legally dependent on the victim at the time of the crime for the loss of support incurred by that person as a direct result of the crime.

(A) Loss of support shall not be paid by the board for income lost by an adult for a period of more than two years and shall not extend more than three years following the date of the crime.

(B) Loss of support shall not be paid by the board on behalf of a minor for a period beyond the child's attaining the age of 18 years.

(C) The total amount payable to all derivative victims for loss of

support pursuant to this paragraph as the result of one crime shall not exceed forty-six thousand dollars (\$46,000).

(4) Authorize cash payments to or on behalf of the victim for job retraining or similar employment-oriented rehabilitative services.

(5) Obtain an independent examination and report from any provider of psychological or psychiatric treatment or mental health counseling services, if it believes there is a reasonable basis for requesting an additional evaluation. In cases where the crime involves sexual assault, the provider shall have expertise in the needs of sexual assault victims. In cases where the crime involves child abuse or molestation, the provider shall have expertise in the needs of victims of child abuse or molestation, as appropriate. When a reevaluation is obtained, payments shall not be discontinued prior to completion of the reevaluation.

(6) When a victim dies as a direct result of a crime, the board may reimburse any individual who voluntarily, and without anticipation of personal gain, pays or assumes the obligation to pay, the medical or burial expenses incurred as a direct result of the crime for the medical or burial expenses incurred in an amount not to exceed the rates or limitations established by the board.

(7) The total award to or on behalf of the victim or a derivative victim shall not exceed twenty-three thousand dollars (\$23,000), and may be increased only in accordance with this section.

(8) In the event that the victim requests that the board give priority to reimbursement of loss of wages, the board shall not pay medical expenses or mental health counseling expenses except upon the request of the victim or after determining that payment of these expenses will not decrease the funds available to the victim for payment of loss of wages.

(b) Assistance granted pursuant to this article shall not disqualify an otherwise eligible victim or derivative victim from participation in any other public assistance program.

(c) Cash payments made pursuant to this article may be on a one-time or periodic basis. If periodic, the board may increase, reduce, or terminate the amount of assistance according to the victim's or derivative victim's need, subject to the maximum limits provided in this section.

(d) The board shall pay attorney's fees representing the reasonable value of legal services rendered to the applicant, in an amount equal to 10 percent of the amount of the award, or five hundred dollars (\$500), whichever is less for each victim and each derivative victim. An attorney receiving fees from another source may waive the right to receive fees under this section. Payments under this section shall be in addition to any amount authorized or ordered under subdivision (d) of Section 13969.1.

(e) No attorney shall charge, demand, receive, or collect any amount for services rendered in connection with any proceedings under this article except as awarded under this article.

(f) The maximum cash payments authorized in paragraph (7) of

subdivision (a) shall be increased to forty-six thousand dollars (\$46,000) if federal funds for those increases are available.

(g) Notwithstanding subdivisions (a) and (f), a victim injured between January 1, 1985, and December 31, 1985, shall be entitled to receive a maximum cash payment of forty-six thousand dollars (\$46,000) if federal funds for these increases are available, but only for costs in excess of limitations provided for in subdivision (a) which are attributable to medical or medical-related expenses, except for psychological or psychiatric treatment, or mental health counseling services.

(h) Notwithstanding any conflicting provision of this chapter, the board may make additional payments for purposes described in paragraph (1) of subdivision (a) to any victim who filed an application with the board on or after December 1, 1982, who was a victim of a crime involving sexual assault, and who is a minor at the time the additional payments pursuant to this subdivision are made. The payments authorized by this subdivision shall not exceed the limits imposed by subdivisions (a) and (j).

(i) Reimbursement for any medical or medical-related services shall, if the victim's application has been approved, be paid by the board within an average of 90 days from receipt of the claim for payment. Payments to a medical or mental health provider under this subdivision or paragraph (1) of subdivision (a) shall not be discontinued prior to completion of any reevaluation. Whether or not a reevaluation is obtained, if the board determines that payments to a provider shall be discontinued, the board shall notify the provider of their discontinuance within 30 days of its determination.

(j) The board may establish maximum rates and service limitations for reimbursement of medical and medical-related expenses, including counseling expenses, for which restitution is requested pursuant to this section. For mental health and counseling services, rates shall not exceed the statewide average. The adoption, amendment, and repeal of these maximum rates shall not be subject to the Administrative Procedure Act under Chapter 3.5 (commencing with Section 11340) of Part 1. An informational copy of the maximum rates shall be filed with the Secretary of State upon adoption by the board. A provider who accepts payment from the program for a service shall accept the program's rates as payment in full and shall not accept any payment on account of the service from any other source if the total of payments accepted would exceed the maximum rate set by the board for that service.

To assure service limitations which are uniform and appropriate to the levels of treatment required by the victim or derivative victim, the board may review all claims for these services as necessary to ensure their medical necessity. The board may further require additional documentation, information, or medical review of cases of continuing treatment which are projected to exceed five thousand dollars (\$5,000) to determine the need to continue treatment in excess of that amount. The board may accept or reject claims for the

amount in excess of five thousand dollars (\$5,000) by applying the same standards applicable to processing the initial claim or may approve a continuing treatment regimen for a specific interval or subject to periodic review as appropriate. All information requested of the treating therapist shall be provided at no cost to the applicant, the board, or to local victim centers, pursuant to subdivision (b) of Section 13962. Requests for additional information shall be made in a timely manner so as not to interfere with necessary treatment.

(k) The authority provided by this section shall not be construed to in any way diminish, enhance, or otherwise affect any authority which the board may have under current law except as explicitly provided in this section.

(l) The board, in its discretion, may make payments directly to providers prior to verification.

(m) Notwithstanding paragraph (1) of subdivision (a), the board may reimburse a victim or derivative victim for mental health counseling in excess of that authorized by that paragraph if the claim is based on dire or exceptional circumstances that require more extensive treatment, as approved by the board.

(n) Notwithstanding paragraph (1) of subdivision (a), if, as of December 31, 1993, a person has incurred mental health counseling expenses pursuant to this article in excess of one-half of the amount specified in that subdivision, the board may award, in addition to amounts awarded for previously incurred expenses, an amount equal to not more than one-half of the applicable maximum amount specified in that paragraph or any additional amounts as the board determines is necessary.

(o) The limitations on the amounts which the board may reimburse for loss of support and loss of wages pursuant to paragraphs (2) and (3) of subdivision (a) shall not apply to victims or derivative victims whose claims for loss of wages and loss of support had been approved prior to January 1, 1994.

SEC. 6. Section 13966 of the Government Code is amended to read:

13966. As used in Sections 13966.01 and 13966.02:

(a) "Carrier" includes any insurer as defined in Section 23 of the Insurance Code, including any private company, corporation, mutual association, trust fund, reciprocal or interinsurance exchange authorized under the laws of this state to insure persons against liability for injuries caused to another, and also any insurer providing benefits under a policy of bodily injury liability insurance covering liability arising out of the ownership, maintenance, or use of a motor vehicle which provides uninsured motorist endorsement or coverage, pursuant to Section 11580.2 of the Insurance Code.

(b) "Victim" means any person who has received assistance or will be provided assistance pursuant to this article. It includes the victim's guardian, conservator or other personal representative, estate, and survivors.

SEC. 7. Section 1463.001 of the Penal Code is amended to read:

1463.001. All fines and forfeitures imposed and collected for crimes other than parking offenses resulting from a filing in a court shall as soon as practicable after receipt thereof, be deposited with the county treasurer, and each month the total fines and forfeitures which have accumulated within the past month shall be distributed, as follows:

(a) The state penalties, county penalties, special penalties, service charges, and penalty allocations shall be transferred to the proper funds as required by law.

(b) The base fines shall be distributed, as follows:

(1) Any base fines which are subject to specific distribution under any other section shall be distributed to the specified funds of the state or local agency.

(2) Any amount due to the county which is collected pursuant to Section 1203.1, but excluding fees to cover the actual cost of formal probation, shall be divided between the state and county, with 75 percent transferred to the General Fund and 25 percent transferred to the proper funds of the county.

(3) Of base fines resulting from county arrest not included in paragraph (1), 25 percent shall be transferred into the proper funds of the county, and 75 percent shall be transferred to the General Fund. In any fiscal year that a county does not remit to the General Fund an amount equal to the amount transmitted during the 1992-93 fiscal year, that county shall make a payment from county funds equal to the difference to the General Fund by October 1 of the subsequent fiscal year.

(4) Of base fines resulting from city arrests not included in paragraph (1), an amount equal to the applicable county percentages set forth in Section 1463.002, as modified by Section 1463.28, shall be divided between the state and county, with 75 percent transferred to the General Fund and 25 percent transferred into the proper funds of the county. In any fiscal year that a county does not remit to the General Fund an amount equal to the amount transmitted during the 1992-93 fiscal year, that county shall make a payment from county funds equal to the difference to the General Fund by October 1 of the subsequent fiscal year. The remainder of base fines resulting from city arrests shall be divided between each city and the state, with 50 percent deposited to the General Fund, and 50 percent deposited to the treasury of the appropriate city.

(5) In a county that had an agreement as of March 22, 1977, that provides for city fines and forfeitures to accrue to the county in exchange for sales tax receipts, of base fines resulting from city arrests not included in paragraph (1), 50 percent shall be deposited to the General Fund, and 50 percent shall be deposited into the proper funds of the county.

(c) Each county shall keep a record of its deposits to its treasury and its transmittal to each city treasury pursuant to this section, and shall provide these records upon request to the Controller.

(d) Any amounts required to be distributed to the state pursuant

to this section shall be remitted to the Controller no later than 45 days after the end of the month in which such fines and forfeitures were collected. This remittance shall be accompanied by a remittance advice identifying the collection month and the appropriate account in the General Fund to which it is to be deposited. Any remittance which is not made in accordance with this section shall be considered delinquent and subject to subdivision (b) of Section 77205.1 of the Government Code.

(e) In the event that the percentage of revenues payable to the General Fund from violations of any of the provisions of the Fish and Game Code or any regulation adopted pursuant thereto, or any other law providing for the protection or preservation of birds, mammals, fish, reptiles or amphibia, is reduced by operation of law to a percentage lower than that payable to the state during the 1991-92 fiscal year, each county shall increase its transmittal to the General Fund from its share of fines and forfeitures pursuant to subdivision (b) by an amount equal to the reduction in its transmittal to the General Fund.

(f) The distribution specified in subdivision (b) applies to all funds subject thereto distributed on or after July 1, 1992, regardless of whether the court has elected to allocate and distribute funds pursuant to Section 1464.8.

(g) Any amounts remitted to the county from amounts collected by the Franchise Tax Board upon referral by a county pursuant to Article 6 (commencing with Section 19280) of Chapter 5 of Part 10.2 of Division 2 of the Revenue and Taxation Code shall be allocated pursuant to this section.

SEC. 7.5. Section 1463.001 of the Penal Code is amended to read:

1463.001. All fines and forfeitures imposed and collected for crimes other than parking offenses resulting from a filing in a court shall as soon as practicable after receipt thereof, be deposited with the county treasurer, and each month the total fines and forfeitures which have accumulated within the past month shall be distributed, as follows:

(a) The state penalties, county penalties, special penalties, service charges, and penalty allocations shall be transferred to the proper funds as required by law.

(b) The base fines shall be distributed, as follows:

(1) Any base fines which are subject to specific distribution under any other section shall be distributed to the specified funds of the state or local agency.

(2) Any amount due to the county which is collected pursuant to Section 1203.1, but excluding fees to cover the actual cost of formal probation, shall be divided between the state and county, with 75 percent transferred to the General Fund and 25 percent transferred to the proper funds of the county.

(3) Of base fines resulting from county arrest not included in paragraph (1), 25 percent shall be transferred into the proper funds of the county, and 75 percent shall be transferred to the General

Fund. Except as otherwise provided in this paragraph, in any fiscal year that a county does not remit to the General Fund an amount equal to the amount transmitted during the 1992-93 fiscal year, that county shall make a payment from county funds equal to the difference to the General Fund by October 1 of the subsequent fiscal year. In any fiscal year that a county, which has an agreement that was in effect as of March 22, 1977, that provides for city fines and forfeitures to accrue to the county in exchange for sales tax receipts, does not remit to the General Fund an amount equal to the amount transmitted during the 1993-94 fiscal year, that county shall make a payment from county funds equal to the difference to the General Fund by October 1 of the subsequent fiscal year.

(4) Of base fines resulting from city arrests not included in paragraph (1), an amount equal to the applicable county percentages set forth in Section 1463.002, as modified by Section 1463.28, shall be divided between the state and county, with 75 percent transferred to the General Fund and 25 percent transferred into the proper funds of the county. In any fiscal year that a county does not remit to the General Fund an amount equal to the amount transmitted during the 1992-93 fiscal year, that county shall make a payment from county funds equal to the difference to the General Fund by October 1 of the subsequent fiscal year. The remainder of base fines resulting from city arrests shall be divided between each city and the state, with 50 percent deposited to the General Fund, and 50 percent deposited to the treasury of the appropriate city.

(5) In a county that had an agreement as of March 22, 1977, that provides for city fines and forfeitures to accrue to the county in exchange for sales tax receipts, of base fines resulting from city arrests not included in paragraph (1), 50 percent shall be deposited to the General Fund, and 50 percent shall be deposited into the proper funds of the county.

(c) Each county shall keep a record of its deposits to its treasury and its transmittal to each city treasury pursuant to this section, and shall provide these records upon request to the Controller.

(d) Any amounts required to be distributed to the state pursuant to this section shall be remitted to the Controller no later than 45 days after the end of the month in which those fines and forfeitures were collected. This remittance shall be accompanied by a remittance advice identifying the collection month and the appropriate account in the General Fund to which it is to be deposited. Any remittance which is not made in accordance with this section shall be considered delinquent and subject to subdivision (b) of Section 77205.1 of the Government Code.

(e) In the event that the percentage of revenues payable to the General Fund from violations of any of the provisions of the Fish and Game Code or any regulation adopted pursuant thereto, or any other law providing for the protection or preservation of birds, mammals, fish, reptiles or amphibia, is reduced by operation of law to a percentage lower than that payable to the state during the 1991-92

fiscal year, each county shall increase its transmittal to the General Fund from its share of fines and forfeitures pursuant to subdivision (b) by an amount equal to the reduction in its transmittal to the General Fund.

(f) The distribution specified in subdivision (b) applies to all funds subject thereto distributed on or after July 1, 1992, regardless of whether the court has elected to allocate and distribute funds pursuant to Section 1464.8.

(g) Any amounts remitted to the county from amounts collected by the Franchise Tax Board upon referral by a county pursuant to Article 6 (commencing with Section 19280) of Chapter 5 of Part 10.2 of Division 2 of the Revenue and Taxation Code shall be allocated pursuant to this section.

SEC. 8. Article 6 (commencing with Section 19280) is added to Chapter 5 of Part 10.2 of Division 2 of the Revenue and Taxation Code, to read:

Article 6. Collection of Amounts Due a Court

19280. (a) Fines, state or local penalties, forfeitures, restitution fines, or restitution orders imposed by a superior, municipal, or justice court of the State of California upon a person or any other entity that is in an amount totaling no less than two hundred fifty dollars (\$250), in the aggregate, and due a county or the state for criminal offenses, including all offenses involving a violation of the Vehicle Code except offenses relating to parking or registration or offenses by pedestrians or bicyclists, may, no sooner than 90 days after payment of that amount becomes delinquent, be referred by the county or the state to the Franchise Tax Board for collection under guidelines prescribed by the Franchise Tax Board. The Franchise Tax Board shall establish criteria for referral, which shall include setting forth a minimum dollar amount subject to referral and collection.

(b) For the period January 1, 1995, to December 31, 1997, inclusive, for purposes of a manageable implementation and evaluation of the program authorized by this article, the Franchise Tax Board may limit referrals to nine counties.

(c) Upon written notice to the obligor from the Franchise Tax Board, any amount referred to the Franchise Tax Board under subdivision (a) and any interest thereon, including any interest on the amount referred under subdivision (a) that accrued prior to the date of referral, shall be treated as final and due and payable to the State of California, and shall be collected from the obligor by the Franchise Tax Board in any manner authorized under the law for collection of a delinquent personal income tax liability, including, but not limited to, issuance of an order and levy under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure in the manner provided for earnings withholding orders for taxes.

(d) (1) Part 10 (commencing with Section 18401), this part, Part 10.7 (commencing with Section 21001), and Part 11 (commencing with Section 23001) shall apply to amounts referred under this article in the same manner and with the same force and effect and to the full extent as if the language of those laws had been incorporated in full into this article, except to the extent that any provision is either inconsistent with this article or is not relevant to this article.

(2) Any information, information sources, or enforcement remedies and capabilities available to the court referring the amount due described in subdivision (a), shall be available to the Franchise Tax Board to be used in conjunction with, or independent of, the information, information sources, or remedies and capabilities available to the Franchise Tax Board for purposes of administering Part 10 (commencing with Section 18401), this part, Part 10.7 (commencing with Section 21001), or Part 11 (commencing with Section 23001).

(e) The activities required to implement and administer this part shall not interfere with the primary mission of the Franchise Tax Board to administer Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001).

(f) For amounts referred for collection under subdivision (a), interest shall accrue at the greater of the rate applicable to the amount due being collected or the rate provided under Section 19521. When notice of the amount due includes interest and is mailed to the obligor and the amount is paid within 10 days after the date of notice, interest shall not be imposed for the period after the date of notice.

(g) In no event shall a collection under this article be construed as a payment of income taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

19281. (a) The Legislature finds that it is essential for fiscal purposes that the program authorized by this part be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any standard, criteria, procedure, determination, rule, notice, or guideline established or issued by the Franchise Tax Board or Controller in implementing and administering the program required by this article.

(b) Except as provided in subdivision (a), any standard, criteria, procedure, determination, rule, notice, or guideline that otherwise would be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall be approved by a majority vote of the Franchise Tax Board.

19282. (a) Amounts collected under this part shall be transmitted to the Treasurer and deposited in the State Treasury to the credit of the Court Collection Account in the General Fund, which is hereby created. Amounts deposited in the Court Collection Account shall, less an amount that is equal to the costs incurred by the Franchise Tax Board in administering the program authorized by

this article, be transferred by the Controller either to the county or to the state fund to which the amount due was originally owing or as otherwise directed by contractual agreement. If the amount collected is not sufficient to satisfy any fine, restitution fine, restitution order, penalty, or forfeiture imposed, then the amount paid shall be allocated for distribution on a pro rata basis, as defined in subdivision (d). The amount that is equal to the costs incurred by the Franchise Tax Board in administering the program authorized by this article shall be transferred by the Controller to the General Fund for the purpose of recovering the amount expended by the Franchise Tax Board from General Fund appropriations for the purpose of implementing and administering the program authorized by this article, and related statutes as added or amended by the act adding this article.

(b) It is the intent of the Legislature that costs to the Franchise Tax Board to administer this article for the 1995–96 and 1996–97 fiscal years not exceed 9 percent of the amount it collects pursuant to this article. It is also the intent of the Legislature that for the 1997–98 fiscal year and thereafter this percentage decrease to 5 percent. If the Franchise Tax Board projects that its costs will exceed these percentages for a given fiscal year, it shall report to the Legislature and the Department of Finance the reasons for the excess costs and the consequences of not funding these excess costs.

(c) Notwithstanding Section 13340 of the Government Code, all moneys deposited in the Court Collection Account pursuant to this section are hereby continuously appropriated, without regard to fiscal years, for purposes of making distributions pursuant to subdivision (a).

(d) For purposes of this section, “pro rata basis” means a distribution determined as follows: the sum of the fines, state and local penalties, forfeitures, restitution fines, or restitution orders imposed by the court to be paid by an offender shall be allocated and distributed in the same proportion that each of the elements has to the sum.

19283. This article shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends this date.

SEC. 8.5. Notwithstanding any repeal of Article 6 (commencing with Section 19280) of Chapter 5 of Part 10.2 of Division 2 of the Revenue and Taxation Code, any collections attributable to that article prior to its repeal shall continue to be transferred and disbursed in accordance with that article as in effect immediately prior to its repeal.

SEC. 9. Section 19531 of the Revenue and Taxation Code, as added by Chapter 878 of the Statutes of 1994, is amended and renumbered to read:

19532. In the event a debtor has more than one debt being collected by the Franchise Tax Board and the amount collected by the Franchise Tax Board is insufficient to satisfy the total amount

owing, the amount collected shall be applied in the following priority:

(a) Payment of any taxes, additions to tax, penalties, interest, fees, or other amounts due and payable under Part 10 (commencing with Section 17001), this part, or Part 11 (commencing with Section 23001).

(b) Payment of any debts referred for collection under Article 5 (commencing with Section 19271) of Chapter 5.

(c) Payment of delinquencies collected under Section 10878.

(d) Payment of any amounts due which are referred for collection under Article 6 (commencing with Section 19280) of Chapter 5.

SEC. 9.5. Section 19531 of the Revenue and Taxation Code, as added by Chapter 878 of the Statutes of 1993, is amended and renumbered to read:

19532. In the event a debtor has more than one debt being collected by the Franchise Tax Board and the amount collected by the Franchise Tax Board is insufficient to satisfy the total amount owing, the amount collected shall be applied in the following priority:

(a) Payment of any taxes, additions to tax, penalties, interest, fees, or other amounts due and payable under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

(b) Payment of any debts referred for collection under Article 5 (commencing with Section 19271) of Chapter 5.

(c) Payment of delinquent wages collected pursuant to the Labor Code.

(d) Payment of delinquencies collected under Section 10878.

(e) Payment of any amounts due which are referred for collection under Article 6 (commencing with Section 19280) of Chapter 5.

(f) Payment of delinquent penalties collected for the Department of Industrial Relations pursuant to the Labor Code.

(g) Payment of delinquent fees collected for the Department of Industrial Relations pursuant to the Labor Code.

SEC. 10. Section 19566 of the Revenue and Taxation Code is amended to read:

19566. Any information provided to or secured by the Franchise Tax Board for purposes of administering Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) may be used by Franchise Tax Board for purposes of administering Section 10878 or Article 6 (commencing with Section 19280) of Chapter 5.

SEC. 11. For purposes of implementing and administering Sections 7 to 10, inclusive, and Section 12 of this act in the 1994-95 fiscal year, the sum of three hundred sixty-nine thousand dollars (\$369,000) is hereby appropriated from the General Fund to the Franchise Tax Board, in augmentation of Item 1730-001-001 of the Budget Act of 1994. The amount expended from the amount appropriated pursuant to this section shall, in the manner specified in Section 19282 of the Revenue and Taxation Code as added by this

act, be repaid to the General Fund from those collected amounts as described in that section. It is the intent of the Legislature that the funds to administer this act for the 1995-96 fiscal year, and each fiscal year thereafter, shall be provided for in the annual Budget Act.

SEC. 12. The State Board of Control shall do either of the following:

(a) Implement the recommendations contained in the Victims of Crime Program Management Study prepared for the State Board of Control in November 1993 by Price Waterhouse that provide for greater efficiencies and reductions in administrative costs. None of these recommendations require legislative action to be implemented.

(b) Report back to the Legislature no later than June 1, 1995, as to why any recommendations subject to subdivision (a) have not been implemented.

SEC. 13. The Franchise Tax Board shall report the results of the court-imposed debt collection program authorized by this act to the appropriate committees of the Legislature on or before April 1, 1998. The report shall include any recommendations for legislation that are necessary for more effective administration of the program by the Franchise Tax Board.

SEC. 14. Section 7.5 of this bill incorporates amendments to Section 1463.001 of the Penal Code proposed by both this bill and SB 1393. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1995, (2) each bill amends Section 1463.001 of the Penal Code, and (3) this bill is enacted after SB 1393, in which case Section 1463.001 of the Penal Code, as amended by SB 1393, shall remain operative only until the operative date of this bill, at which time Section 7.5 of this bill shall become operative, and Section 7 of this bill shall not become operative.

SEC. 15. Section 9.5 of this bill incorporates amendments to Section 19531 of the Revenue and Taxation Code proposed by both this bill and SB 1490. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 19531 of the Revenue and Taxation Code, and this bill is enacted after SB 1490, in which case Section 9 of this bill shall not become operative.

CHAPTER 1243

An act to amend Section 7550.5 of the Government Code, to amend Section 1760 of the Insurance Code, to amend Section 1340 of the Military and Veterans Code, to amend Sections 64, 11003, 13210, 17014, 17052.12, 17220, 17270, 17506, 18152.5, 18402, 18621, 18621.5, 18624, 18633, 18723, 18731, 18795, 18812, 19136, 19167, 19602, 19701.5, 19705, 21011, 23609, 23801, 24347.5, 24661, 24672, 25106, 25110, and 25111.1 of, to amend and renumber Section 19531 of, to amend, repeal, and add Section 25105 of, to add Sections 18405 and 19364 to, to add and repeal Article 9 (commencing with Section 18801) and Article 11 (commencing with Section 18821) of Chapter 3 of Part 10.2 of Division 2 of, to repeal Sections 17095, 17134, 17153, 17156, 17157, 17158, 17160, 17232, 17241, 17261, 17270.5, 17272, 17289, 17325, 17502, 17512, 17558, 17559, 17562, 17566, 17800, 17932, 18044, 18431, 18431.2, 18512, 18517, 18548, 18684.7, 18934, 19133, 19401.5, 19405, 25403, 25403.5, 25782, 25962, and 26081.5 of, and to repeal Article 6.9 (commencing with Section 18518) of Chapter 17 of Part 10 of Division 2 of, the Revenue and Taxation Code, to amend Section 42205 of the Vehicle Code, and to amend Section 9 of Chapter 33 of the Statutes of 1994, relating to taxation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 7550.5 of the Government Code is amended to read:

7550.5. (a) Notwithstanding any other provision of law, until January 1, 1995, no state or local agency shall be required to prepare or to submit any written report to the Legislature or the Governor unless any of the following circumstances exist:

(1) The report is required either in whole or part by a court, federal law, or regulation.

(2) The report is required in the Budget Act.

(3) The Legislature expressly provides that, notwithstanding this section, a written report shall be prepared and submitted.

(4) The report is necessary for preparation of the Budget Act or implementation of the Budget Act, as determined by the Department of Finance.

(b) Pursuant to subdivision (a), the reports specified in the following provisions of law shall be prepared and submitted:

(1) Section 29 of the Business and Professions Code.

(1.1) Section 312 of the Business and Professions Code.

(1.2) Section 327 of the Business and Professions Code.

(1.3) Section 472.4 of the Business and Professions Code.

(1.4) Section 806 of the Business and Professions Code.

- (1.5) Section 1620 of the Business and Professions Code.
- (1.6) Section 1724 of the Business and Professions Code.
- (1.7) Section 2075 of the Business and Professions Code.
- (1.8) Section 2313 of the Business and Professions Code.
- (1.9) Section 2673 of the Business and Professions Code.
- (1.10) Section 2392 of the Business and Professions Code.
- (1.11) Section 2435 of the Business and Professions Code.
- (1.12) Section 2815.7 of the Business and Professions Code.
- (1.13) Section 3151 of the Business and Professions Code.
- (1.14) Section 3152 of the Business and Professions Code.
- (1.15) Section 3521 of the Business and Professions Code.
- (1.16) Section 3521.5 of the Business and Professions Code.
- (1.17) Section 4946 of the Business and Professions Code.
- (1.18) Section 5171 of the Business and Professions Code.
- (1.19) Section 5681 of the Business and Professions Code.
- (1.20) Section 5724 of the Business and Professions Code.
- (1.21) Section 6632 of the Business and Professions Code.
- (1.22) Section 7017 of the Business and Professions Code.
- (1.23) Section 7139.7 of the Business and Professions Code.
- (1.24) Section 7215.5 of the Business and Professions Code.
- (1.25) Section 7316 of the Business and Professions Code.
- (1.26) Section 7444 of the Business and Professions Code.
- (1.27) Section 10239.34 of the Business and Professions Code.
- (1.28) Section 10264 of the Business and Professions Code.
- (1.29) Section 12102 of the Business and Professions Code.
- (1.30) Section 12729.5 of the Business and Professions Code.
- (1.31) Section 18618 of the Business and Professions Code.
- (1.50) Section 1920 of the Civil Code.
- (2) Section 8007 of the Education Code.
- (3) Section 8272 of the Education Code.
- (4) Section 12141 of the Education Code.
- (6) Section 15750 of the Education Code.
- (7) Section 16098 of the Education Code.
- (8) Section 17330 of the Education Code.
- (9) Section 22218.6 of the Education Code.
- (10) Section 22218.7 of the Education Code.
- (11) Section 22220 of the Education Code.
- (12) Section 22236 of the Education Code.
- (13) Section 24700 of the Education Code.
- (14) Section 33053 of the Education Code.
- (16) Section 41310.5 of the Education Code.
- (17) Section 42263 of the Education Code.
- (18) Section 45355 of the Education Code.
- (19) Section 45357 of the Education Code.
- (20) Section 48204 of the Education Code.
- (21) Section 60604.5 of the Education Code.
- (22) Section 60663 of the Education Code.
- (23) Section 66742 of the Education Code.
- (24) Section 66743 of the Education Code.

- (25) Section 66903 of the Education Code.
- (26) Section 66904 of the Education Code.
- (27) Section 69615.4 of the Education Code.
- (28) Section 69944 of the Education Code.
- (29) Section 99105 of the Education Code.
- (30) Section 99181 of the Education Code.
- (31) Section 99182 of the Education Code.
- (32) Section 2079 of the Fish and Game Code.
- (33) Section 3409 of the Fish and Game Code.
- (34) Section 3333 of the Food and Agricultural Code.
- (35) Section 13144 of the Food and Agricultural Code.
- (36) Section 13152 of the Food and Agricultural Code.
- (37) Section 14104 of the Food and Agricultural Code.
- (38) Section 965.4 of the Government Code.
- (39) Section 965.65 of the Government Code.
- (40) Section 7078 of the Government Code.
- (41) Section 7086 of the Government Code.
- (42) Section 7563 of the Government Code.
- (43) Section 8523 of the Government Code.
- (44) Section 8574.8 of the Government Code.
- (45) Section 8670.53.15 of the Government Code.
- (46) Section 8878.97 of the Government Code.
- (47) Section 10534 of the Government Code.
- (48) Section 11011 of the Government Code.
- (49) Section 12010.6 of the Government Code.
- (50) Section 12017 of the Government Code.
- (51) Section 12020 of the Government Code.
- (52) Section 12021 of the Government Code.
- (53) Section 12080.2 of the Government Code.
- (54) Section 12170 of the Government Code.
- (55) Section 12329 of the Government Code.
- (56) Section 12439 of the Government Code.
- (57) Section 12460 of the Government Code.
- (58) Section 12461 of the Government Code.
- (59) Section 12461.3 of the Government Code.
- (60) Section 12522 of the Government Code.
- (61) Section 12805.5 of the Government Code.
- (62) Section 13305 of the Government Code.
- (63) Section 13308 of the Government Code.
- (64) Section 13332.04 of the Government Code.
- (65) Section 13332.10 of the Government Code.
- (66) Section 13336.5 of the Government Code.
- (67) Section 13337 of the Government Code.
- (68) Section 13887 of the Government Code.
- (69) Section 13887.3 of the Government Code.
- (70) Section 13895.3 of the Government Code.
- (71) Section 13899.3 of the Government Code.
- (72) Section 14523 of the Government Code.
- (73) Section 14525.6 of the Government Code.

- (73.5) Section 14535 of the Government Code.
- (74) Section 14840 of the Government Code.
- (75) Section 15207 of the Government Code.
- (76) Section 15323.5 of the Government Code.
- (77) Section 15355.3 of the Government Code.
- (78) Section 15364.25 of the Government Code.
- (79) Section 15364.54 of the Government Code.
- (79.5) Section 15378 of the Government Code.
- (80) Section 15616 of the Government Code.
- (81) Section 15646 of the Government Code.
- (82) Section 15901 of the Government Code.
- (83) Section 15977 of the Government Code.
- (84) Section 16725 of the Government Code.
- (85) Section 16759 of the Government Code.
- (86) Section 16855 of the Government Code.
- (87) Section 17570 of the Government Code.
- (88) Section 19827.2 of the Government Code.
- (89) Section 19994.20 of the Government Code.
- (90) Section 19996.21 of the Government Code.
- (91) Section 19996.40 of the Government Code.
- (92) Section 20017.99 of the Government Code.
- (93) Section 20138 of the Government Code.
- (94) Section 20139 of the Government Code.
- (95) Section 20140.1 of the Government Code.
- (96) Section 20206.5 of the Government Code.
- (97) Section 20230.1 of the Government Code.
- (98) Section 20233 of the Government Code.
- (99) Section 22840.1 of the Government Code.
- (100) Section 22840.3 of the Government Code.
- (101) Section 142 of the Health and Safety Code.
- (102) Section 218 of the Health and Safety Code.
- (103) Section 309.76 of the Health and Safety Code.
- (104) Section 322.8 of the Health and Safety Code.
- (105) Section 429.51 of the Health and Safety Code.
- (106) Section 431.1 of the Health and Safety Code.
- (107) Section 1180.110 of the Health and Safety Code.
- (108) Section 1266.1 of the Health and Safety Code.
- (109) Section 11605 of the Health and Safety Code.
- (110) Section 11757.62 of the Health and Safety Code.
- (111) Section 24164 of the Health and Safety Code.
- (112) Section 25178 of the Health and Safety Code.
- (113) Section 39604 of the Health and Safety Code.
- (114) Section 39611 of the Health and Safety Code.
- (115) Section 41712 of the Health and Safety Code.
- (116) Section 41865 of the Health and Safety Code.
- (117) Section 42311.1 of the Health and Safety Code.
- (118) Section 43101 of the Health and Safety Code.
- (119) Section 43101.5 of the Health and Safety Code.
- (120) Section 43206 of the Health and Safety Code.

- (121) Section 43701 of the Health and Safety Code.
- (122) Section 43822 of the Health and Safety Code.
- (123) Section 44011.6 of the Health and Safety Code.
- (123.5) Section 44021 of the Health and Safety Code.
- (124) Section 111 of the Labor Code.
- (125) Section 3716.5 of the Labor Code.
- (126) Section 3729 of the Labor Code.
- (127) Section 5502 of the Labor Code.
- (128) Section 987.93 of the Military and Veterans Code.
- (129) Section 273.88 of the Penal Code.
- (130) Section 628.2 of the Penal Code.
- (130.5) Section 629.12 of the Penal Code.
- (131) Section 999y of the Penal Code.
- (132) Section 2057 of the Penal Code.
- (133) Section 4807 of the Penal Code.
- (134) Section 7003.5 of the Penal Code.
- (135) Section 7012 of the Penal Code.
- (136) Section 7433 of the Penal Code.
- (137) Section 11107.5 of the Penal Code.
- (138) Section 13730 of the Penal Code.
- (138.5) Section 13847 of the Penal Code.
- (139) Section 10359 of the Public Contract Code.
- (140) Section 5005.6 of the Public Resources Code.
- (141) Section 14542 of the Public Resources Code.
- (142) Section 14592 of the Public Resources Code.
- (143) Section 322 of the Public Utilities Code.
- (144) Section 99243.5 of the Public Utilities Code.
- (145) Section 95.6 of the Revenue and Taxation Code.
- (146) Section 2246 of the Revenue and Taxation Code.
- (147) Section 6051.5 of the Revenue and Taxation Code.
- (148) Section 6201.5 of the Revenue and Taxation Code.
- (149) Section 8352.6 of the Revenue and Taxation Code.
- (150) Section 8352.7 of the Revenue and Taxation Code.
- (151) Section 8352.8 of the Revenue and Taxation Code.
- (152) Section 19522 of the Revenue and Taxation Code.
- (153) Section 21006 of the Revenue and Taxation Code.
- (154) Section 163 of the Streets and Highways Code.
- (155) Section 165 of the Streets and Highways Code.
- (156) Section 199 of the Streets and Highways Code.
- (157) Section 2154 of the Streets and Highways Code.
- (158) Section 2602 of the Streets and Highways Code.
- (159) Section 1562 of the Unemployment Insurance Code.
- (160) Section 162 of the Water Code.
- (161) Section 229 of the Water Code.
- (162) Section 230 of the Water Code.
- (163) Section 232 of the Water Code.
- (164) Section 10004 of the Water Code.
- (165) Section 10010 of the Water Code.
- (166) Section 12875 of the Water Code.

- (167) Section 12879.5 of the Water Code.
- (168) Section 12890.4 of the Water Code.
- (169) Section 12928.5 of the Water Code.
- (170) Section 12929.47 of the Water Code.
- (171) Section 13467 of the Water Code.
- (172) Section 13833 of the Water Code.
- (173) Section 13844 of the Water Code.
- (174) Section 13896.2 of the Water Code.
- (175) Section 14014 of the Water Code.
- (176) Section 5613 of the Welfare and Institutions Code.
- (179) Section 10612 of the Welfare and Institutions Code.
- (180) Section 10822 of the Welfare and Institutions Code.
- (181) Section 14100.5 of the Welfare and Institutions Code.
- (182) Section 14105.42 of the Welfare and Institutions Code.
- (183) Section 14120 of the Welfare and Institutions Code.
- (184) Section 14161 of the Welfare and Institutions Code.
- (185) Section 16707 of the Welfare and Institutions Code.
- (186) Section 19106 of the Welfare and Institutions Code.
- (187) Section 2 of Chapter 1495 of the Statutes of 1988.
- (188) Section 9 of Chapter 803 of the Statutes of 1989.
- (189) Section 27.001.50 of Chapter 467 of the Statutes of 1990.
- (190) Section 2 of Chapter 469 of the Statutes of 1990.
- (191) Sections 11 and 12 of Chapter 1672 of the Statutes of 1990.
- (192) Section 24 of Chapter 1172 of the Statutes of 1991.

(c) Notwithstanding any other provision of law, resolution, or supplemental language, the University of California, the California State University, and the California Community Colleges shall not be required until January 1, 1995, to prepare or submit any written report to the Legislature or the Governor unless any of the following circumstances exist:

(1) The report is required whether in whole or part by a court, federal law, or regulation.

(2) The report is required in the Budget Act.

(3) The Legislature expressly provides that, notwithstanding this section, a written report shall be prepared and submitted.

(4) The report is necessary for preparation of the Budget Act or implementation of the Budget Act, as determined by the Department of Finance.

(d) It is the intent of the Legislature that the University of California continue to prepare and submit reports specified in the following provisions of law:

(1) Section 554 of the Food and Agricultural Code.

(2) Section 424.70 of the Health and Safety Code.

(3) Section 10500.5 of the Public Contract Code.

(4) Section 10507.5 of the Public Contract Code.

(e) It is further the intent of the Legislature that the University of California, the California State University, and the California Community Colleges continue to provide reports requested through the following supplemental language or resolutions, as applicable:

(1) 1989–90 Supplemental Language regarding the report entitled “Five Year Capital Outlay Plan and Seismic Retrofit Schedule.”

(2) 1985–86 Supplemental Language regarding the report entitled “Lottery Funds.”

(3) 1985–86 Supplemental Language regarding the report entitled “Faculty Workload Policies.”

(4) 1980–81 Supplemental Language regarding the report entitled “Post Audit Minor Capital Outlay.”

(5) 1973–74 Supplemental Language regarding the report entitled “Summary of Instructional Research Space.”

(6) 1970–71 and 1984–85 Supplemental Language regarding the report entitled “Deferred Maintenance.”

(7) Senate Concurrent Resolution 51, 1965 and 1978–79 Supplemental Language regarding the report entitled “Faculty Salaries.”

(8) 1990–91 Supplemental Language regarding the report entitled “Seismic Safety Sign Posting.”

(9) 1990–91 Supplemental Language regarding the report entitled “Weapons Laboratory Regulations.”

(10) 1978–79 Supplemental Language regarding the report entitled “Subject A: Report to School Boards.”

(f) “Written report,” for purposes of this section, means a document, of which the preparation and distribution to the Legislature, or the Governor, or both, is mandated in statute. Any mandate exemption, pursuant to this section, shall not relieve the affected agency of the responsibility to provide available information, either in writing or orally, to the Governor or the Legislature with regard to the status of the report and any findings, if applicable.

This section shall remain in effect only until January 1, 1995, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1995, deletes or extends that date.

SEC. 1.5. Section 1760 of the Insurance Code is amended to read:

1760. (a) Any person may negotiate and effect insurance to protect himself, herself, or itself against loss, damage, or liability with any nonadmitted insurer.

(b) Every person that effects insurance governed by this chapter shall pay the tax imposed by Part 7.5 (commencing with Section 13201) of Division 2 of the Revenue and Taxation Code.

SEC. 2. Section 1340 of the Military and Veterans Code is amended to read:

1340. The California Mexican American Veterans’ Memorial Beautification and Enhancement Account is hereby created in the General Fund. All funds received by the California Mexican American Veterans’ Memorial Beautification and Enhancement Commission under Chapter 7 (commencing with Section 1330) and under Article 11 (commencing with Section 18821) of Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation Code shall be

deposited in the account for the design and construction of the California Mexican American Veterans' Memorial as specified in Section 18823 of the Revenue and Taxation Code.

SEC. 2.3. Section 64 of the Revenue and Taxation Code is amended to read:

64. (a) Except as provided in subdivision (h) of Section 61 and subdivisions (c) and (d) of this section, the purchase or transfer of ownership interests in legal entities, such as corporate stock or partnership interests, shall not be deemed to constitute a transfer of the real property of the legal entity.

(b) Any corporate reorganization, where all of the corporations involved are members of an affiliated group, and which qualifies as a reorganization under Section 368 of the United States Internal Revenue Code and which is accepted as a nontaxable event by similar California statutes, or any transfer of real property among members of an affiliated group, or any reorganization of farm credit institutions pursuant to the federal Farm Credit Act of 1971 (Public Law 92-181), as amended, shall not be a change of ownership. The taxpayer shall furnish proof, under penalty of perjury, to the assessor that the transfer meets the requirements of this subdivision.

For purposes of this subdivision "affiliated group" means one or more chains of corporations connected through stock ownership with a common parent corporation if:

(1) One hundred percent of the voting stock, exclusive of any share owned by directors, of each of the corporations, except the parent corporation, is owned by one or more of the other corporations; and

(2) The common parent corporation owns, directly, 100 percent of the voting stock, exclusive of any shares owned by directors, of at least one of the other corporations.

(c) When a corporation, partnership, other legal entity or any other person obtains control, as defined in Section 25105 (as enacted by Chapter 938 of the Statutes of 1955), in any corporation, or obtains a majority ownership interest in any partnership or other legal entity through the purchase or transfer of corporate stock, partnership interest, or ownership interests in other legal entities, the purchase or transfer of that stock or other interest shall be a change of ownership of property owned by the corporation, partnership, or other legal entity in which the controlling interest is obtained.

(d) If property is transferred on or after March 1, 1975, to a legal entity in a transaction excluded from change in ownership by paragraph (2) of subdivision (a) of Section 62, then the persons holding ownership interests in such legal entity immediately after the transfer shall be considered the "original coowners." Whenever shares or other ownership interests representing cumulatively more than 50 percent of the total interests in the entity are transferred by any of the original coowners in one or more transactions, a change in ownership of that real property owned by the legal entity shall have occurred, and the property which was previously excluded

from change in ownership under the provisions of paragraph (2) of subdivision (a) of Section 62 shall be reappraised.

The date of reappraisal shall be the date of the transfer of the ownership interest representing individually or cumulatively more than 50 percent of the interests in the entity.

A transfer of shares or other ownership interests which results in a change in control of a corporation, partnership, or any other legal entity is subject to reappraisal as provided in subdivision (c) rather than this subdivision.

(e) In order to assist in the determination of whether a change of ownership has occurred under subdivisions (c) and (d), the Franchise Tax Board shall include a question in substantially the following form on returns for partnerships, banks and corporations (except tax-exempt organizations):

If the corporation (or partnership) owns real property in California, has cumulatively more than 50 percent of the voting stock (or more than 50 percent of total interest in both partnership capital and partnership profits) (1) been transferred by the corporation (or partnership) since March 1, 1975, or (2) been acquired by another legal entity or person during the year? (See instructions.)

If the entity answers "yes" to (1) or (2) in the above question, then the Franchise Tax Board shall furnish the names and addresses of that entity and of the stock or partnership ownership interest transferees to the State Board of Equalization.

SEC. 2.5. Section 64 of the Revenue and Taxation Code is amended to read:

64. (a) Except as provided in subdivision (h) of Section 61 and subdivisions (c) and (d) of this section, the purchase or transfer of ownership interests in legal entities, such as corporate stock or partnership or limited liability company interests, shall not be deemed to constitute a transfer of the real property of the legal entity.

(b) Any corporate reorganization, where all of the corporations involved are members of an affiliated group, and which qualifies as a reorganization under Section 368 of the United States Internal Revenue Code and which is accepted as a nontaxable event by similar California statutes, or any transfer of real property among members of an affiliated group, or any reorganization of farm credit institutions pursuant to the federal Farm Credit Act of 1971 (Public Law 92-181), as amended, shall not be a change of ownership. The taxpayer shall furnish proof, under penalty of perjury, to the assessor that the transfer meets the requirements of this subdivision.

For purposes of this subdivision "affiliated group" means one or more chains of corporations connected through stock ownership with a common parent corporation if:

(1) One hundred percent of the voting stock, exclusive of any share owned by directors, of each of the corporations, except the

parent corporation, is owned by one or more of the other corporations; and

(2) The common parent corporation owns, directly, 100 percent of the voting stock, exclusive of any shares owned by directors, of at least one of the other corporations.

(c) When a corporation, partnership, limited liability company, other legal entity, or any other person obtains control, as defined in Section 25105 (as enacted by Chapter 938 of the Statutes of 1955), in any corporation, or obtains a majority ownership interest in any partnership, limited liability company, or other legal entity through the purchase or transfer of corporate stock, partnership, or limited liability company interest, or ownership interests in other legal entities, the purchase or transfer of that stock or other interest shall be a change of ownership of property owned by the corporation, partnership, limited liability company, or other legal entity in which the controlling interest is obtained.

(d) If property is transferred on or after March 1, 1975, to a legal entity in a transaction excluded from change in ownership by paragraph (2) of subdivision (a) of Section 62, then the persons holding ownership interests in such legal entity immediately after the transfer shall be considered the "original coowners." Whenever shares or other ownership interests representing cumulatively more than 50 percent of the total interests in the entity are transferred by any of the original coowners in one or more transactions, a change in ownership of that real property owned by the legal entity shall have occurred, and the property which was previously excluded from change in ownership under the provisions of paragraph (2) of subdivision (a) of Section 62 shall be reappraised.

The date of reappraisal shall be the date of the transfer of the ownership interest representing individually or cumulatively more than 50 percent of the interests in the entity.

A transfer of shares or other ownership interests which results in a change in control of a corporation, partnership, limited liability company, or any other legal entity is subject to reappraisal as provided in subdivision (c) rather than this subdivision.

(e) In order to assist in the determination of whether a change of ownership has occurred under subdivisions (c) and (d), the Franchise Tax Board shall include a question in substantially the following form on returns for partnerships, banks and corporations (except tax-exempt organizations):

If the corporation (or partnership or limited liability company) owns real property in California, has cumulatively more than 50 percent of the voting stock (or more than 50 percent of total interest in both partnership or limited liability company capital and partnership or limited liability company profits) (1) been transferred by the corporation (or partnership or limited liability company) since March 1, 1975, or (2) been acquired by another legal entity or person during the year? (See instructions.)

If the entity answers "yes" to (1) or (2) in the above question, then the Franchise Tax Board shall furnish the names and addresses of that entity and of the stock or partnership or limited liability company ownership interest transferees to the State Board of Equalization.

SEC. 2.7. Section 11003 of the Revenue and Taxation Code is amended to read:

11003. The amount appropriated by the Legislature for the use of the Department of Motor Vehicles and the Franchise Tax Board for the enforcement of this part shall be transferred from the Motor Vehicle License Fee Account in the Transportation Tax Fund to the Motor Vehicle Account in the State Transportation Fund. That amount shall be determined so that the appropriate costs for registration and motor vehicle license fee activities are apportioned between the recipients of revenues in proportion to the revenues received by those recipients.

SEC. 3. Section 13210 of the Revenue and Taxation Code is amended to read:

13210. (a) For gross premiums paid or to be paid on insurance contracts that take effect or are renewed on or after January 1, 1994, every person who effects insurance governed by Chapter 6 (commencing with Section 1760) of Part 2 of Division 1 of the Insurance Code shall pay a gross premium tax of 3 percent for the use of the state, less 3 percent of returned premiums that were subject to the tax received by reason of cancellation or reduction of premium.

(1) This section shall not apply to any of the following:

(A) Insurance coverage for which a tax on the gross premium is due or has been paid pursuant to Section 1775.5 of the Insurance Code.

(B) Gross premiums paid and returned premiums received by that person upon business governed by the provisions of Section 1760.5 of the Insurance Code.

(C) Insurance coverage for which a tax on the gross premium is due or has been paid pursuant to Section 132 of the Insurance Code.

(2) If during any calendar quarter 3 percent of the returned premiums received that were subject to the tax imposed by this part exceed 3 percent of the gross premiums paid or to be paid by that person on contracts that took effect or were renewed in that calendar quarter, then that person may either carry forward the excess to a succeeding calendar quarter and apply it as a credit against the 3 percent of gross premiums paid or to be paid by that person in the succeeding calendar quarter, or the person may elect to receive, and be paid a refund equal to the amount of taxes paid by the person on the excess of returned premiums received over gross premiums paid or to be paid.

(b) For purposes of determining the tax, the total premium paid or to be paid for all nonadmitted insurance placed in a single transaction with one underwriter or group of underwriters, whether

in one or more policies, in that calendar quarter during which the taxable insurance contract or contracts took effect or were renewed, shall be allocated to this state in the proportion that the total premium on the insured properties or operations in this state, as computed on the exposure in this state on the basis of any single standard rating method in use in all states or countries where the insurance applies, bears to the total premium so computed in all states or countries in which that nonadmitted insurance may apply or, with prior approval of the Franchise Tax Board, on any other reasonable basis as determined by the Franchise Tax Board in its sole discretion.

(c) Subdivision (b) shall not apply to interstate motor transit operations conducted between this and other states. With respect to those operations, the tax shall be payable on the entire premium charged on all nonadmitted insurance, less any of the following:

(1) The portion of the premium that is determined to have been charged for operations in other states that have taxed the premium on operations in states of an insured maintaining its headquarters office in this state.

(2) The premium for any operations outside of this state of an insured who maintains a headquarters operating office outside of this state and a branch office in this state.

SEC. 4. Section 17014 of the Revenue and Taxation Code is amended to read:

17014. (a) "Resident" includes:

(1) Every individual who is in this state for other than a temporary or transitory purpose.

(2) Every individual domiciled in this state who is outside the state for a temporary or transitory purpose.

(b) Any individual (and spouse) who is domiciled in this state shall be considered outside this state for a temporary or transitory purpose while that individual:

(1) Holds an elective office of the government of the United States, or

(2) Is employed on the staff of an elective officer in the legislative branch of the government of the United States as described in paragraph (1), or

(3) Holds an appointive office in the executive branch of the government of the United States (other than the armed forces of the United States or career appointees in the United States Foreign Service) if the appointment to that office was by the President of the United States and subject to confirmation by the Senate of the United States and whose tenure of office is at the pleasure of the President of the United States.

(c) Any individual who is a resident of this state continues to be a resident even though temporarily absent from the state.

(d) For any taxable year beginning on or after January 1, 1994, any individual domiciled in this state who is absent from the state for an uninterrupted period of at least 546 consecutive days under an

employment-related contract shall be considered outside this state for other than a temporary or transitory purpose.

(1) For purposes of this subdivision, returns to this state, totaling in the aggregate not more than 45 days during a taxable year, shall be disregarded.

(2) This subdivision shall not apply to any individual, including any spouse described in paragraph (3), who has income from stocks, bonds, notes, or other intangible personal property in excess of two hundred thousand dollars (\$200,000) in any taxable year in which the employment-related contract is in effect. In the case of an individual who is married, this paragraph shall be applied to the income of each spouse separately.

(3) Any spouse who is absent from the state for an uninterrupted period of at least 546 consecutive days to accompany a spouse who, under this subdivision, is considered outside this state for other than a temporary or transitory purpose shall, for purposes of this subdivision, also be considered outside this state for other than a temporary or transitory purpose.

(4) This subdivision shall not apply to any individual if the principal purpose of the individual's absence from this state is to avoid any tax imposed by this part.

SEC. 5. Section 17052.12 of the Revenue and Taxation Code is amended to read:

17052.12. For each taxable year beginning on or after January 1, 1987, there shall be allowed as a credit against the "net tax" (as defined by Section 17039) for the taxable year an amount determined in accordance with Section 41 of the Internal Revenue Code, except as follows:

(a) (1) The reference to "20 percent" in Section 41 (a) (1) of the Internal Revenue Code is modified to read "8 percent."

(2) Section 41 (a) (2) of the Internal Revenue Code, relating to basic research payments, shall not apply.

(b) "Qualified research" shall include only research conducted in California.

(c) In the case where the credit allowed under this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(d) Section 41 (c) (5) of the Internal Revenue Code, relating to gross receipts, is modified to take into account only those gross receipts from the sale of property held primarily for sale to customers in the ordinary course of the taxpayer's trade or business that is delivered or shipped to a purchaser within this state, regardless of F.O.B. point or other conditions of sale.

(e) Section 41 (h) of the Internal Revenue Code, relating to termination, shall not apply.

(f) Except as provided in subdivision (g), the amendments to this section by the act adding this subdivision shall apply only to taxable years beginning on or after January 1, 1993.

(g) The amendments made by Section 13112 of the Revenue Reconciliation Act of 1993 (P.L. 103-66) to Section 41 of the Internal Revenue Code, relating to the credit for increased research activities, shall apply to taxable years beginning on or after January 1, 1994.

(h) Section 41(g) of the Internal Revenue Code, relating to special rule for passthrough of credit, is modified by each of the following:

(1) The last sentence shall not apply.

(2) If the amount determined under Section 41 (a) of the Internal Revenue Code for any taxable year exceeds the limitation of Section 41(g) of the Internal Revenue Code, that amount may be carried over to other taxable years under the rules of subdivision (c); except that the limitation of Section 41 (g) of the Internal Revenue Code shall be taken into account in each subsequent taxable year.

SEC. 6. Section 17095 of the Revenue and Taxation Code is repealed.

SEC. 7. Section 17134 of the Revenue and Taxation Code is repealed.

SEC. 8. Section 17153 of the Revenue and Taxation Code is repealed.

SEC. 9. Section 17156 of the Revenue and Taxation Code is repealed.

SEC. 10. Section 17157 of the Revenue and Taxation Code is repealed.

SEC. 11. Section 17158 of the Revenue and Taxation Code is repealed.

SEC. 12. Section 17160 of the Revenue and Taxation Code is repealed.

SEC. 13. Section 17220 of the Revenue and Taxation Code is amended to read:

17220. (a) Section 164(a)(3) of the Internal Revenue Code, relating to the deductibility of state, local, and foreign income, war profits, and excess profits taxes, shall not apply.

(b) In addition to the provisions of Section 164(c) of the Internal Revenue Code, relating to deduction denied in case of certain taxes, no deduction shall be allowed for any tax imposed under Part 11 (commencing with Section 23001).

SEC. 14. Section 17232 of the Revenue and Taxation Code is repealed.

SEC. 15. Section 17241 of the Revenue and Taxation Code is repealed.

SEC. 16. Section 17261 of the Revenue and Taxation Code is repealed.

SEC. 17. Section 17270 of the Revenue and Taxation Code is amended to read:

17270. (a) For purposes of Section 162(a)(2) of the Internal Revenue Code, relating to travel expenses, all of the following shall apply:

(1) The place of residence of a member of the Legislature within the district represented shall be considered the tax home.

(2) The provisions of Section 162(h) of the Internal Revenue Code, relating to state legislators' travel expenses away from home, shall not be applied.

(b) The provisions of Section 280C(a) of the Internal Revenue Code (relating to rule for targeted jobs credit) shall not apply.

(c) Section 280C(c)(3)(B) of the Internal Revenue Code is modified to refer to Section 17041 in lieu of Section 11(b)(1) of the Internal Revenue Code.

SEC. 18. Section 17270.5 of the Revenue and Taxation Code is repealed.

SEC. 19. Section 17272 of the Revenue and Taxation Code is repealed.

SEC. 20. Section 17289 of the Revenue and Taxation Code is repealed.

SEC. 21. Section 17325 of the Revenue and Taxation Code is repealed.

SEC. 22. Section 17502 of the Revenue and Taxation Code is repealed.

SEC. 23. Section 17506 of the Revenue and Taxation Code is amended to read:

17506. The provisions of Section 403 of the Internal Revenue Code, relating to taxation of employee annuities, shall be modified to provide that the basis of any person in an employee annuity shall include the amount of any contributions made prior to January 1, 1987, which were not allowed as a deduction under former Sections 17503 and 17513 of the Revenue and Taxation Code (including predecessor Section 17524 repealed by Chapter 488 of the Statutes of 1983) relating to special limitations for self-employed individuals.

SEC. 24. Section 17512 of the Revenue and Taxation Code is repealed.

SEC. 25. Section 17558 of the Revenue and Taxation Code is repealed.

SEC. 26. Section 17559 of the Revenue and Taxation Code is repealed.

SEC. 27. Section 17562 of the Revenue and Taxation Code is repealed.

SEC. 28. Section 17566 of the Revenue and Taxation Code is repealed.

SEC. 29. Section 17800 of the Revenue and Taxation Code is repealed.

SEC. 30. Section 17932 of the Revenue and Taxation Code is repealed.

SEC. 31. Section 18044 of the Revenue and Taxation Code is repealed.

SEC. 32. Section 18152.5 of the Revenue and Taxation Code is amended to read:

18152.5. (a) For purposes of this part, gross income shall not

include 50 percent of any gain from the sale or exchange of qualified small business stock held for more than five years.

(b) (1) If the taxpayer has eligible gain for the taxable year from one or more dispositions of stock issued by any corporation, the aggregate amount of the gain from dispositions of stock issued by the corporation which may be taken into account under subdivision (a) for the taxable year shall not exceed the greater of either of the following:

(A) Ten million dollars (\$10,000,000) reduced by the aggregate amount of eligible gain taken into account by the taxpayer under subdivision (a) for prior taxable years and attributable to dispositions of stock issued by the corporation.

(B) Ten times the aggregate adjusted bases of qualified small business stock issued by the corporation and disposed of by the taxpayer during the taxable year. For purposes of subparagraph (B), the adjusted basis of any stock shall be determined without regard to any addition to basis after the date on which the stock was originally issued.

(2) For purposes of this subdivision, the term "eligible gain" means any gain from the sale or exchange of qualified small business stock held for more than five years.

(3) (A) In the case of a married individual filing a separate return, subparagraph (A) of paragraph (1) shall be applied by substituting five million dollars (\$5,000,000) for ten million dollars (\$10,000,000).

(B) In the case of a married taxpayer filing a joint return, the amount of gain taken into account under subdivision (a) shall be allocated equally between the spouses for purposes of applying this subdivision to subsequent taxable years.

(C) For purposes of this subdivision, marital status shall be determined under Section 7703 of the Internal Revenue Code.

(c) For purposes of this section:

(1) Except as otherwise provided in this section, the term "qualified small business stock" means any stock in a C corporation which is originally issued after August 10, 1993, and before January 1, 1999, if both of the following apply:

(A) As of the date of issuance, the corporation is a qualified small business.

(B) Except as provided in subdivisions (f) and (h), the stock is acquired by the taxpayer at its original issue (directly or through an underwriter) in either of the following manners:

(i) In exchange for money or other property (not including stock).

(ii) As compensation for services provided to the corporation (other than services performed as an underwriter of the stock).

(2) (A) Stock in a corporation shall not be treated as qualified small business stock unless, during substantially all of the taxpayer's holding period for the stock, the corporation meets the active business requirements of subdivision (e) and the corporation is a C

corporation.

(B) (i) Notwithstanding any provision of subdivision (e), a corporation shall be treated as meeting the active business requirements of subdivision (e) for any period during which the corporation qualifies as a specialized small business investment company.

(ii) For purposes of clause (i), the term "specialized small business investment company" means any eligible corporation (as defined in paragraph (4) of subdivision (e)) that is licensed to operate under Section 301(d) of the Small Business Investment Act of 1958 (as in effect on May 13, 1993).

(3) (A) Stock acquired by the taxpayer shall not be treated as qualified small business stock if, at any time during the four-year period beginning on the date two years before the issuance of the stock, the corporation issuing the stock purchased (directly or indirectly) any of its stock from the taxpayer or from a related person (within the meaning of Section 267(b) or 707(b)) to the taxpayer.

(B) Stock issued by a corporation shall not be treated as qualified small business stock if, during the two-year period beginning on the date one year before the issuance of the stock, the corporation made one or more purchases of its stock with an aggregate value (as of the time of the respective purchases) exceeding 5 percent of the aggregate value of all of its stock as of the beginning of the two-year period.

(C) If any transaction is treated under Section 304(a) of the Internal Revenue Code as a distribution in redemption of the stock of any corporation, for purposes of subparagraphs (A) and (B), the corporation shall be treated as purchasing an amount of its stock equal to the amount treated as a distribution in redemption of the stock of the corporation under Section 304(a) of the Internal Revenue Code.

(d) For purposes of this section:

(1) The term "qualified small business" means any domestic corporation which is a C corporation if all of the following apply:

(A) The aggregate gross assets of the corporation (or any predecessor thereof) at all times on or after July 1, 1993, and before the issuance did not exceed fifty million dollars (\$50,000,000).

(B) The aggregate gross assets of the corporation immediately after the issuance (determined by taking into account amounts received in the issuance) do not exceed fifty million dollars (\$50,000,000).

(C) At least 80 percent of the corporation's payroll, as measured by total dollar value, is attributable to employment located within California.

(D) The corporation agrees to submit those reports to the Franchise Tax Board and to shareholders as the Franchise Tax Board may require to carry out the purposes of this section.

(2) (A) For purposes of paragraph (1), the term "aggregate gross assets" means the amount of cash and the aggregate adjusted bases

of other property held by the corporation.

(B) For purposes of subparagraph (A), the adjusted basis of any property contributed to the corporation (or other property with a basis determined in whole or in part by reference to the adjusted basis of property so contributed) shall be determined as if the basis of the property contributed to the corporation immediately after the contribution was equal to its fair market value as of the time of the contribution.

(3) (A) All corporations which are members of the same parent-subsidiary controlled group shall be treated as one corporation for purposes of this subdivision.

(B) For purposes of subparagraph (A), the term "parent-subsidiary controlled group" means any controlled group of corporations as defined in Section 1563(a)(1) of the Internal Revenue Code, except that both of the following shall apply:

(i) "More than 50 percent" shall be substituted for "at least 80 percent" each place it appears in Section 1563(a)(1) of the Internal Revenue Code.

(ii) Section 1563(a)(4) of the Internal Revenue Code shall not apply.

(e) (1) For purposes of paragraph (2) of subdivision (c), the requirements of this subdivision are met by a corporation for any period if during that period both of the following apply:

(A) At least 80 percent (by value) of the assets of the corporation are used by the corporation in the active conduct of one or more qualified trades or businesses in California.

(B) The corporation is an eligible corporation.

(2) For purposes of paragraph (1), if, in connection with any future qualified trade or business, a corporation is engaged in:

(A) Startup activities described in Section 195(c)(1)(A) of the Internal Revenue Code,

(B) Activities resulting in the payment or incurring of expenditures which may be treated as research and experimental expenditures under Section 174 of the Internal Revenue Code, or

(C) Activities with respect to in-house research expenses described in Section 41(b)(4) of the Internal Revenue Code, then assets used in those activities shall be treated as used in the active conduct of a qualified trade or business. Any determination under this paragraph shall be made without regard to whether a corporation has any gross income from those activities at the time of the determination.

(3) For purposes of this subdivision, the term "qualified trade or business" means any trade or business other than any of the following:

(A) Any trade or business involving the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset of the trade or business is the reputation or skill of one

or more of its employees.

(B) Any banking, insurance, financing, leasing, investing, or similar business.

(C) Any farming business (including the business of raising or harvesting trees).

(D) Any business involving the production or extraction of products of a character with respect to which a deduction is allowable under Section 613 or 613A of the Internal Revenue Code.

(E) Any business of operating a hotel, motel, restaurant, or similar business.

(4) For purposes of this subdivision, the term "eligible corporation" means any domestic corporation, except that the term shall not include any of the following:

(A) A DISC or former DISC.

(B) A corporation with respect to which an election under Section 936 of the Internal Revenue Code is in effect or which has a direct or indirect subsidiary with respect to which the election is in effect.

(C) A regulated investment company, real estate investment trust (REIT), or real estate mortgage investment conduit (REMIC).

(D) A cooperative.

(5) (A) For purposes of this subdivision, stock and debt in any subsidiary corporation shall be disregarded and the parent corporation shall be deemed to own its ratable share of the subsidiary's assets, and to conduct its ratable share of the subsidiary's activities.

(B) A corporation shall be treated as failing to meet the requirements of paragraph (1) for any period during which more than 10 percent of the value of its assets (in excess of liabilities) consists of stock or securities in other corporations which are not subsidiaries of the corporation (other than assets described in paragraph (6)).

(C) For purposes of this paragraph, a corporation shall be considered a subsidiary if the parent owns more than 50 percent of the combined voting power of all classes of stock entitled to vote, or more than 50 percent in value of all outstanding stock, of the corporation.

(6) For purposes of subparagraph (A) of paragraph (1), the following assets shall be treated as used in the active conduct of a qualified trade or business:

(A) Assets that are held as a part of the reasonably required working capital needs of a qualified trade or business of the corporation.

(B) Assets that are held for investment and are reasonably expected to be used within two years to finance research and experimentation in a qualified trade or business or increases in working capital needs of a qualified trade or business. For periods after the corporation has been in existence for at least two years, in no event may more than 50 percent of the assets of the corporation qualify as used in the active conduct of a qualified trade or business

by reason of this paragraph.

(7) A corporation shall not be treated as meeting the requirements of paragraph (1) for any period during which more than 10 percent of the total value of its assets consists of real property that is not used in the active conduct of a qualified trade or business. For purposes of the preceding sentence, the ownership of, dealing in, or renting of, real property shall not be treated as the active conduct of a qualified trade or business.

(8) For purposes of paragraph (1), rights to computer software that produces active business computer software royalties (within the meaning of Section 543(d)(1) of the Internal Revenue Code) shall be treated as an asset used in the active conduct of a trade or business.

(9) A corporation shall not be treated as meeting the requirements of paragraph (1) for any period during which more than 20 percent of the corporation's total payroll expense is attributable to employment located outside of California.

(f) If any stock in a corporation is acquired solely through the conversion of other stock in the corporation that is qualified small business stock in the hands of the taxpayer, both of the following shall apply:

(1) The stock so acquired shall be treated as qualified small business stock in the hands of the taxpayer.

(2) The stock so acquired shall be treated as having been held during the period during which the converted stock was held.

(g) (1) If any amount included in gross income by reason of holding an interest in a pass-through entity meets the requirements of paragraph (2), then both of the following shall apply:

(A) The amount shall be treated as gain described in subdivision (a).

(B) For purposes of applying subdivision (b), the amount shall be treated as gain from a disposition of stock in the corporation issuing the stock disposed of by the pass-through entity and the taxpayer's proportionate share of the adjusted basis of the pass-through entity in the stock shall be taken into account.

(2) An amount meets the requirements of this paragraph if both of the following apply:

(A) The amount is attributable to gain on the sale or exchange by the pass-through entity of stock that is qualified small business stock in the hands of the entity (determined by treating the entity as an individual) and that was held by that entity for more than five years.

(B) The amount is includable in the gross income of the taxpayer by reason of the holding of an interest in the entity that was held by the taxpayer on the date on which the pass-through entity acquired the stock and at all times thereafter before the disposition of the stock by the pass-through entity.

(3) Paragraph (1) shall not apply to any amount to the extent the amount exceeds the amount to which paragraph (1) would have applied if the amount was determined by reference to the interest

the taxpayer held in the pass-through entity on the date the qualified small business stock was acquired.

(4) For purposes of this subdivision, the term "pass-through entity" means any of the following:

- (A) Any partnership.
- (B) Any S corporation.
- (C) Any regulated investment company.
- (D) Any common trust fund.

(h) For purposes of this section:

(1) In the case of a transfer described in paragraph (2), the transferee shall be treated as meeting both of the following:

(A) Having acquired the stock in the same manner as the transferor.

(B) Having held the stock during any continuous period immediately preceding the transfer during which it was held (or treated as held under this subdivision) by the transferor.

(2) A transfer is described in this subdivision if the transfer is any of the following:

- (A) By gift.
- (B) At death.

(C) From a partnership to a partner of stock with respect to which requirements similar to the requirements of subdivision (g) are met at the time of the transfer (without regard to the five-year holding period requirement).

(3) Rules similar to the rules of Section 1244(d) (2) of the Internal Revenue Code shall apply for purposes of this section.

(4) (A) In the case of a transaction described in Section 351 of the Internal Revenue Code or a reorganization described in Section 368 of the Internal Revenue Code, if qualified small business stock is exchanged for other stock that would not qualify as qualified small business stock but for this subparagraph, the other stock shall be treated as qualified small business stock acquired on the date on which the exchanged stock was acquired.

(B) This section shall apply to gain from the sale or exchange of stock treated as qualified small business stock by reason of subparagraph (A) only to the extent of the gain that would have been recognized at the time of the transfer described in subparagraph (A) if Section 351 or 368 of the Internal Revenue Code had not applied at that time. The preceding sentence shall not apply if the stock that is treated as qualified small business stock by reason of subparagraph (A) is issued by a corporation that (as of the time of the transfer described in subparagraph (A)) is a qualified small business.

(C) For purposes of this paragraph, stock treated as qualified small business stock under subparagraph (A) shall be so treated for subsequent transactions or reorganizations, except that the limitation of subparagraph (B) shall be applied as of the time of the first transfer to which the limitation applied (determined after the application of the second sentence of subparagraph (B)).

(D) In the case of a transaction described in Section 351 of the Internal Revenue Code, this paragraph shall apply only if immediately after the transaction the corporation issuing the stock owns directly or indirectly stock representing control (within the meaning of Section 368(c) of the Internal Revenue Code) of the corporation whose stock was exchanged.

(i) For purposes of this section:

(1) In the case where the taxpayer transfers property (other than money or stock) to a corporation in exchange for stock in the corporation, both of the following shall apply:

(A) The stock shall be treated as having been acquired by the taxpayer on the date of the exchange.

(B) The basis of the stock in the hands of the taxpayer shall in no event be less than the fair market value of the property exchanged.

(2) If the adjusted basis of any qualified small business stock is adjusted by reason of any contribution to capital after the date on which the stock was originally issued, in determining the amount of the adjustment by reason of the contribution, the basis of the contributed property shall in no event be treated as less than its fair market value on the date of the contribution.

(j) (1) If the taxpayer has an offsetting short position with respect to any qualified small business stock, subdivision (a) shall not apply to any gain from the sale or exchange of the stock unless both of the following apply:

(A) The stock was held by the taxpayer for more than five years as of the first day on which there was such a short position.

(B) The taxpayer elects to recognize gain as if the stock was sold on that first day for its fair market value.

(2) For purposes of paragraph (1), the taxpayer shall be treated as having an offsetting short position with respect to any qualified small business stock if any of the following apply:

(A) The taxpayer has made a short sale of substantially identical property.

(B) The taxpayer has acquired an option to sell substantially identical property at a fixed price.

(C) To the extent provided in regulations, the taxpayer has entered into any other transaction that substantially reduces the risk of loss from holding the qualified small business stock. For purposes of the preceding sentence, any reference to the taxpayer shall be treated as including a reference to any person who is related (within the meaning of Section 267(b) or 707(b) of the Internal Revenue Code) to the taxpayer.

(k) The Franchise Tax Board may prescribe those regulations as may be appropriate to carry out the purposes of this section, including regulations to prevent the avoidance of the purposes of this section through splitups, shell corporations, partnerships, or otherwise.

(l) It is the intent of the Legislature that, in construing the provisions of this section, any regulations that may be promulgated

by the Secretary of the Treasury under Section 1202(k) of the Internal Revenue Code shall apply to the extent that those regulations do not conflict with the provisions of this section or with any regulations that may be promulgated by the Franchise Tax Board.

SEC. 33. Section 18402 of the Revenue and Taxation Code, as added by Chapter 31 of the Statutes of 1993, is amended to read:

18402. (a) Except where the context otherwise requires, the general provisions and definitions provided in Chapter 1 (commencing with Section 17001) of Part 10 and in Chapter 1 (commencing with Section 23001) of Part 11 shall apply to this part.

(b) For purposes of this part, "person" includes an individual, fiduciary, partnership, bank, corporation, or organization exempt from taxation under Section 23701.

(c) (1) Whenever provisions of this part are applied in connection with Part 10 (commencing with Section 17001), the terms "taxpayer," "corporation" and "taxable year" have the same meaning as defined in Chapter 1 (commencing with Section 17001) of Part 10.

(2) Whenever provisions of this part are applied in connection with Part 11 (commencing with Section 23001), the terms "taxpayer," "corporation," "income year," and "taxable year" have the same meaning as defined in Article 2 (commencing with Section 23030) of Chapter 1 of Part 11.

SEC. 33.5. Section 18402 of the Revenue and Taxation Code, as added by Chapter 31 of the Statutes of 1993, is amended to read:

18402. (a) Except where the context otherwise requires, the general provisions and definitions provided in Chapter 1 (commencing with Section 17001) of Part 10 and in Chapter 1 (commencing with Section 23001) of Part 11 shall apply to this part.

(b) For purposes of this part, "person" includes an individual, fiduciary, partnership, limited liability company, bank, corporation, or organization exempt from taxation under Section 23701.

(c) (1) Whenever provisions of this part are applied in connection with Part 10 (commencing with Section 17001), the terms "taxpayer," "corporation" and "taxable year" have the same meaning as defined in Chapter 1 (commencing with Section 17001) of Part 10.

(2) Whenever provisions of this part are applied in connection with Part 11 (commencing with Section 23001), the terms "taxpayer," "corporation," "income year," and "taxable year" have the same meaning as defined in Article 2 (commencing with Section 23030) of Chapter 1 of Part 11.

SEC. 34. Section 18405 is added to the Revenue and Taxation Code, to read:

18405. (a) In the case of a new statutory provision in Part 7.5 (commencing with Section 13201), Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), or Part 11 (commencing with Section 23001), or the addition of a new part,

the Franchise Tax Board itself is authorized to grant relief as set forth in subdivision (b) from the requirements of the new statutory provision in a manner as provided in subdivision (c).

(b) The relief provided in subdivision (a) may be granted only for the first taxable or income year for which the new statutory provision is operative and only when substantial unintentional noncompliance with the new provision has occurred by a class of affected taxpayers. The relief is limited to waiving penalties or perfecting elections and may be granted only to taxpayers who timely paid taxes and other required amounts shown on the return consistent with the election and who timely filed their return (with regard to extension).

(c) The relief granted in this section shall, upon the recommendation of the executive officer of the Franchise Tax Board, be made by resolution of the Franchise Tax Board which sets forth the conditions, time, and manner as the Franchise Tax Board determines are necessary. The resolution shall be adopted only by an affirmative vote of each of the three members of the Franchise Tax Board.

(d) For purposes of this section:

(1) "New statutory provision" means a complete, newly established tax program, tax credit, exemption, deduction, exclusion, penalty, or reporting or payment requirement and does not mean amendments made to existing tax provisions that make minor modifications or technical changes.

(2) "Perfecting elections" includes correcting omissions or errors only when substantial evidence is present with the filed return that the taxpayer intended to make the election and does not include making an election where one was not previously attempted to be made.

(e) This section shall apply to any Franchise Tax Board resolution adopted after the effective date of this section with respect to any taxable or income year which is subject to an open statute of limitations on the date of the resolution.

(f) Except for the reporting requirement of this subdivision, this section shall cease to be operative on January 1, 1995. On or before March 1, 1995, the Franchise Tax Board shall report to the Legislature on the utilization of this section. The report shall describe the class or classes of taxpayers provided relief, the issue involved and the number of taxpayers affected, and, where applicable, the aggregate amount of penalty relieved for each class of taxpayers.

SEC. 35. Section 18431 of the Revenue and Taxation Code is repealed.

SEC. 36. Section 18431.2 of the Revenue and Taxation Code is repealed.

SEC. 37. Section 18512 of the Revenue and Taxation Code is repealed.

SEC. 38. Section 18517 of the Revenue and Taxation Code is repealed.

SEC. 39. Article 6.9 (commencing with Section 18518) of Chapter

17 of Part 10 of Division 2 of the Revenue and Taxation Code is repealed.

SEC. 40. Section 18548 of the Revenue and Taxation Code is repealed.

SEC. 41. Section 18621 of the Revenue and Taxation Code, as added by Chapter 31 of the Statutes of 1993, is amended to read:

18621. Except as otherwise provided by the Franchise Tax Board and in Section 18621.5, any return, declaration, statement, or other document required to be made under any provision of Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), this part, or any applicable regulation shall contain, or be verified by, a written declaration that it is made under the penalties of perjury. Those returns, and all other returns, declarations, statements, or other documents or copies thereof required, shall be in any form as the Franchise Tax Board may from time to time prescribe, including, but not limited to, on paper, on magnetic media pursuant to Section 19524, or by electronic technology or electronic imaging technology pursuant to Section 18621.5, and shall be filed with the Franchise Tax Board. The Franchise Tax Board shall prepare blank forms for the returns, declarations, statements, or other documents and shall distribute them throughout the state and furnish them upon application. Failure to receive or secure the form does not relieve any taxpayer from making any return, declaration, statement, or other document required.

SEC. 42. Section 18621.5 of the Revenue and Taxation Code, as added by Chapter 31 of the Statutes of 1993, is amended to read:

18621.5. (a) Any return, declaration, statement, or other document required to be made under this part that is filed using electronic technology shall be in a form as the Franchise Tax Board may prescribe and is not complete, and therefore not filed, unless an electronic filing declaration is signed by the taxpayer, in accordance with Section 18621 in the case of individuals, subdivision (a) of Section 18505 in the case of estates and trusts, banks, or corporations, or subdivision (a) of Section 18633 in the case of a partnership. The Franchise Tax Board may prescribe forms and instructions for requiring the electronic filing declaration to be retained by the preparer or the taxpayer and may require the declaration to be furnished to the Franchise Tax Board upon request.

(b) Notwithstanding any other provision of law, any return, declaration, statement, or other document otherwise required to be signed that is filed in a traditional medium and captured using electronic imaging technology shall be deemed to be a valid original document upon reproduction to paper form by the Franchise Tax Board.

(c) Notwithstanding any other law, any return, declaration, statement, or other document otherwise required to be signed that is filed by the taxpayer using electronic technology in a form as required by the Franchise Tax Board shall be deemed to be a signed,

valid original document, including upon reproduction to paper form by the Franchise Tax Board.

(d) "Electronic imaging technology" means a system of microphotography, optical disk, or reproduction by other technique that does not permit additions, deletions, or changes to the original document. The system may include, but is not limited to, any magnetic media or other machine readable form.

(e) "Traditional medium" means any return, declaration, statement, or other document required to be made pursuant to this article other than those made using electronic technology or electronic imaging technology.

(f) "Electronic technology" includes, but is not limited to, computer modem, magnetic media, optical disk, facsimile machine, or telephone.

SEC. 42.5. Section 18621.5 of the Revenue and Taxation Code, as added by Chapter 31 of the Statutes of 1993, is amended to read:

18621.5. (a) Any return, declaration, statement, or other document required to be made under this part that is filed using electronic technology shall be in a form as the Franchise Tax Board may prescribe and is not complete, and therefore not filed, unless an electronic filing declaration is signed by the taxpayer, in accordance with Section 18621 in the case of individuals, subdivision (a) of Section 18505 in the case of estates or trusts, banks, or corporations or limited liability companies classified as corporations for California income tax purposes, subdivision (a) of Section 18633 in the case of a partnership, or Section 18633.5 in the case of limited liability companies classified as partnerships for California income tax purposes. The Franchise Tax Board may prescribe forms and instructions for requiring the electronic filing declaration to be retained by the preparer or taxpayer and may require the declaration to be furnished to the Franchise Tax Board upon request.

(b) Notwithstanding any other provision of law, any return, declaration, statement, or other document otherwise required to be signed that is filed in a traditional medium and captured using electronic imaging technology shall be deemed to be a valid original document upon reproduction to paper form by the Franchise Tax Board.

(c) Notwithstanding any other law, any return, declaration, statement, or other document otherwise required to be signed that is filed by the taxpayer using electronic technology in a form as required by the Franchise Tax Board shall be deemed to be a signed, valid original document, including upon reproduction to paper form by the Franchise Tax Board.

(d) "Electronic imaging technology" means a system of microphotography, optical disk, or reproduction by other technique that does not permit additions, deletions, or changes to the original document. The system may include, but is not limited to, any magnetic media or other machine readable form.

(e) "Traditional medium" means any return, declaration,

statement, or other document required to be made pursuant to this article other than those made using electronic imaging technology.

(f) "Electronic technology" includes, but is not limited to, computer modem, magnetic media, optical disk, facsimile machine, or telephone.

SEC. 43. Section 18624 of the Revenue and Taxation Code, as added by Chapter 31 of the Statutes of 1993, is amended to read:

18624. (a) Section 6109 of the Internal Revenue Code, relating to identifying numbers, shall apply, except as otherwise provided.

(b) Identifying numbers shall be required on state tax returns, statements, or other documents in the form and manner as the Franchise Tax Board may require.

(c) Section 6109(e) of the Internal Revenue Code, relating to furnishing numbers for certain dependents, shall not apply.

(d) Section 6109(h) of the Internal Revenue Code, relating to identifying information required with respect to certain seller-provided financing, shall not apply.

SEC. 44. Section 18633 of the Revenue and Taxation Code, as added by Chapter 31 of the Statutes of 1993, is amended to read:

18633. (a) Every partnership, within three months and 15 days after the close of its taxable year, shall make a return for that taxable year, stating specifically the items of gross income and the deductions allowed by Part 10 (commencing with Section 17001). Except as otherwise provided in Section 18621.5, the return shall include the names, addresses, and taxpayer identification numbers of the persons, whether residents or nonresidents, who would be entitled to share in the net income if distributed and the amount of the distributive share of each person. The return shall contain or be verified by a written declaration that it is made under the penalties of perjury, signed by one of the partners.

(b) Each partnership required to file a return under subdivision (a) for any taxable year shall (on or before the day on which the return for that taxable year was required to be filed) furnish to each person who is a partner or who holds an interest in that partnership as a nominee for another person at any time during that taxable year a copy of that information required to be shown on that return as may be required by regulations.

(c) Any person who holds an interest in a partnership as a nominee for another person shall do both of the following:

(1) Furnish to the partnership, in the manner prescribed by the Franchise Tax Board, the name, address, and taxpayer identification number of that other person, and any other information for that taxable year as the Franchise Tax Board may by form and regulation prescribe.

(2) Furnish to that other person, in the manner prescribed by the Franchise Tax Board, the information provided by that partnership under subdivision (b).

(d) The provisions of Section 6031(d) of the Internal Revenue Code, relating to the separate statement of items of unrelated

business taxable income, shall apply.

SEC. 45. Section 18684.7 of the Revenue and Taxation Code is repealed.

SEC. 46. Section 18723 of the Revenue and Taxation Code, as added by Chapter 31 of the Statutes of 1993, is amended to read:

18723. (a) All moneys transferred to the California Fund for Senior Citizens pursuant to Section 18722, upon appropriation by the Legislature, shall be allocated as follows:

(1) To the Franchise Tax Board and the Controller for reimbursement of all costs incurred by the Franchise Tax Board and the Controller in connection with their duties under this article.

(2) The balance to the California Commission on Aging for allocation as follows:

(A) To the California Senior Legislature, in the 1988–89 fiscal year, and each succeeding fiscal year thereafter, the sum of seventy-five thousand dollars (\$75,000), or the balance of the fund if less than that amount remains in the fund, for the conduct of sessions of the California Senior Legislature.

(B) The balance, if any, but not to exceed two hundred fifty thousand dollars (\$250,000), to the California Senior Legislature for its ongoing activities on behalf of older persons.

Thirty-three thousand dollars (\$33,000) of the balance allocated under this subparagraph, or the entire balance allocated under this subparagraph if the balance is less than thirty-three thousand dollars (\$33,000), shall be specifically allocated annually for the conduct of elections of members of the California Senior Legislature. That amount may be carried over from fiscal years in which there are no elections and accumulated, in an amount not to exceed sixty-six thousand dollars (\$66,000), for use in election years, and any portion of that amount not used in an election year shall be reallocated pursuant to subparagraph (C).

(C) The balance, if any, to the commission for senior citizen direct service programs through contracts with the Department of Aging and Long-Term Care.

(b) All moneys allocated pursuant to paragraph (2) of subdivision (a) may be carried over from the year in which they were received and encumbered in any following year.

(c) The amount allocated pursuant to subparagraphs (A) and (B) of paragraph (2) of subdivision (a) may be adjusted annually, as determined by the Department of Finance, to reflect changes in salary adjustments, price increases, and travel reimbursement adjustments included for all state agencies in the annual Budget Act.

(d) The funds allocated to the commission for the purpose of funding the activities of the California Senior Legislature shall be spent pursuant to an agreement that is approved by both the commission and the Joint Rules Committee of the California Senior Legislature no later than March 1, 1994, and whose terms are consistent with the bylaws of the California Senior Legislature, established through a majority vote of the California Senior

Legislature.

SEC. 46.5. Section 18723 of the Revenue and Taxation Code, as amended by Chapter 31 of the Statutes of 1993, is amended to read:

18723. (a) All moneys transferred to the California Fund for Senior Citizens pursuant to Section 18722 and appropriated pursuant to subdivision (c) of Section 18722 shall be allocated for each fiscal year as follows:

(1) To the Franchise Tax Board and the Controller for reimbursement of all costs incurred by the Franchise Tax Board and the Controller in connection with their duties under this article.

(2) The balance to the California Commission on Aging for allocation as follows:

(A) To the California Senior Legislature, in the 1988–89 fiscal year, and each succeeding fiscal year thereafter, the sum of seventy-five thousand dollars (\$75,000), or the balance of the fund if less than that amount remains in the fund, for the conduct of sessions of the California Senior Legislature.

(B) The balance, if any, but not to exceed two hundred fifty thousand dollars (\$250,000), to the California Senior Legislature for its ongoing activities on behalf of older persons.

Thirty-three thousand dollars (\$33,000) of the balance allocated under this subparagraph, or the entire balance allocated under this subparagraph if the balance is less than thirty-three thousand dollars (\$33,000), shall be specifically allocated annually for the conduct of elections of members of the California Senior Legislature. That amount may be carried over from fiscal years in which there are no elections and accumulated, in an amount not to exceed sixty-six thousand dollars (\$66,000), for use in election years, and any portion of that amount not used in an election year shall be reallocated pursuant to subparagraph (C).

(C) The balance, if any, to the commission for senior citizen direct service programs through contracts with the Department of Aging and Long-Term Care.

(b) All moneys allocated pursuant to paragraph (2) of subdivision (a) may be carried over from the year in which they were received and encumbered in any following year.

(c) The amount allocated pursuant to subparagraphs (A) and (B) of paragraph (2) of subdivision (a) may be adjusted annually, as determined by the Department of Finance, to reflect changes in salary adjustments, price increases, and travel reimbursement adjustments included for all state agencies in the annual Budget Act.

(d) The funds allocated to the commission for the purpose of funding the activities of the California Senior Legislature shall be spent pursuant to an agreement that is approved by both the commission and the Joint Rules Committee of the California Senior Legislature no later than March 1, 1994, and whose terms are consistent with the bylaws of the California Senior Legislature, established through a majority vote of the California Senior Legislature.

SEC. 47. Section 18731 of the Revenue and Taxation Code is amended to read:

18731. (a) Any individual may designate on the tax return that a contribution in excess of the tax liability, if any, be made to the Veterans Memorial Account in the General Fund, as established pursuant to Section 1316 of the Military and Veterans Code.

(b) The contribution shall be in full dollar amounts and may be made individually by each signatory on the joint return.

(c) A designation under subdivision (a) shall be made for any taxable year beginning on or after January 1, 1991, and before January 1, 1996, on the initial return for that taxable year, and once made shall be irrevocable.

In the event that payments and credits reported on the return, together with any other credits associated with the taxpayer's account, do not exceed the tax liability, if any, shown thereupon, the return shall be treated as though no designation had been made.

If the amount designated exceeds the amount actually available for designation, the amount designated shall be adjusted to correspond to the amount actually available for designation.

(d) In the event a taxpayer designates a contribution to more than one account, and the amount available is insufficient to satisfy the total amount designated, the contribution shall be allocated among the designees on a pro rata basis.

(e) The Franchise Tax Board shall revise the forms of the return to include a space labeled the Veterans Memorial Account to allow for the designation permitted under subdivision (a). The forms shall also include in the instructions the information that the contribution may be in the amount of one dollar (\$1) or more and that the contribution shall be used to build a memorial to California veterans.

(f) A deduction shall be allowed under Article 6 (commencing with Section 17201) of Chapter 3 of Part 10 for any contribution made pursuant to subdivision (a).

SEC. 48. Section 18795 of the Revenue and Taxation Code, as added by Chapter 31 of the Statutes of 1993, is amended to read:

18795. All money transferred to the California Breast Cancer Research Fund, upon appropriation by the Legislature, shall be allocated as follows:

(a) To the Franchise Tax Board and the Controller for reimbursement of all costs incurred by the Franchise Tax Board and the Controller in connection with their duties under this article.

(b) To the State Department of Health Services. These funds shall be expended for the purpose of conducting research relating to the prevention, cure, screening, and treatment of breast cancer disease through contracts or grants developed and awarded as determined by the State Department of Health Services. The state department shall allocate twenty thousand dollars (\$20,000) each year to promote the California Breast Cancer Research Fund.

SEC. 49. Article 9 (commencing with Section 18801) is added to Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation

Code, to read:

Article 9. Designations to the California Firefighters' Memorial Fund

18801. (a) Any individual may designate on the tax return that a contribution in excess of the tax liability, if any, be made to the California Firefighters' Memorial Fund, which is established by Section 18802. That designation is to be used as a voluntary checkoff on the tax return.

(b) The contributions shall be in full dollar amounts and may be made individually by each signatory on the joint return.

(c) A designation shall be made for any taxable year on the initial return for that taxable year, and once made shall be irrevocable. In the event that payments and credits reported on the return, together with any other credits associated with the taxpayer's account, do not exceed the taxpayer's liability, the return shall be treated as though no designation has been made. In the event that no designee is specified, the contribution shall be transferred to the General Fund, after reimbursement of the direct actual costs of the Franchise Tax Board for the collection and the administration of funds under this article.

(d) In the event a taxpayer designates a contribution to more than one account or fund listed on the tax return, and the amount available for designation is insufficient to satisfy the total amount designated, the contribution shall be allocated among the designees on a pro rata basis.

(e) The Franchise Tax Board shall revise the forms of the return to include a space labeled the "California Firefighters' Memorial Fund" to allow for the designation permitted. The forms shall also include in the instructions information that the contribution may be in the amount of one dollar (\$1) or more and that the contribution shall be used to construct a memorial to California firefighters on the grounds of the State Capitol.

(f) A deduction shall be allowed under Article 6 (commencing with Section 17201) of Chapter 3 of Part 10 for any contribution made pursuant to subdivision (a).

18802. There is in the State Treasury the California Firefighters' Memorial Fund to receive contributions made pursuant to Section 18801. The Franchise Tax Board shall notify the Controller of both the amount of money paid by taxpayers in excess of their tax liability and the amount of refund money which taxpayers have designated pursuant to Section 18801 to be transferred to the California Firefighters' Memorial Fund. The Controller shall transfer from the Personal Income Tax Fund to the California Firefighters' Memorial Fund an amount not in excess of the sum of the amounts designated by individuals pursuant to Section 18801 for payment into that fund. It is the intent of the Legislature that the 1993 tax return include a space for the California Firefighters' Memorial Fund.

18803. All money transferred to the California Firefighters' Memorial Fund, upon appropriation by the Legislature, shall be allocated as follows:

(a) To the Franchise Tax Board and the Controller for reimbursement of all costs incurred by the Franchise Tax Board and the Controller in connection with their duties under this article.

(b) To the California Fire Foundation for the construction of a memorial to California firefighters on the grounds of the State Capitol as provided by Section 13081 of the Health and Safety Code.

18804. (a) This article shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes that date.

(b) If, in any calendar year the Franchise Tax Board estimates by September 1 that contributions described in this article made on returns filed in that calendar year will be less than two hundred fifty thousand dollars (\$250,000), or the adjusted amount specified in subdivision (c), as may be applicable, then this article is repealed with respect to taxable years beginning on and after January 1 of that calendar year. The Franchise Tax Board shall estimate the annual contribution amount by September 1 of each year using the actual amounts known to be contributed and an estimate of the remaining year's contributions.

(c) For each calendar year, beginning with the 1994 calendar year, the Franchise Tax Board shall adjust, on or before September 1 of that calendar year, the minimum estimated contribution amount specified in subdivision (b) as follows:

(1) The minimum estimated contribution amount for the calendar year shall be an amount equal to the product of the minimum estimated contribution amount for the prior September 1 multiplied by the inflation factor adjustment as specified in paragraph (2) of subdivision (h) of Section 17041, rounded off to the nearest dollar.

(2) The inflation factor adjustment used for the calendar year shall be based on the figures for the percentage change in the California Consumer Price Index received on or before August 1 of the calendar year pursuant to paragraph (1) of subdivision (h) of Section 17041.

(d) Notwithstanding the repeal of this article, any contribution amounts designated pursuant to this article prior to its repeal shall continue to be transferred and disbursed in accordance with this article as in effect immediately prior to that repeal.

SEC. 50. Section 18812 of the Revenue and Taxation Code is amended to read:

18812. (a) Any individual may designate on the tax return that a contribution in excess of the tax liability, if any, be made to the California Public School Library Protection Fund, which is established by Section 18813. That designation is to be used as a voluntary checkoff on the tax return.

(b) The contributions shall be in full dollar amounts and may be

made individually by each signatory on the joint return.

(c) A designation shall be made for any taxable year on the initial return for that taxable year, and once made shall be irrevocable. In the event that payments and credits reported on the return, together with any other credits associated with the taxpayer's account, do not exceed the taxpayer's liability, the return shall be treated as though no designation has been made. In the event that no designee is specified, the contribution shall be transferred to the General Fund, after reimbursement of the direct actual costs of the Franchise Tax Board for the collection and the administration of funds under this article.

(d) In the event a taxpayer designates a contribution to more than one account or fund listed on the tax return, and the amount available for designation is insufficient to satisfy the total amount designated, the contribution shall be allocated among the designees on a pro rata basis.

(e) The Franchise Tax Board shall revise the forms of the return to include a space labeled the "California Public School Library Protection Fund" to allow for the designation permitted. The forms shall also include in the instructions information that the contribution may be in the amount of one dollar (\$1) or more and that the contribution shall be used to purchase books and library media technology for schools as described in Sections 18177 and 18178 of the Education Code.

(f) A deduction shall be allowed under Article 6 (commencing with Section 17201) of Chapter 3 of Part 10 for any contribution made pursuant to subdivision (a).

SEC. 51. Article 11 (commencing with Section 18821) is added to Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation Code, to read:

Article 11. California Mexican American Veterans' Memorial
Beautification and Enhancement Account

18821. (a) Any individual may designate on the tax return that a contribution in excess of the tax liability, if any, be made to the California Mexican American Veterans' Memorial Beautification and Enhancement Account in the General Fund established by Section 1340 of the Military and Veterans Code. That designation is to be used as a voluntary checkoff on the tax return only after the Veterans' Memorial Commission has notified the Franchise Tax Board in writing that the Veterans Memorial is completely constructed pursuant to Chapter 5 (commencing with Section 1310). If the Veterans Memorial is completed and the Franchise Tax Board is notified in writing prior to September 1 of any taxable year, then the California Mexican American Veterans' Memorial Beautification and Enhancement Account shall first appear for contribution on the tax return filed for the taxable year beginning on or after January 1 of the year of completion. If the Veterans Memorial is completed and

the Franchise Tax Board is notified in writing on or after September 1 of any taxable year, the California Mexican American Veterans' Memorial Beautification and Enhancement Account shall first appear for contribution on the tax return filed for the taxable year beginning on or after January 1 of the following year.

(b) The contributions shall be in full dollar amounts and may be made individually by each signatory on the joint return.

(c) A designation under subdivision (a) shall be made on the initial return for that taxable year, and once made shall be irrevocable. In the event that payments and credits reported on the return, together with any other credits associated with the taxpayer's account, do not exceed the taxpayer's liability, the return shall be treated as though no designation has been made.

(d) In the event a taxpayer designates a contribution to more than one account or fund listed on the tax return, and the amount available is insufficient to satisfy the total amount designated, the contribution shall be allocated among the designees on a pro rata basis.

(e) The Franchise Tax Board shall revise the forms of the return to include a space labeled the "California Mexican American Veterans' Memorial" to allow for the designation permitted under subdivision (a). The forms shall also include in the instructions information that the contribution may be in the amount of one dollar (\$1) or more and that the contribution shall be used to beautify and enhance an existing memorial.

(f) A deduction shall be allowed under Article 6 (commencing with Section 17201) of Chapter 3 of Part 10 for any contribution made pursuant to subdivision (a).

18822. The Franchise Tax Board shall notify the Controller of both the amount of money paid by the taxpayer in excess of his or her tax liability and the amount of refund money that the taxpayer has designated pursuant to Section 18821 that is to be transferred to the California Mexican American Veterans' Memorial Beautification and Enhancement Account. The Controller shall transfer from the Personal Income Tax Fund to the California Mexican American Veterans' Memorial Beautification and Enhancement Account an amount not in excess of the amounts designated by individuals pursuant to Section 18821 for payment into that account.

18823. Notwithstanding Section 13340 of the Government Code, all funds deposited in the California Mexican American Veterans' Memorial Beautification and Enhancement Account established pursuant to Section 1340 of the Military and Veterans Code are hereby continuously appropriated, without regard to fiscal year, to the California Mexican American Veterans' Memorial Beautification and Enhancement Commission for all of the following purposes:

(a) Reimbursement of all costs incurred by the Franchise Tax Board and the Controller in connection with their duties under this section.

(b) Beautification and enhancement of an existing memorial and

surrounding grounds at the State Capitol pursuant to Chapter 7 (commencing with Section 1330), and Chapter 8 (commencing with Section 1340) of Division 6 of the Military and Veterans Code.

18824. (a) This article shall remain in effect only until, and shall be repealed on, January 1 of the fifth taxable year following the notification required under subdivision (a) of Section 18821, unless a later enacted statute, which is enacted before that date, deletes that date.

(b) Notwithstanding subdivision (a), if, in any calendar year the Franchise Tax Board estimates by September 1 that contributions described in this article made on returns filed in that calendar year will be less than two hundred fifty thousand dollars (\$250,000), then this section is repealed with respect to taxable years beginning on and after January 1 of that calendar year. The Franchise Tax Board shall estimate the annual contribution amount by September 1 of each year using the actual amounts known to be contributed and an estimate of the remaining year's contributions.

SEC. 52. Section 18934 of the Revenue and Taxation Code is repealed.

SEC. 53. Section 19133 of the Revenue and Taxation Code is repealed.

SEC. 54. Section 19136 of the Revenue and Taxation Code is amended to read:

19136. (a) Section 6654 of the Internal Revenue Code, relating to failure by an individual to pay estimated income tax, shall apply, except as otherwise provided.

(b) Section 6654(a)(1) of the Internal Revenue Code is modified to refer to the rate determined under Section 19521 in lieu of Section 6621 of the Internal Revenue Code.

(c) (1) For purposes of Section 6654(d) of the Internal Revenue Code, relating to the amount of required installments, any reference to "90 percent" is modified to read "80 percent."

(2) Section 6654(d)(2)(C)(ii) of the Internal Revenue Code, relating to applicable percentages, is modified as follows:

In the case of the following required installments:	The applicable percentage is:
1st	20
2nd	40
3rd	60
4th	80

(3) The annualized income installment, determined under Section 6654(d)(2) of the Internal Revenue Code, shall not include "alternative minimum taxable income" or "adjusted self-employment income."

(d) (1) Section 6654(e)(1) of the Internal Revenue Code, relating to exceptions where the tax is a small amount, shall not apply.

(2) No addition to the tax shall be imposed under this section if any of the following apply:

(A) The tax imposed under Section 17041 or 17048 for the preceding taxable year, minus the sum of any credits against the tax provided by Part 10 (commencing with Section 17001) or this part, or the tax computed under Section 17041 or 17048 upon the estimated income for the taxable year, minus the sum of any credits against the tax provided by Part 10 (commencing with Section 17001) or this part, is less than one hundred dollars (\$100), except in the case of a separate return filed by a married person the amount shall be less than fifty dollars (\$50).

(B) Eighty percent or more of the tax imposed under Section 17041 or 17048 for the preceding taxable year, less any credits against the tax other than the credit allowed under Section 19002, was paid by withholding pursuant to Section 18662 or 18666 of this code or Section 13020 of the Unemployment Insurance Code.

(C) Eighty percent or more of the estimated tax for the taxable year will be paid by withholding of tax pursuant to Section 18662 or 18666 of this code or Section 13020 of the Unemployment Insurance Code.

(D) Eighty percent or more of the adjusted gross income for the taxable year consists of items subject to withholding pursuant to Section 18662 or 18666 of this code or Section 13020 of the Unemployment Insurance Code.

(3) Paragraph (2) shall not apply if the employee files a false or fraudulent withholding exemption certificate for the taxable year, or the taxpayer provides a false or fraudulent document or documents to obtain reduced withholding at source for the taxable year.

(e) Section 6654(f) of the Internal Revenue Code shall not apply and for purposes of this section the term "tax" means the tax imposed under Section 17041 or 17048, less any credits against the tax provided by Part 10 (commencing with Section 17001) or this part, other than the credit provided by subdivision (a) of Section 19002.

(f) The credit for tax withheld on wages, as specified in Section 6654(g) of the Internal Revenue Code, shall be the credit allowed under subdivision (a) of Section 19002.

(g) This section shall apply to a nonresident individual.

SEC. 55. Section 19167 of the Revenue and Taxation Code is amended to read:

19167. A penalty shall be imposed under this section for any of the following:

(a) In accordance with Section 6695(a) of the Internal Revenue Code, for failure to furnish a copy of the return to the taxpayer, as required by Section 18625.

(b) In accordance with Section 6695(c) of the Internal Revenue Code, for failure to furnish an identifying number, as required by Section 18624.

(c) In accordance with Section 6695(d) of the Internal Revenue Code, for failure to retain a copy or list, as required by Section 18625

or for failure to retain an electronic filing declaration, as required by Section 18621.5.

SEC. 56. Section 19364 is added to the Revenue and Taxation Code, to read:

19364. If any overpayment of tax is claimed as a credit against estimated tax for the succeeding taxable or income year, that amount shall be considered as payment of the tax for the succeeding year (whether or not claimed as a credit in the return of estimated tax for that succeeding year), and no claim for credit or refund of that overpayment shall be allowed for the income or taxable year in which the overpayment arises.

SEC. 57. Section 19401.5 of the Revenue and Taxation Code is repealed.

SEC. 58. Section 19405 of the Revenue and Taxation Code is repealed.

SEC. 59. Section 19531 of the Revenue and Taxation Code, as added by Chapter 878 of the Statutes of 1993, is amended and renumbered to read:

19532. In the event the debtor has more than one debt being collected by the Franchise Tax Board and the amount collected by the Franchise Tax Board is insufficient to satisfy the total amount owing, the amount collected shall be applied in the following priority:

(a) Payment of any taxes, additions to tax, penalties, interest, fees, or other amounts due and payable under Part 10 or 11 or this part.

(b) Payment of any debts referred for collection under Article 5 (commencing with Section 19271) of Chapter 5.

(c) Payment of delinquencies collected under Section 10878.

SEC. 59.1. Section 19531 of the Revenue and Taxation Code, as added by Chapter 878 of the Statutes of 1993, is amended and renumbered to read:

19532. In the event the debtor has more than one debt being collected by the Franchise Tax Board and the amount collected by the Franchise Tax Board is insufficient to satisfy the total amount owing, the amount collected shall be applied in the following priority:

(a) Payment of any taxes, additions to tax, penalties, interest, fees, or other amounts due and payable under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

(b) Payment of any debts referred for collection under Article 5 (commencing with Section 19271) of Chapter 5.

(c) Payment of delinquent wages collected pursuant to the Labor Code.

(d) Payment of delinquencies collected under Section 10878.

(e) Payment of delinquent penalties collected for the Department of Industrial Relations pursuant to the Labor Code.

(f) Payment of delinquent fees collected for the Department of Industrial Relations pursuant to the Labor Code.

SEC. 59.2. Section 19531 of the Revenue and Taxation Code, as added by Chapter 878 of the Statutes of 1993, is amended and renumbered to read:

19532. In the event the debtor has more than one debt being collected by the Franchise Tax Board and the amount collected by the Franchise Tax Board is insufficient to satisfy the total amount owing, the amount collected shall be applied in the following priority:

(a) Payment of any taxes, additions to tax, penalties, interest, fees, or other amounts due and payable under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

(b) Payment of any debts referred for collection under Article 5 (commencing with Section 19271) of Chapter 5.

(c) Payment of delinquencies collected under Section 10878.

(d) Payment of any amounts due that are referred for collection under Article 6 (commencing with Section 19280) of Chapter 5.

SEC. 59.3. Section 19531 of the Revenue and Taxation Code, as added by Chapter 878 of the Statutes of 1993, is amended and renumbered to read:

19532. In the event the debtor has more than one debt being collected by the Franchise Tax Board and the amount collected by the Franchise Tax Board is insufficient to satisfy the total amount owing, the amount collected shall be applied in the following priority:

(a) Payment of any taxes, additions to tax, penalties, interest, fees, or other amounts due and payable under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

(b) Payment of any debts referred for collection under Article 5 (commencing with Section 19271) of Chapter 5.

(c) Payment of delinquent wages collected pursuant to the Labor Code.

(d) Payment of delinquencies collected under Section 10878.

(e) Payment of any amounts due that are referred for collection under Article 6 (commencing with Section 19280) of Chapter 5.

(f) Payment of delinquent penalties collected for the Department of Industrial Relations pursuant to the Labor Code.

(g) Payment of delinquent fees collected for the Department of Industrial Relations pursuant to the Labor Code.

SEC. 59.5. Section 19602 of the Revenue and Taxation Code is amended to read:

19602. Except for fees collected or accrued under Sections 19531 and 19561, all moneys and remittances received by the Franchise Tax Board as tax imposed under Part 10 (commencing with Section 17001), and related penalties, additions to tax, and interest imposed under this part, shall be deposited, after clearance of remittances, in the State Treasury and credited to the Personal Income Tax Fund.

SEC. 60. Section 19701.5 of the Revenue and Taxation Code, as

added by Chapter 31 of the Statutes of 1993, is amended to read:

19701.5. (a) Any person who signs his or her spouse's name on any income tax return, or any schedules or attachments thereto, or who files electronically pursuant to Section 18621.5, without the consent of the spouse as provided in subdivision (b), is guilty of a misdemeanor and shall upon conviction be fined an amount not to exceed five thousand dollars (\$5,000) or be imprisoned for a term not to exceed one year, or both, at the discretion of the court, together with costs of investigation and prosecution.

(b) Notwithstanding subdivision (a), any person who signs his or her spouse's name shall not be guilty of a misdemeanor when one spouse is physically unable by reason of disease or injury to sign a joint return, and the other spouse, with the oral consent of the one who is incapacitated, signs the incapacitated spouse's name in the proper place on the return followed by the words "By _____, Husband (or Wife)," and by the signature of the signing spouse in his or her own right, provided that a dated statement signed by the spouse who is signing the return is attached to and made a part of the return stating each of the following:

- (1) The name of the return being filed.
- (2) The taxable year.
- (3) The reason for the inability of the spouse who is incapacitated to sign the return.
- (4) That the spouse who is incapacitated consented to the signing of the return and that the taxpayer and his or her agent, if any, are responsible for the return as made and incur liability for the penalties provided for erroneous, false, or fraudulent returns.

(c) The penalties provided by this section are cumulative and shall not be construed as restricting any other penalty provided by law based upon the same facts, including any penalty under Section 470 of the Penal Code. However, an act or omission which is made punishable in different ways by this section and different provisions of the Penal Code shall not be punished under more than one provision.

SEC. 61. Section 19705 of the Revenue and Taxation Code, as added by Chapter 31 of the Statutes of 1993, is amended to read:

19705. (a) Any person who does any of the following shall be guilty of a felony and, upon conviction, shall be fined not more than twenty thousand dollars (\$20,000) or imprisoned not more than three years, or both, together with the costs of prosecution:

(1) Willfully makes and subscribes any return, statement, or other document, that contains or is verified by a written declaration that it is made under the penalties of perjury, and he or she does not believe to be true and correct as to every material matter.

(2) Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the Personal Income Tax Law or the Bank and Corporation Tax Law, of a return, affidavit, claim, or other document, that is fraudulent or is false as to any material matter,

whether or not that falsity or fraud is with the knowledge or consent of the person authorized or required to present that return, affidavit, claim, or document.

(3) Simulates or falsely or fraudulently executes or signs any bond, permit, entry, or other document required by the provisions of the Personal Income Tax Law or the Bank and Corporation Tax Law, or by any regulation pursuant to that law, or procures the same to be falsely or fraudulently executed or advises, aids in, or connives at that execution.

(4) Removes, deposits, or conceals, or is concerned in removing, depositing, or concealing, any goods or commodities for or in respect whereof any tax is or shall be imposed, or any property upon which levy is authorized by Chapter 5 (commencing with Section 19201); or Chapter 5 (commencing with Section 706.010) of Division 2 of, and Chapter 8 (commencing with Section 688.010) of Division 1 of, Title 9 of the Code of Civil Procedure, with intent to evade or defeat the assessment or collection of any tax, additions to tax, penalty, or interest imposed by Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

(5) In connection with any settlement under Section 19442, or offer of that settlement, or in connection with any closing agreement under Section 19441 or offer to enter into that agreement, willfully does any of the following:

(A) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(B) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(b) In the case of a bank or corporation, the twenty thousand dollars (\$20,000) limitation specified in subdivision (a) shall be increased to one hundred thousand dollars (\$100,000).

(c) The fact that an individual's name is signed to a return, statement, or other document filed, including a return, statement, or other document filed using electronic technology pursuant to Section 18621.5, shall be prima facie evidence for all purposes that the return, statement, or other document was actually signed by him or her.

(d) For purposes of this section "person" means the taxpayer, any member of the taxpayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or which owns or controls the taxpayer, directly or indirectly.

SEC. 62. Section 21011 of the Revenue and Taxation Code is amended to read:

21011. Procedures of the board, relating to protest hearings before board audit staff or legal staff, shall include all of the following:

(a) Any hearing shall be held at a reasonable time at a board office which is convenient to the taxpayer when possible.

(b) The hearing may be recorded only if prior notice is given to the taxpayer and the taxpayer is entitled to receive a copy of the recording.

(c) The taxpayer shall be informed prior to any hearing that he or she has a right to have present at the hearing his or her designated agent.

SEC. 63. Section 23609 of the Revenue and Taxation Code is amended to read:

23609. For each income year beginning on or after January 1, 1987, there shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount determined in accordance with Section 41 of the Internal Revenue Code, except as follows:

(a) (1) The reference to "20 percent" in Section 41(a)(1) of the Internal Revenue Code is modified to read "8 percent."

(2) The reference to "20 percent" in Section 41(a)(2) of the Internal Revenue Code is modified to read "12 percent."

(b) "Qualified research" and "basic research" shall include only research conducted in California.

(c) The provisions of Section 41(e)(7)(A) of the Internal Revenue Code, shall be modified so that "basic research," for purposes of this section, includes any basic or applied research including scientific inquiry or original investigation for the advancement of scientific or engineering knowledge or the improved effectiveness of commercial products, except that the term does not include any of the following:

(1) Basic research conducted outside California.

(2) Basic research in the social sciences, arts, or humanities.

(3) Basic research for the purpose of improving a commercial product if the improvements relate to style, taste, cosmetic, or seasonal design factors.

(4) Any expenditure paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral (including oil and gas).

(d) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(e) Section 41(c)(5) of the Internal Revenue Code, relating to gross receipts, is modified to take into account only those gross receipts from the sale of property held primarily for sales to customers in the ordinary course of the taxpayer's trade or business that is delivered or shipped to a purchaser within this state, regardless of F.O.B. point or other conditions of sale.

(f) Except as provided in subdivision (g), the amendments to this section made by the act adding this subdivision shall apply only to income years beginning on or after January 1, 1993.

(g) The amendments made by Section 13112 of the Revenue

Reconciliation Act of 1993 (P.L. 103-66) to Section 41 of the Internal Revenue Code (related to the credit for increased research activities) shall apply to income years beginning on or after January 1, 1994.

(h) Section 41(g) of the Internal Revenue Code, relating to special rule for passthrough of credit, is modified by each of the following:

(1) The last sentence shall not apply.

(2) If the amount determined under Section 41(a) of the Internal Revenue Code for any income year exceeds the limitation of Section 41(g) of the Internal Revenue Code, that amount may be carried over to other income years under the rules of subdivision (d); except that the limitation of Section 41(g) of the Internal Revenue Code shall be taken into account in each subsequent income year.

SEC. 63.5. Section 23609 of the Revenue and Taxation Code is amended to read:

23609. For each income year beginning on or after January 1, 1987, there shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount determined in accordance with Section 41 of the Internal Revenue Code, except as follows:

(a) (1) The reference to "20 percent" in Section 41(a)(1) of the Internal Revenue Code is modified to read "8 percent."

(2) The reference to "20 percent" in Section 41(a)(2) of the Internal Revenue Code is modified to read "12 percent."

(b) "Qualified research" and "basic research" shall include only research conducted in California.

(c) The provisions of Section 41(e)(7)(A) of the Internal Revenue Code, shall be modified so that "basic research," for purposes of this section, includes any basic or applied research including scientific inquiry or original investigation for the advancement of scientific or engineering knowledge or the improved effectiveness of commercial products, except that the term does not include any of the following:

(1) Basic research conducted outside California.

(2) Basic research in the social sciences, arts, or humanities.

(3) Basic research for the purpose of improving a commercial product if the improvements relate to style, taste, cosmetic, or seasonal design factors.

(4) Any expenditure paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral (including oil and gas).

(d) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(e) Section 41(c)(5) of the Internal Revenue Code, relating to gross receipts, is modified to take into account only those gross receipts from the sale of property held primarily for sales to customers in the ordinary course of the taxpayer's trade or business

that is delivered or shipped to a purchaser within this state, regardless of F.O.B. point or other conditions of sale.

(f) Section 41(h) of the Internal Revenue Code, relating to termination, shall not apply.

(g) Except as provided in subdivision (h), the amendments to this section made by the act adding this subdivision shall apply only to income years beginning on or after January 1, 1993.

(h) The amendments made by Section 13112 of the Revenue Reconciliation Act of 1993 (P.L. 103-66) to Section 41 of the Internal Revenue Code (related to the credit for increased research activities) shall apply to income years beginning on or after January 1, 1994.

(i) Section 41(g) of the Internal Revenue Code, relating to special rule for passthrough of credit, is modified by each of the following:

(1) The last sentence shall not apply.

(2) If the amount determined under Section 41(a) of the Internal Revenue Code for any income year exceeds the limitation of Section 41(g) of the Internal Revenue Code, that amount may be carried over to other income years under the rules of subdivision (d); except that the limitation of Section 41(g) of the Internal Revenue Code shall be taken into account in each subsequent income year.

SEC. 64. Section 23801 of the Revenue and Taxation Code is amended to read:

23801. (a) (1) A corporation may not elect to be treated as an "S corporation" unless it has in effect for federal purposes a valid election under Section 1362(a) of the Internal Revenue Code for the same year.

(2) For income years beginning in 1987, the following shall apply:

(A) A corporation that has in effect a valid federal election for the income year beginning in 1987, shall be deemed to have elected to be treated as an "S corporation" for purposes of this part, unless that corporation elects on its return to continue to be treated as a "C corporation" for purposes of this part.

(B) A corporation to which subparagraph (A) applies, but is not required to file a return under this part, may elect to be treated as a "C corporation" for purposes of this part in the form and in the manner as the Franchise Tax Board may prescribe.

(C) A corporation that is deemed to have elected to be treated as an "S corporation" under subparagraph (A) shall, for purposes of applying the provisions of Section 1374 of the Internal Revenue Code, relating to tax imposed on certain built-in gains, and Section 1375 of the Internal Revenue Code, relating to tax imposed on passive investment income, be deemed to have made the election to be treated as an "S corporation" on the same date as the date of its federal election under Section 1362(a) of the Internal Revenue Code.

(3) For income years beginning in 1988 or 1989, the following shall apply:

(A) A corporation that had in effect a valid federal election for the

preceding year, but was a "C corporation" for purposes of this part for that preceding year, may elect to be treated as an "S corporation" for purposes of this part by making an election in accordance with the provisions of Section 1362 of the Internal Revenue Code in the form and in the manner as the Franchise Tax Board may prescribe.

(B) A corporation that did not have in effect a valid federal election for the preceding year and that makes a federal election for the income year under Section 1362(a) of the Internal Revenue Code shall be deemed to have made an election to be treated as an "S corporation" for purposes of this part on the same date as the date of its federal election, unless that corporation elects on its return to continue to be treated as a "C corporation" for purposes of this part.

(C) A corporation to which subparagraph (B) applies, but is not required to file a return under this part, may elect to be treated as a "C corporation" for purposes of this part in such form and in such manner as the Franchise Tax Board may prescribe.

(D) A corporation that elects to be treated as an "S corporation" under subparagraph (A) for an income year beginning in 1988 shall, for purposes of applying the provisions of Section 1374 of the Internal Revenue Code, relating to tax imposed on certain built-in gains, and Section 1375 of the Internal Revenue Code, relating to tax imposed on passive investment income, be deemed to have made the election to be treated as an "S corporation" on the same date as the date of its federal election under Section 1362(a) of the Internal Revenue Code.

(4) For income years beginning on or after January 1, 1990, the following shall apply:

(A) An election under Section 1362(a) of the Internal Revenue Code, that is first effective for an income year beginning on or after January 1, 1990, shall be an election to which subdivision (g) of Section 23051.5 applies and shall be deemed to have been made for purposes of this part on the same date as the date of the federal election, unless the corporation files a California election under clause (ii) to be treated as a "C corporation" for purposes of this part.

(i) The federal "S" election shall be reported for purposes of this part in the form and manner as prescribed by the Franchise Tax Board no later than the last date allowed for filing the federal election under Section 1362(a) of the Internal Revenue Code for that income year.

(ii) The California election to be a "C corporation" may only be made by a corporation incorporated in California or qualified to do business in California and shall be made in the form and manner prescribed by the Franchise Tax Board no later than the last date allowed for filing the federal "S" election under Section 1362(a) of the Internal Revenue Code for that income year.

(B) A corporation that has in effect a valid election under Section 1362(a) of the Internal Revenue Code, but is a "C corporation" for purposes of this part, may elect to be treated as an "S corporation" by making an election in the form and manner as prescribed by the

Franchise Tax Board at the time required for making an "S" election under Section 1362(a) of the Internal Revenue Code for that income year, unless prohibited from doing so by Section 1362(g) of the Internal Revenue Code, relating to election after termination.

(C) In the event a corporation which has in effect a valid election under Section 1362(a) of the Internal Revenue Code and is not doing business in California becomes subject to this part by qualifying to do business in California, the corporation is deemed to have made an election to be treated as an "S corporation" for the income year during which the corporation qualifies to do business in California, unless the corporation files a California election in accordance with clause (ii) to be treated as a "C corporation" for that income year.

(i) The federal "S" election shall be reported for purposes of this part within two and one-half months after qualifying to do business in California in the form and manner as prescribed by the Franchise Tax Board.

(ii) The California election to be a "C corporation" shall be made in the form and manner as prescribed by the Franchise Tax Board no later than the following:

(I) For an income year beginning in 1990, two and one-half months after qualifying to do business in California.

(II) For an income year beginning on or after January 1, 1991, the last date allowed for filing a federal "S" election under Section 1362(a) of the Internal Revenue Code for that income year.

(D) (i) A corporation that is not qualified to do business in California, but is treated as an "S corporation" for federal purposes, shall be treated as an "S corporation" for purposes of this part, and its shareholders shall be treated as shareholders of an "S corporation."

(ii) If a corporation described in clause (i) elected to be treated as a "C corporation" under this section prior to its amendment by the act adding this paragraph during the 1989-90 Regular Session, that election shall be revoked for income years beginning on or after January 1, 1990. The corporation shall be treated as an "S corporation" for purposes of this part, and its shareholders shall be treated as shareholders of an "S corporation."

(E) For purposes of this section, "qualified to do business in California" or "qualifying to do business in California" means incorporating or obtaining a certificate of qualification pursuant to the Corporations Code.

(F) For purposes of this section:

(i) A timely election to be treated as a "C corporation" shall be treated as a revocation and Section 1362(g), relating to election after termination, shall apply.

(ii) An untimely election to be treated as a "C corporation" shall be null and void and shall not be applied to either the current or any subsequent income year.

(b) If a corporation subject to tax under this part elects to be treated as an "S corporation" and has one or more shareholders who

are nonresidents of this state or is a trust with a nonresident fiduciary, each of the following shall be required:

(1) Each nonresident shareholder or fiduciary shall file with the return a statement of consent by that shareholder or fiduciary to be subject to the jurisdiction of the State of California to tax the shareholder's pro rata share of the income attributable to California sources.

(2) An "S corporation" shall include in its return for each income year a list of shareholders in the form and in the manner prescribed by the Franchise Tax Board.

(3) Failure to meet the requirements of this subdivision shall be grounds for retroactive revocation by the Franchise Tax Board of the election pursuant to this chapter.

(c) Except as provided in subdivision (d), a corporation that makes a valid election to be treated as an "S corporation" for purposes of this part shall not be included in a combined report pursuant to Article 1 (commencing with Section 25101) of Chapter 17.

(d) (1) In cases where the Franchise Tax Board determines that the reported income or loss of a group of commonly owned or controlled corporations (within the meaning of Section 25105), which includes one or more corporations electing to be treated as an "S corporation" under Chapter 4.5 (commencing with Section 23800), does not clearly reflect income (or loss) of a member of that group or represents an evasion of tax by one or more members of that group, and the Franchise Tax Board determines that the comparable uncontrolled price method prescribed by regulations pursuant to Section 482 of the Internal Revenue Code cannot practically be applied, the Franchise Tax Board may, in lieu of other methods prescribed by regulations pursuant to Section 482 of the Internal Revenue Code, apply methods of unitary combination, pursuant to Article 1 (commencing with Section 25101) of Chapter 17, to properly reflect the income or loss of the members of the group.

(2) The application of the provisions of this subdivision shall not affect the election of any corporation to be treated as an "S corporation."

(e) The tax for a "C corporation" for a short year shall be determined in accordance with Chapter 13 (commencing with Section 24631), in lieu of Section 1362(e) (5) of the Internal Revenue Code.

(f) (1) A termination of a federal election pursuant to Section 1362(d) of the Internal Revenue Code, that is not an inadvertent termination pursuant to Section 1362(f) of the Internal Revenue Code, shall simultaneously terminate the "S corporation" election for purposes of Part 10 (commencing with Section 17001) and this part.

(2) A federal termination by revocation shall be effective for purposes of this part and shall be reported to the Franchise Tax Board in the form and manner prescribed by the Franchise Tax Board no later than the last date allowed for filing federal

termination for that year under Section 1362(d) of the Internal Revenue Code.

(3) A corporation which is qualified to do business in California and has in effect a valid "S" election under Section 1362(a) of the Internal Revenue Code, may revoke its "S" election for purposes of this part without revoking its federal election. The revocation for purposes of this part shall be made by providing a written notification to the Franchise Tax Board in the form and manner prescribed by the Franchise Tax Board which includes the California corporation number and meets the requirements of Section 1362(d) (1) of the Internal Revenue Code.

(g) For income years beginning on or after January 1, 1990, if a corporation, which has in effect a valid "S" election under Section 1362(a) of the Internal Revenue Code, fails to make a "C corporation" election under clause (ii) of subparagraphs (A) and (C) of paragraph (4) of subdivision (a) or to terminate by revocation under paragraph (3) of subdivision (f), the corporation shall be treated as an "S corporation" pursuant to subparagraph (A) of paragraph (4) of subdivision (a).

SEC. 65. Section 24347.5 of the Revenue and Taxation Code, as amended by Chapter 33 of the Statutes of 1994, is amended to read:

24347.5. (a) In lieu of Section 24347, Section 165(i) of the Internal Revenue Code, relating to disaster losses, shall apply to each of the following:

(1) Forest fire or any other related casualty occurring in 1985 in California.

(2) Storm, flooding, or any other related casualty occurring in 1986 in California.

(3) Any loss sustained during 1987 as a result of a forest fire or any other related casualty.

(4) Earthquake, aftershock, or any other related casualty occurring in October 1987 in California.

(5) Earthquake, aftershock, or any related casualty occurring in October 1989 in California.

(6) Any loss sustained during 1990 as a result of fire or any other related casualty in California.

(7) For income years beginning on or after January 1, 1991, any loss sustained as a result of the Oakland/Berkeley fire of 1991, or any other related casualty.

(8) Any loss sustained as a result of storm, flooding, or any other related casualty occurring in February 1992 in California.

(9) Earthquake, aftershock, or any other related casualty occurring in April 1992 in the County of Humboldt.

(10) Riots, arson, or any other related casualty occurring in April or May 1992 in California.

(11) Any loss sustained as a result of the earthquakes that occurred in the County of San Bernardino in June and July of 1992, or any other related casualty.

(12) Any loss sustained as a result of the fountain fire that

occurred in the County of Shasta, or as a result of either of the fires in the Counties of Calaveras and Trinity that occurred in August 1992, or any other related casualty.

(13) Any loss sustained as a result of a fire that occurred in the County of Los Angeles, Orange, Riverside, San Bernardino, San Diego, or Ventura, during October or November of 1993, or any other related casualty.

(14) Any loss sustained as a result of the earthquake, aftershocks, or any other related casualty that occurred in the Counties of Los Angeles, Orange, and Ventura on or after January 17, 1994.

(b) To the extent that losses under subdivision (a) exceed the net income of the year of loss or, if the election under Section 165(i) of the Internal Revenue Code is made, the net income of the year preceding the loss, then that "excess loss," at the election of the taxpayer, may be carried forward to each of the five income years following the income year the loss is claimed. However, if there is any "excess loss" remaining after the five-year period, then 50 percent of that "excess loss" may be carried forward to each of the next 10 income years.

(c) The entire amount of any "excess loss" as defined in subdivision (b) shall be carried to the earliest of the income years to which, by reason of subdivision (b), the loss may be carried. The portion of the loss which shall be carried to each of the other income years shall be the excess, if any, of the amount of "excess loss" over the sum of the net income for each of the prior income years to which that "excess loss" may be carried.

(d) This section and Section 165(i) of the Internal Revenue Code shall be applicable to any of the following losses sustained in any county or city in this state which was proclaimed by the Governor to be in a state of disaster:

(1) Any loss sustained during February 1986 as a result of storm, flooding, or any other related casualty.

(2) Any loss sustained during 1987 as a result of forest fire or any other related casualty.

(3) Any loss sustained during October 1987 as the result of earthquake, aftershock, or any other related casualty.

(4) Any loss resulting from the earthquake which occurred in October 1989, aftershock, or any other related casualty.

(5) Any loss sustained during 1990 as the result of fire in the County of Santa Barbara.

(6) For income years beginning on or after January 1, 1991, any loss sustained as a result of the Oakland/Berkeley fire of 1991, or any other related casualty.

(7) Any loss sustained as a result of storm, flooding, or any other related casualty occurring in February 1992 in California.

(8) Any loss sustained during April 1992 as a result of earthquake, aftershock, or any other related casualty in the County of Humboldt.

(9) Any loss sustained during April or May 1992 as a result of riots, arson, or any other related casualty.

(10) Any loss sustained as a result of the earthquakes that occurred in the County of San Bernardino in June and July of 1992, or any other related casualty.

(11) Any loss sustained as a result of the fountain fire that occurred in the County of Shasta, or as a result of either of the fires in the Counties of Calaveras and Trinity that occurred in August 1992, or any other related casualty.

(12) Any loss sustained as a result of a fire that occurred in the County of Los Angeles, Orange, Riverside, San Bernardino, San Diego, or Ventura, during October or November of 1993, or any other related casualty.

(13) Any loss sustained as a result of the earthquake, aftershocks, or any other related casualty that occurred in the Counties of Los Angeles, Orange, and Ventura on or after January 17, 1994.

(e) Any corporation subject to the provisions of Section 25101 or 25101.15 that has disaster losses pursuant to this section, shall determine the "excess loss" to be carried to other income years under the principles specified in Section 25108 relating to net operating losses.

(f) Losses described in this section may not be taken into account in computing a net operating loss deduction under Section 24416 or 24416.1.

(g) For losses described in paragraphs (13) and (14) of subdivision (a) and paragraphs (12) and (13) of subdivision (d), the election under Section 165(i) of the Internal Revenue Code may be made on a return or amended return filed on or before the due date of the return (determined with regard to extension) for the income year in which the disaster occurred.

SEC. 66. Section 24661 of the Revenue and Taxation Code is amended to read:

24661. Section 451 of the Internal Revenue Code, relating to the general rule for taxable year of inclusion, shall apply, except as otherwise provided.

SEC. 67. Section 24672 of the Revenue and Taxation Code is amended to read:

24672. (a) Where a taxpayer elects to report income arising from the sale or other disposition of property as provided in this article, and the entire income therefrom has not been reported prior to the year that the taxpayer ceases to be subject to the tax measured by net income imposed under Chapter 2 or Chapter 3 of this part, the unreported income shall be included in the measure of the tax for the last year in which the taxpayer is subject to the tax measured by net income imposed under Chapter 2 or Chapter 3 of this part. Abatement shall not be allowed under the provisions of Sections 23331 to 23333, inclusive, for any tax measured by unreported installment income arising from installment sales made during prior income years which is included in the measure of the tax by reason of this section or for installment income reported during the year preceding the year in which the taxpayer ceases to be subject to the

tax imposed by this part. Abatement shall be allowed for any tax measured by reported or unreported income arising from installment sales made during the income year preceding dissolution or withdrawal or cessation of business. This section shall not be applicable where the installment obligation is transferred pursuant to a reorganization (as defined in Section 368(a) of the Internal Revenue Code) to another taxpayer that is a party to the reorganization (as defined in Section 368(b) of the Internal Revenue Code) subject to tax under the same chapter as the transferor, or is transferred to any exempt nonprofit cemetery corporation as defined in Section 23701c of this code. The determination of any deficiency resulting from this section shall be made under the provisions of Chapter 20, Article 1, but the period of limitation under that article, and the accrual of interest under Chapter 21, Article 1, shall commence on the date the taxpayer ceases to be subject to the tax imposed under Chapter 2 or Chapter 3 of this part.

(b) "Cessation of business" as herein used means the failure to do business during an entire taxable year.

SEC. 68. Section 25105 of the Revenue and Taxation Code is amended to read:

25105. (a) Direct or indirect ownership or control of more than 50 percent of the voting stock of the taxpayer shall constitute ownership or control for the purposes of this article.

(b) This section shall apply to income years beginning before January 1, 1995. This section shall cease to be operative on December 1, 1995, and as of that date is repealed.

SEC. 69. Section 25105 is added to the Revenue and Taxation Code, to read:

25105. (a) For purposes of this article, other than Section 25102, the income and apportionment factors of two or more corporations shall be included in a combined report only if the corporations, otherwise meeting the requirements of Section 25101 or 25101.15, are members of a commonly controlled group.

(b) A "commonly controlled group" means any of the following:

(1) A parent corporation and any one or more corporations or chains of corporations, connected through stock ownership (or constructive ownership) with the parent, but only if—

(A) The parent owns stock possessing more than 50 percent of the voting power of at least one corporation, and, if applicable,

(B) Stock cumulatively representing more than 50 percent of the voting power of each of the corporations, except the parent, is owned by the parent, one or more corporations described in subparagraph (A), or one or more other corporations that satisfy the conditions of this subparagraph.

(2) Any two or more corporations, if stock representing more than 50 percent of the voting power of the corporations is owned, or constructively owned, by the same person.

(3) Any two or more corporations that constitute stapled entities.

(A) For purposes of this paragraph, "stapled entities" means any

group of two or more corporations if more than 50 percent of the ownership or beneficial ownership of the stock possessing voting power in each corporation consists of stapled interests.

(B) Two or more interests are stapled interests if, by reason of form of ownership restrictions on transfer, or other terms or conditions, in connection with the transfer of one of the interests the other interest are also transferred or required to be transferred.

(4) Any two or more corporations, all of whose stock representing more than 50 percent of the voting power of the corporations is cumulatively owned (without regard to the constructive ownership rules of paragraph (1) of subdivision (e)) by, or for the benefit of, members of the same family. Members of the same family are limited to an individual, his or her spouse, parents, brothers or sisters, grandparents, children and grandchildren, and their respective spouses.

(c) (1) If, in the application of subdivision (b), a corporation is eligible to be treated as a member of more than one commonly controlled group of corporations, the corporation shall elect to be treated as a member of only one commonly controlled group. This election shall remain in effect unless revoked with the approval of the Franchise Tax Board.

(2) Membership in a commonly controlled group shall be treated as terminated in any year, or fraction thereof, in which the conditions of subdivision (b) are not met, except as follows:

(A) When stock of a corporation is sold, exchanged, or otherwise disposed of, the membership of a corporation in a commonly controlled group shall not be terminated, if the requirements of subdivision (b) are again met immediately after the sale, exchange, or disposition.

(B) The Franchise Tax Board may treat the commonly controlled group as remaining in place if the conditions of subdivision (b) are again met within a period not to exceed two years.

(d) A taxpayer may exclude some or all corporations included in a "commonly controlled group" by reason of paragraph (4) of subdivision (b) by showing that those members of the group are not controlled directly or indirectly by the same interests, within the meaning of the same phrase in Section 482 of the Internal Revenue Code. For purposes of this subdivision, the term "controlled" includes any kind of control, direct or indirect, whether legally enforceable, and however exercisable or exercised.

(e) Except as otherwise provided, stock is "owned" when title to the stock is directly held or if the stock is constructively owned.

(1) An individual constructively owns stock that is owned by any of the following:

(A) His or her spouse.

(B) Children, including adopted children, of that individual or the individual's spouse, who have not attained the age of 21 years.

(C) An estate or trust, of which the individual is an executor, trustee, or grantor, to the extent that the estate or trust is for the

benefit of that individual's spouse or children.

(2) Stock owned by a corporation, or a member of a controlled group of which the corporation is the parent corporation, is constructively owned by any shareholder owning stock that represents more than 50 percent of the voting power of the corporation.

(3) Stock owned by a partnership is constructively owned by any partner, other than a limited partner, in proportion to the partner's capital interest in the partnership. For this purpose, a partnership is treated as owning proportionately the stock owned by any other partnership in which it has a tiered interest, other than as a limited partner.

(4) In any case where a member of a commonly controlled group, or shareholders, officers, directors, or employees of a member of a commonly controlled group, is a general partner in a limited partnership, stock held by the limited partnership is constructively owned by a limited partner to the extent of its capital interest in the limited partnership.

(f) For purposes of this section, each of the following shall apply:

(1) "Corporation" means a bank, a subchapter S corporation, any other incorporated entity, or any entity defined or treated as a corporation pursuant to Section 23038 or 23038.5.

(2) "Person" means an individual, a trust, an estate, a qualified employee benefit plan, a limited partnership, or a corporation.

(3) "Voting power" means the power of all classes of stock entitled to vote that possess the power to elect the membership of the board of directors of the corporation.

(4) "More than 50 percent of the voting power" means voting power sufficient to elect a majority of the membership of the board of directors of the corporation.

(5) "Stock representing voting power" includes stock where ownership is retained but the actual voting power is transferred in either of the following manners:

(A) For one year or less.

(B) By proxy, voting trust, written shareholder agreement, or by similar device, where the transfer is revocable by the transferor.

(g) The Franchise Tax Board may prescribe any regulations as may be necessary or appropriate to carry out the purposes of this section, including, but not limited to, regulations that do the following:

(1) Prescribe terms and conditions relating to the election described by subdivision (c), and the revocation thereof.

(2) Disregard transfers of voting power not described by paragraph (5) of subdivision (f).

(3) Treat entities not described by paragraph (2) of subdivision (f) as a person.

(4) Treat warrants, obligations convertible into stock, options to acquire or sell stock, and similar instruments as stock.

(5) Treat holders of a beneficial interest in, or executor or trustee

powers over, stock held by an estate or trust as constructively owned by the holder.

(6) Prescribe rules relating to the treatment of partnership agreements which authorize a particular partner or partners to exercise voting power of stock held by the partnership.

(h) This section shall apply to income years beginning on or after January 1, 1995.

SEC. 70. Section 25106 of the Revenue and Taxation Code is amended to read:

25106. In any case in which the tax of a corporation is or has been determined under this chapter with reference to the income and apportionment factors of another corporation with which it is doing or has done a unitary business, all dividends paid by one to another of those corporations shall, to the extent those dividends are paid out of the income previously described of the unitary business, be eliminated from the income of the recipient and, except for purposes of applying Section 24345, shall not be taken into account under Section 24344 or in any other manner in determining the tax of any member of the unitary group.

In view of pending litigation concerning the proper treatment of intercompany dividends, it is not intended by enactment of this section that any inference be drawn from it in such litigation.

SEC. 71. Section 25110 of the Revenue and Taxation Code, as amended by Chapter 31 of the Statutes of 1993, is amended to read:

25110. (a) Notwithstanding Section 25101, a qualified taxpayer, as defined in paragraph (2) of subdivision (b) which is subject to the tax imposed under this part, may elect to determine its income derived from or attributable to sources within this state pursuant to a water's-edge election in accordance with the provisions of this part, as modified by this article. A taxpayer which makes a water's-edge election shall take into account the income and apportionment factors of the following affiliated entities only:

(1) Affiliated banks or corporations which are eligible to be included in a federal consolidated return as described in Sections 1501 to 1505, inclusive, of the Internal Revenue Code, other than corporations making an election under Section 936 of the Internal Revenue Code.

(2) Domestic international sales corporations, as described in Sections 991 to 994, inclusive, of the Internal Revenue Code and foreign sales corporations as described in Sections 921 to 927, inclusive, of the Internal Revenue Code.

(3) Any corporation, regardless of the place where it is incorporated if the average of its property, payroll, and sales factors within the United States is 20 percent or more.

(4) Banks and corporations which are incorporated in the United States, excluding corporations making an election pursuant to Sections 931 to 936, inclusive, of the Internal Revenue Code, of which more than 50 percent of their stock is controlled directly or indirectly by the same interests, which are not included in paragraph (1).

(5) A bank or corporation which is not described in paragraphs (1) to (4), inclusive, or paragraph (6), but only to the extent of its income derived from or attributable to sources within the United States and its factors assignable to a location within the United States in accordance with paragraph (3) of subdivision (b). Income of such a bank or corporation derived from or attributable to sources within the United States as determined by federal income tax laws shall be limited to and determined from the books of account maintained by the bank or corporation with respect to its activities conducted within the United States.

(6) Export trade corporations, as described in Sections 970 to 972, inclusive, of the Internal Revenue Code.

(7) Any affiliated bank or corporation which is a "controlled foreign corporation," as defined in Section 957 of the Internal Revenue Code, if all or part of the income of that affiliate is defined in Section 952 of Subpart F of the Internal Revenue Code ("Subpart F income"). The income and apportionment factors of any affiliate to be included under this paragraph shall be determined by multiplying the income and apportionment factors of that affiliate without application of this paragraph by a fraction (not to exceed one), the numerator of which is the "Subpart F income" of that bank or corporation for that income year and the denominator of which is the "earnings and profits" of that bank or corporation for that income year, as defined in Section 964 of the Internal Revenue Code.

(8) (A) The income and factors of the above-enumerated banks and corporations shall be taken into account only if the income and factors would have been taken into account under Section 25101 if this section had not been enacted.

(B) The income and factors of a bank or corporation which is not described in paragraphs (1) to (4), inclusive, and paragraph (6) and which is an electing taxpayer under this subdivision shall be taken into account in determining its income only to the extent set forth in paragraph (5).

(b) For purposes of this article and Section 24411:

(1) An "affiliated bank or corporation" means a bank or corporation that is a member of a commonly controlled group as defined in Section 25105.

(2) A "qualified taxpayer" means a bank or corporation which does both of the following:

(A) Files with the state tax return on which the water's-edge election is made a consent to the taking of depositions at the time and place most reasonably convenient to all parties from key domestic corporate individuals and to the acceptance of subpoenas duces tecum requiring reasonable production of documents to the Franchise Tax Board as provided in Section 19504 or by the State Board of Equalization as provided in Title 18, California Code of Regulations, Section 5005, or by the courts of this state as provided in Chapter 2 (commencing with Section 1985) of Title 3 of Part 4 of, and Section 2025 of, the Code of Civil Procedure. The consent relates

to issues of jurisdiction and service and does not waive any defenses a taxpayer may otherwise have. The consent shall remain in effect so long as the water's-edge election is in effect and shall be limited to providing that information necessary to review or to adjust income or deductions in a manner authorized under Sections 482, 861, Subpart F of Part III of Subchapter N, or similar provisions of the Internal Revenue Code, together with the regulations adopted pursuant to those provisions, and for the conduct of an investigation with respect to any unitary business in which the taxpayer may be involved.

(B) Agrees that for purposes of this article, dividends received by any bank or corporation whose income and apportionment factors are taken into account pursuant to subdivision (a) from either of the following are functionally related dividends and shall be presumed to be business income:

(i) A bank or corporation of which more than 50 percent of the voting stock is owned, directly or indirectly, by members of the unitary group and which is engaged in the same general line of business.

(ii) Any bank or corporation which is either a significant source of supply for the unitary business or a significant purchaser of the output of the unitary business, or which sells a significant part of its output or obtains a significant part of its raw materials or input from the unitary business. "Significant," as used in this subparagraph, means an amount of 15 percent or more of either input or output.

All other dividends shall be classified as business or nonbusiness income without regard to this subparagraph.

(3) The definitions and locations of property, payroll, and sales shall be determined under the laws and regulations which set forth the apportionment formulas used by the individual states to assign net income subject to taxes on or measured by net income in that state. If a state does not impose a tax on or measured by net income or does not have laws or regulations with respect to the assignment of property, payroll, and sales, the laws and regulations provided in Article 2 (commencing with Section 25120) shall apply.

Sales shall be considered to be made to a state only if the bank or corporation making the sale may otherwise be subject to a tax on or measured by net income under the Constitution or laws of the United States, and shall not include sales made to a bank or corporation whose income and apportionment factors are taken into account pursuant to subdivision (a) in determining the amount of income of the taxpayer derived from or attributable to sources within this state.

(4) "The United States" means the 50 states of the United States and the District of Columbia.

(c) All references in this part to income determined pursuant to Section 25101 shall also mean income determined pursuant to this section.

SEC. 72. Section 25111.1 of the Revenue and Taxation Code is

amended to read:

25111.1. (a) For any income year beginning on or after January 1, 1994, consideration for water's-edge contracts in existence as of that date is no longer provided for by law. Contracts entered into for income years beginning prior to January 1, 1994, are rescinded for any periods remaining on those contracts commencing on the first day of the taxpayer's first income year that begins on or after January 1, 1994. Any fiscal year taxpayer whose contract is in effect as of December 31, 1993, shall continue to be bound by that contract until the close of its income year after January 1, 1994, and before December 31, 1994.

(b) Notwithstanding subdivision (a), and except for the purposes of Section 25115, all taxpayers that are members of a water's-edge group consisting of taxpayers with different income years shall continue to be bound by the contract in effect as of December 31, 1993, until the income year beginning prior to January 1, 1994, and ending in 1994 for each of the taxpayer members of the water's-edge group has ended.

SEC. 73. Section 25403 of the Revenue and Taxation Code is repealed.

SEC. 74. Section 25403.5 of the Revenue and Taxation Code is repealed.

SEC. 75. Section 25782 of the Revenue and Taxation Code is repealed.

SEC. 76. Section 25962 of the Revenue and Taxation Code is repealed.

SEC. 77. Section 26081.5 of the Revenue and Taxation Code is repealed.

SEC. 77.5. Section 42205 of the Vehicle Code is amended to read:

42205. Notwithstanding Chapter 3 (commencing with Section 42270), the department shall file, at least monthly with the Controller, a report of money received by the department pursuant to Section 9400 for the previous month and shall, at the same time, remit all money so reported to the Treasurer. On order of the Controller, the Treasurer shall deposit all money so remitted in the State Highway Account in the State Transportation Fund.

The Controller shall transfer from the State Highway Account in the State Transportation Fund to the Motor Vehicle Account in the State Transportation Fund amounts equal to the costs incurred by the department and the Franchise Tax Board in performing their duties pursuant to Article 3 (commencing with Section 9400) of Chapter 6 of Division 3. The applicable amount shall be determined so that the appropriate costs for registration and weight fee collection activities are appropriated between the recipients of revenues in proportion to the revenues received individually by those recipients.

SEC. 78. Section 9 of Chapter 33 of the Statutes of 1994 is amended to read:

Sec. 9. Sections 6.5 and 7.5 of this bill incorporate amendments to

Sections 17207 and 24347.5 of the Revenue and Taxation Code proposed by both this bill and AB 2290. These sections shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1995, (2) each bill amends Sections 17207 and 24347.5 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 2290, in which case Sections 6 and 7 of this bill shall not become operative.

SEC. 79. (a) Section 2.5 of this bill incorporates amendments to Section 64 of the Revenue and Taxation Code proposed by both this bill and SB 469. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1995, but this bill becomes operative first, (2) each bill amends Section 64 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 469, in which case Section 64 of the Revenue and Taxation Code, as amended by Section 2.3 of this bill, shall remain operative only until the operative date of SB 469, at which time Section 2.5 of this bill shall become operative.

(b) Section 33.5 of this bill incorporates amendments to Section 18402 of the Revenue and Taxation Code proposed by both this bill and SB 469. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1995, but this bill becomes operative first, (2) each bill amends Section 18402 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 469, in which case Section 18402 of the Revenue and Taxation Code, as amended by Section 33 of this bill, shall remain operative only until the operative date of SB 469, at which time Section 33.5 of this bill shall become operative.

(c) Section 42.5 of this bill incorporates amendments to Section 18621.5 of the Revenue and Taxation Code proposed by both this bill and SB 469. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1995, but this bill becomes operative first, (2) each bill amends Section 18621.5 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 469, in which case Section 18621.5 of the Revenue and Taxation Code, as amended by Section 42 of this bill, shall remain operative only until the operative date of SB 469, at which time Section 42.5 of this bill shall become operative.

SEC. 79.5. Section 46.5 of this bill incorporates amendments to Section 18723 of the Revenue and Taxation Code proposed by both this bill and AB 339. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1994, but this bill becomes operative first, (2) each bill amends Section 18723 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 339, in which case Section 18723 of the Revenue and Taxation Code, as amended by Section 46 of this bill, shall remain operative only until the operative date of AB 339, at which time Section 46.5 of this bill shall become operative.

SEC. 80. (a) Section 59.1 of this bill incorporates amendments to Section 19531 of the Revenue and Taxation Code proposed by both

this bill and SB 1490. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1995, (2) each bill amends or amends and renumbers Section 19531 of the Revenue and Taxation Code, (3) AB 3343 is not enacted or as enacted does not amend or amend and renumber that section, and (4) this bill is enacted after SB 1490, in which case Section 19531 of the Revenue and Taxation Code, as amended and renumbered only by Section 59 of this bill, shall become operative and remain operative only until the operative date of SB 1490, at which time Section 59.1 of this bill shall become operative, and Sections 59.2 and 59.3 of this bill shall not become operative.

(b) Section 59.2 of this bill incorporates amendments to Section 19531 of the Revenue and Taxation Code proposed by both this bill and AB 3343. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1995, (2) each bill amends or amends and renumbers Section 19531 of the Revenue and Taxation Code, (3) SB 1490 is not enacted or as enacted does not amend or amend and renumber that section, and (4) this bill is enacted after AB 3343, in which case Section 19531 of the Revenue and Taxation Code, as amended and renumbered only by Section 59 of this bill, shall become operative and remain operative only until the operative date of AB 3343, at which time Section 59.2 of this bill shall become operative, and Sections 59.1 and 59.3 of this bill shall not become operative.

(c) Section 59.3 of this bill incorporates amendments to Section 19531 of the Revenue and Taxation Code proposed by this bill, SB 1490, and AB 3343. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1995, (2) all three bills amend or amend and renumber Section 19531 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 1490 and AB 3343, in which case Section 19531 of the Revenue and Taxation Code, as amended and renumbered only by Section 59 of this bill, shall become operative and remain operative only until January 1, 1995, at which time Section 59.3 of this bill shall become operative, and Sections 59.1 and 59.2 of this bill shall not become operative.

SEC. 81. Section 63.5 of this bill incorporates amendments to Section 23609 of the Revenue and Taxation Code proposed by both this bill and AB 2407. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1995, but this bill becomes operative first, (2) each bill amends Section 23609 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 2407, in which case Section 23609 of the Revenue and Taxation Code, as amended by Section 63 of this bill, shall remain operative only until the operative date of AB 2407, at which time Section 63.5 of this bill shall become operative.

SEC. 82. The Legislature finds and declares that the amendments to Sections 17052.12, 23609, 23801, 24347.5, and 25106 of the Revenue and Taxation Code made by Sections 5, 63, 64, 65, and 70 of this act

do not constitute a change in, but are declaratory of, existing law.

SEC. 83. The amendments to Section 9 of Chapter 33 of the Statutes of 1994 by Section 78 of this act shall take effect as if included in Chapter 33 of the Statutes of 1994.

SEC. 84. The repeal of Sections 17261 and 17272 of the Revenue and Taxation Code by Sections 16 and 19 of this act shall become operative on January 1, 1995.

SEC. 85. Notwithstanding the repeal of Article 11 (commencing with Section 18821) of Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation Code, any contribution amounts designated pursuant to that article prior to its repeal shall continue to be transferred and disbursed in accordance with that article as it read immediately prior to that repeal.

SEC. 86. The amendments made to Section 64 of the Revenue and Taxation Code by Sections 2.3 and 2.5 of this act are not intended to change existing property tax law or its interpretation.

SEC. 87. It is the intent of the Legislature that no inference be drawn in connection with any matter considered under Section 17220 of the Revenue and Taxation Code for any taxable year beginning before January 1, 1994, with respect to the amendment made to Section 17220 of the Revenue and Taxation Code by this act.

SEC. 88. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to avoid problems relating to the implementation of certain statutes that were enacted during the 1993 portion of the 1993-94 Regular Session, and to enable orderly administration of tax laws, it is necessary that this act go into immediate effect and be operative on January 1, 1994.

CHAPTER 1244

An act to amend Section 13140.5 of the Health and Safety Code, and to amend Sections 18518.5 and 18804 of the Revenue and Taxation Code, relating to fire protection.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 13140.5 of the Health and Safety Code is amended to read:

13140.5. The board shall be composed of the following voting members: the State Fire Marshal, the Chief of Fire Protection of the Department of Forestry and Fire Protection, the Chief of the Fire and Rescue Division, Office of Emergency Services, one

representative of the insurance industry, one volunteer firefighter, four fire chiefs, six fire service labor representatives, one representative from city government, one representative from a fire district, and one representative from county government.

The following members shall be appointed by the Governor: one representative of the insurance industry, one volunteer firefighter, four fire chiefs, six fire service labor representatives, one representative from city government, one representative from a fire district, and one representative from county government. Each member appointed shall be a resident of this state. The volunteer firefighter shall be selected from a list of names recommended by statewide organizations representing volunteer firefighters with organization memberships exceeding 2,000 persons. Three of the fire chiefs appointed to the board shall be selected from a list of names recommended by the Board of Directors of the California Fire Chiefs' Association, Inc. and one fire chief shall be selected from a list of names submitted by the California Metropolitan Fire Chiefs. The six fire service labor representatives shall be selected from a list of names recommended by statewide employee organizations representing rank and file firefighters with organization memberships exceeding 2,000 firefighters, but not more than one fire service labor representative shall be selected from among persons recommended by any one of the employee organizations, unless each organization is represented on the membership of the board. The city government representative shall be selected from elected or appointed city chief administrative officers or elected city mayors or council members. The fire district representative shall be selected from elected or appointed directors of fire districts. The county government representative shall be selected from elected or appointed county chief administrative officers or elected county supervisors. The appointed members shall be appointed for a term of four years. Any member chosen by the Governor to fill a vacancy created other than by expiration of a term shall be appointed for the unexpired term of the member he or she is to succeed.

SEC. 2. Section 18518.5 of the Revenue and Taxation Code is amended to read:

18518.5. (a) This article shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes that date.

(b) (1) If, in any calendar year beginning on or after January 1, 1995, the Franchise Tax Board estimates by September 1 that contributions described in this article made on returns filed in that calendar year will be less than the minimum contribution amount prescribed by paragraph (2), or the adjusted amount specified in subdivision (c), as may be applicable, then this article is inoperative with respect to taxable years beginning on and after January 1 of that calendar year. The Franchise Tax Board shall estimate the annual contribution amount by September 1 of each year using the actual amounts known to be contributed and an estimate of the remaining

year's contributions.

(2) For purposes of this section, "minimum contribution amount" means two hundred fifty thousand dollars (\$250,000) for any calendar year.

(c) For each calendar year, beginning with calendar year 1996, the Franchise Tax Board shall adjust, on or before September 1 of that calendar year, the minimum contribution amount specified in subdivision (b) as follows:

(1) The minimum contribution amount for the calendar year shall be an amount equal to the product of the minimum contribution amount specified for the calendar year in paragraph (2) of subdivision (b) multiplied by the inflation factor adjustment as specified in paragraph (2) of subdivision (h) of Section 17041, rounded off to the nearest dollar.

(2) The inflation factor adjustment used for the calendar year shall be based on the figures for the percentage change in the California Consumer Price Index received on or before August 1 of the calendar year pursuant to paragraph (1) of subdivision (h) of Section 17041.

(d) Notwithstanding the repeal of this article, any contribution amounts designated pursuant to this article prior to its repeal shall continue to be transferred and disbursed in accordance with this article as in effect immediately prior to that repeal.

SEC. 2.5. Section 18804 of the Revenue and Taxation Code, as added by Senate Bill 1805, is amended to read:

18804. (a) This article shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes that date.

(b) (1) If, in any calendar year beginning on or after January 1, 1995, the Franchise Tax Board estimates by September 1 that contributions described in this article made on returns filed in that calendar year will be less than the minimum contribution amount prescribed by paragraph (2), or the adjusted amount specified in subdivision (c), as may be applicable, then this article is inoperative with respect to taxable years beginning on and after January 1 of that calendar year. The Franchise Tax Board shall estimate the annual contribution amount by September 1 of each year using the actual amounts known to be contributed and an estimate of the remaining year's contributions.

(2) For purposes of this section, "minimum contribution amount" means two hundred fifty thousand dollars (\$250,000) for any calendar year.

(c) For each calendar year, beginning with calendar year 1996, the Franchise Tax Board shall adjust, on or before September 1 of that calendar year, the minimum contribution amount specified in subdivision (b) as follows:

(1) The minimum contribution amount for the calendar year shall be an amount equal to the product of the minimum contribution amount specified for the calendar year in paragraph (2) of

subdivision (b) multiplied by the inflation factor adjustment as specified in paragraph (2) of subdivision (h) of Section 17041, rounded off to the nearest dollar.

(2) The inflation factor adjustment used for the calendar year shall be based on the figures for the percentage change in the California Consumer Price Index received on or before August 1 of the calendar year pursuant to paragraph (1) of subdivision (h) of Section 17041.

(d) Notwithstanding the repeal of this article, any contribution amounts designated pursuant to this article prior to its repeal shall continue to be transferred and disbursed in accordance with this article as in effect immediately prior to that repeal.

SEC. 3. (a) Section 2 of this bill shall become operative if SB 1805 is not enacted or if SB 1805 is enacted but does not repeal Section 18518.5 of the Revenue and Taxation Code and add Section 18804 to the Revenue and Taxation Code, in which case Section 2.5 of this bill shall not become operative.

(b) Section 2.5 of this bill shall become operative if SB 1805 is enacted and repeals Section 18518.5 of the Revenue and Taxation Code and adds Section 18804 to the Revenue and Taxation Code, in which case Section 2 shall not become operative.

CHAPTER 1245

An act to amend Sections 17207 and 24347.5 of, and to add Sections 196.97, 196.98, and 196.99 to, the Revenue and Taxation Code, relating to disaster relief, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 196.97 is added to the Revenue and Taxation Code, to read:

196.97. In the 1994-95 fiscal year, or as soon as possible thereafter, the county auditor of an eligible county, proclaimed by the Governor to be in a state of disaster as a result of fire or any other related casualty that occurred in the County of San Luis Obispo during August of 1994, shall certify to the Director of Finance an estimate of the total amount of the reduction in property tax revenues on both the regular secured roll and the supplemental roll for that fiscal year resulting from the reassessment of eligible properties by the county assessor pursuant to paragraph (1) of subdivision (a) of Section 170, except that the amount certified shall not include any estimated property tax revenue reductions to school districts (other than basic state aid school districts) and county offices of education. For

purposes of this section, "basic state aid school district" means any school district that does not receive a state apportionment pursuant to subdivision (h) of Section 42238 of the Education Code, but receives from the state only a basic apportionment pursuant to Section 6 of Article IX of the California Constitution.

SEC. 2. Section 196.98 is added to the Revenue and Taxation Code, to read:

196.98. After the county auditor of an eligible county, as described in Section 196.97, has made the applicable certification to the Director of Finance pursuant to Section 196.97, the director shall, within 30 days after verification of the county auditor's estimate, certify this amount to the Controller for allocation to the county. Upon receipt of certification from the Director of Finance, the Controller shall make the appropriate allocation to the county within 10 working days thereafter.

SEC. 3. Section 196.99 is added to the Revenue and Taxation Code, to read:

196.99. On or before December 31, 1995, each eligible county, as described in Section 196.97, shall compute and remit to the Controller for deposit in the General Fund an amount equal to the amount allocated to it by the Controller pursuant to Section 196.97, less the actual amount of its property tax revenue lost in the immediately preceding fiscal year on the regular secured and supplemental rolls with respect to eligible properties as a result of the reassessment of those properties pursuant to paragraph (1) of subdivision (a) of Section 170, excluding any property tax revenue lost by school districts (other than basic state aid school districts) and county offices of education. If the actual amount of property tax revenue lost by an eligible county in the immediately preceding fiscal year, as described and limited in the preceding sentence, exceeds the amount allocated by the Controller to that county pursuant to Section 196.98, the Controller shall allocate the amount of that excess to that eligible county. For purposes of this section, "basic state aid school district" means any school district that does not receive a state apportionment pursuant to subdivision (h) of Section 42238 of the Education Code, but receives from the state only a basic apportionment pursuant to Section 6 of Article IX of the California Constitution.

SEC. 4. Section 17207 of the Revenue and Taxation Code, as amended by Section 6.5 of Chapter 33 of the Statutes of 1994, is amended to read:

17207. (a) For disaster losses that qualify for treatment under Section 165(i) of the Internal Revenue Code, to the extent that those losses, as computed pursuant to Section 165(a) of the Internal Revenue Code, exceed the adjusted taxable income of the year of loss or, if the election under Section 165(i) of the Internal Revenue Code is made, the adjusted taxable income of the year preceding the loss, then that "excess loss," at the election of the taxpayer, may be carried to other taxable years as provided in subdivision (b), with respect to

disaster losses resulting from any of the following:

(1) Forest fire or any other related casualty occurring in 1985 in California.

(2) Storm, flooding, or any other related casualty occurring in 1986 in California.

(3) Any loss sustained during 1987 as a result of a forest fire or any other related casualty.

(4) Earthquake, aftershock, or any other related casualty occurring in 1987 in California.

(5) Earthquake, aftershock, or any other related casualty occurring in 1989 in California.

(6) Any loss sustained during 1990 as a result of fire or any other related casualty in California.

(7) For taxable years beginning on or after January 1, 1991, any loss sustained as a result of the Oakland/Berkeley Fire of 1991, or any other related casualty.

(8) Any loss sustained as a result of storm, flooding, or any other related casualty occurring in February 1992 in California.

(9) Earthquake, aftershock, or any other related casualty occurring in April 1992 in the County of Humboldt.

(10) Riots, arson, or any other related casualty occurring in April or May 1992 in California.

(11) Any loss sustained as a result of the earthquakes that occurred in the County of San Bernardino in June and July of 1992, or any other related casualty.

(12) Any loss sustained as a result of the Fountain Fire that occurred in the County of Shasta, or as a result of either of the fires in the Counties of Calaveras and Trinity that occurred in August 1992, or any other related casualty.

(13) Any loss sustained as a result of a fire that occurred in the County of Los Angeles, Orange, Riverside, San Bernardino, San Diego, or Ventura, during October or November of 1993, or any other related casualty.

(14) Any loss sustained as a result of the earthquake, aftershocks, or any other related casualty that occurred in the Counties of Los Angeles, Orange, and Ventura on or after January 17 in 1994.

(15) Any loss sustained as a result of a fire that occurred in the County of San Luis Obispo during August of 1994, or any other related casualty.

(b) For losses covered by Sections 165(c) (1) and 165(c) (2) of the Internal Revenue Code, relating to trade or business losses, losses resulting from transactions entered into for profit, and for losses covered by Section 165(c) (3) of the Internal Revenue Code, relating to personal casualty losses, the "excess loss" may be carried forward to each of the five taxable years following the year the loss is claimed. However, if there is any "excess loss" remaining after the five-year period, then 50 percent of that "excess loss" may be carried forward to each of the next 10 taxable years.

(c) The entire amount of any "excess loss" as defined in

subdivision (a) shall be carried to the earliest of the taxable years to which, by reason of subdivision (b), the loss may be carried. The portion of the loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of "excess loss" over the sum of the adjusted taxable income for each of the prior taxable years to which that "excess loss" may be carried.

(d) The provisions of this section and Section 165(i) of the Internal Revenue Code shall be applicable to any of the following losses sustained in any county or city in this state which was proclaimed by the Governor to be in a state of disaster:

(1) Any loss sustained during February 1986 as a result of storm, flooding, or any other related casualty.

(2) Any loss sustained during 1987 as a result of forest fire or any other related casualty.

(3) Any loss sustained during October 1987 as the result of earthquake, aftershock, or any other related casualty.

(4) Any loss resulting from the earthquake which occurred in October 1989, aftershock, or any other related casualty.

(5) Any loss sustained during 1990 as the result of fire in the County of Santa Barbara.

(6) Any loss sustained as a result of storm, flooding, or any other related casualty occurring in February 1992 in California.

(7) For taxable years beginning on or after January 1, 1991, any loss sustained as a result of the Oakland/Berkeley Fire of 1991, or any other related casualty.

(8) Any loss sustained during April 1992 as a result of earthquake, aftershock, or any other related casualty in the County of Humboldt.

(9) Any loss sustained during April or May 1992 as a result of riots, arson, or any other related casualty.

(10) Any loss sustained as a result of earthquakes that occurred in the County of San Bernardino in June and July of 1992, or any other related casualty.

(11) Any loss sustained as a result of the Fountain Fire that occurred in the County of Shasta, or as a result of either of the fires in the Counties of Calaveras and Trinity that occurred in August 1992, or any other related casualty.

(12) Any loss sustained as a result of a fire that occurred in the County of Los Angeles, Orange, Riverside, San Bernardino, San Diego, or Ventura, during October or November of 1993, or any other related casualty.

(13) Any loss sustained as a result of the earthquake, aftershocks, or any other related casualty that occurred in the Counties of Los Angeles, Orange, and Ventura on or after January 17 in 1994.

(14) Any loss sustained as a result of a fire that occurred in the County of San Luis Obispo during August of 1994, or any other related casualty.

(e) Losses described in this section may not be taken into account in computing a net operating loss deduction under Section 17201, as modified by Sections 17276, 17276.1, and 17276.2.

(f) For purposes of this section, "adjusted taxable income" shall be defined by Section 1212(b)(2)(B) of the Internal Revenue Code.

(g) For losses described in paragraphs (13), (14), and (15) of subdivision (a) and paragraphs (12), (13), and (14) of subdivision (d), the election under Section 165(i) of the Internal Revenue Code may be made on a return or amended return filed on or before the due date of the return (determined with regard to extension) for the taxable year in which the disaster occurred.

SEC. 5. Section 24347.5 of the Revenue and Taxation Code is amended to read:

24347.5. (a) In lieu of Section 24347, Section 165(i) of the Internal Revenue Code, relating to disaster losses, shall apply to each of the following:

(1) Forest fire or any other related casualty occurring in 1985 in California.

(2) Storm, flooding, or any other related casualty occurring in 1986 in California.

(3) Any loss sustained during 1987 as a result of a forest fire or any other related casualty.

(4) Earthquake, aftershock, or any other related casualty occurring in October 1987 in California.

(5) Earthquake, aftershock, or any related casualty occurring in October 1989 in California.

(6) Any loss sustained during 1990 as a result of fire or any other related casualty in California.

(7) Earthquake, aftershock, or any other related casualty occurring in April 1992 in the County of Humboldt.

(8) Riots, arson, or any other related casualty occurring in April or May 1992 in California.

(9) Any loss sustained as a result of a fire that occurred in the County of Los Angeles, Orange, Riverside, San Bernardino, San Diego, or Ventura, during October or November of 1993, or any other related casualty.

(10) Any loss sustained as a result of the earthquake, aftershocks, or any other related casualty that occurred in the Counties of Los Angeles, Orange, and Ventura on or after January 17 in 1994.

(11) Any loss sustained as a result of a fire that occurred in the County of San Luis Obispo during August of 1994, or any other related casualty.

(b) To the extent that losses under subdivision (a) exceed the net income of the year of loss or, if the election under Section 165(i) of the Internal Revenue Code is made, the net income of the year preceding the loss, then that "excess loss," at the election of the taxpayer, may be carried forward to each of the five income years following the income year the loss is claimed. However, if there is any "excess loss" remaining after the five-year period, then 50 percent of that "excess loss" may be carried forward to each of the next 10 income years.

(c) The entire amount of any "excess loss" as defined in

subdivision (b) shall be carried to the earliest of the income years to which, by reason of subdivision (b), the loss may be carried. The portion of the loss which shall be carried to each of the other income years shall be the excess, if any, of the amount of "excess loss" over the sum of the net income for each of the prior income years to which that "excess loss" may be carried.

(d) This section and Section 165(i) of the Internal Revenue Code shall be applicable to any of the following losses sustained in any county or city in this state which was proclaimed by the Governor to be in a state of disaster:

(1) Any loss sustained during February 1986 as a result of storm, flooding, or any other related casualty.

(2) Any loss sustained during 1987 as a result of forest fire or any other related casualty.

(3) Any loss sustained during October 1987 as the result of earthquake, aftershock, or any other related casualty.

(4) Any loss resulting from the earthquake which occurred in October 1989, aftershock, or any other related casualty.

(5) Any loss sustained during 1990 as the result of fire in the County of Santa Barbara.

(6) Any loss sustained during April 1992 as a result of earthquake, aftershock, or any other related casualty in the County of Humboldt.

(7) Any loss sustained during April or May 1992 as a result of riots, arson, or any other related casualty.

(8) Any loss sustained as a result of a fire that occurred in the County of Los Angeles, Orange, Riverside, San Bernardino, San Diego, or Ventura, during October or November of 1993, or any other related casualty.

(9) Any loss sustained as a result of the earthquake, aftershocks, or any other related casualty that occurred in the Counties of Los Angeles, Orange, and Ventura on or after January 17 in 1994.

(10) Any loss sustained as a result of a fire that occurred in the County of San Luis Obispo during August of 1994, or any other related casualty.

(e) Any corporation subject to the provisions of Section 25101 or 25101.15 that has disaster losses pursuant to this section, shall determine the "excess loss" to be carried to other income years under the principles specified in Section 25108 relating to net operating losses.

(f) Losses described in this section may not be taken into account in computing a net operating loss deduction under Section 24416 or 24416.1.

(g) For losses described in paragraphs (9), (10), and (11) of subdivision (a) and paragraphs (8), (9), and (10) of subdivision (d), the election under Section 165(i) of the Internal Revenue Code may be made on a return or amended return filed on or before the due date of the return (determined with regard to extension) for the income year in which the disaster occurred.

SEC. 6. The Legislature finds and declares that this act fulfills a

statewide public purpose because of both of the following:

(a) The Governor of California has officially proclaimed that the fire that occurred in the County of San Luis Obispo during August of 1994 was a disaster, thus qualifying persons affected for various forms of governmental assistance and relief.

(b) This act is consistent with and supplements the proclaimed disaster relief by providing necessary tax relief to affected taxpayers to allow them to repair damage to, and to restore, their homes and businesses.

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

In order to promptly provide vitally necessary relief and facilitate the recovery from the heavy damage that was inflicted by the fire that occurred in the County of San Luis Obispo, it is necessary that this act take effect immediately.

CHAPTER 1246

An act to amend Sections 1337, 1337.2, 1337.6, 1337.7, and 1727 of, to add Sections 1337.9, 1338.5, 1736.1, 1736.2, 1736.3, 1736.4, 1736.5, and 1736.6 to, and to repeal and add Section 1337.8 of, the Health and Safety Code, to add Sections 12302.3 and 15755 to, and to add Article 9 (commencing with Section 15670) to Chapter 11 of Part 3 of Division 9 of the Welfare and Institutions Code, relating to elder and dependent adults.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 1337 of the Health and Safety Code is amended to read:

1337. (a) The Legislature finds that the quality of patient care in skilled nursing and intermediate care facilities is dependent upon the competence of the personnel who staff its facilities. The Legislature further finds that direct patient care in skilled nursing and intermediate care facilities is currently rendered largely by certified nurse assistants. To assure the availability of trained personnel in skilled nursing and intermediate care facilities, the Legislature intends that all such facilities in this state participate in approved training programs established under this article. This article shall not apply to intermediate care facilities/developmentally disabled habilitative which have staff training programs approved by the State Department of Developmental Services, general acute care hospitals, acute

psychiatric hospitals, or special hospitals.

(b) The requirement that certified nurse assistants obtain a criminal record clearance upon certification and biannually thereafter shall apply regardless of the setting in which the certified nurse assistant is employed.

(c) The department shall develop procedures to ensure that certified nurse assistants employed by intermediate care facilities for the developmentally disabled/habilitative and intermediate care facilities for the developmentally disabled/nursing shall not be required to obtain multiple criminal record clearances.

(d) For the purpose of this article:

(1) "Nurse assistant" means any unlicensed aide, assistant, or orderly, who performs nursing services directed at the safety, comfort, personal hygiene, or protection of patients in a skilled nursing or intermediate care facility.

(2) "Approved training program" means a program for the training of nurse assistants that meets the criteria established and approved under this chapter.

(3) "Certified nurse assistant" means any person who holds himself or herself out as a certified nurse assistant and who, for compensation, performs basic patient care services directed at the safety, comfort, personal hygiene, and protection of patients, and is certified as having completed the requirements of this article. These services shall not include any services which may only be performed by a licensed person and otherwise shall be performed under the supervision of a registered nurse, as defined in Section 2725 of the Business and Professions Code, or a licensed vocational nurse, as defined in Section 2859 of the Business and Professions Code.

(4) "State department" means the State Department of Health Services.

SEC. 2. Section 1337.2 of the Health and Safety Code is amended to read:

1337.2. (a) An applicant for certification as a certified nurse assistant shall comply with each of the following:

(1) Be at least 16 years of age.

(2) Have successfully completed a training program approved by the department, which includes an examination to test the applicant's knowledge and skills related to basic patient care services.

(3) Obtain a criminal record clearance pursuant to Section 1338.5.

(b) The state department may establish procedures for issuing certificates which recognize certification programs in other states and countries.

(c) Upon written application, criminal record clearance pursuant to Section 1338.5, and documentation of passing an appropriate competency examination, the state department may issue a certificate to any applicant who possesses a valid state license as either a licensed vocational nurse or a registered nurse issued by any other state or foreign country, and who, in the opinion of the state

department, has the qualifications specified in this article.

(d) Upon written application, criminal record clearance pursuant to Section 1338.5, and documentation of passing an appropriate examination, the state department may issue a certificate to any applicant who has completed the fundamentals of nursing courses in a school for registered nurses, approved by the Board of Registered Nursing, or in a school for licensed vocational nurses, approved by the Board of Vocational Nurse and Psychiatric Technician Examiners, which are substantially equivalent to the certification training program specified in this article.

(e) Every person certified as a nurse assistant under this article may be known as a "certified nurse assistant" and may place the letters CNA after his or her name when working in a licensed health facility. An individual working independently, providing personal care services, may not advertise or represent himself or herself as a certified nurse assistant.

(f) Any person holding a nurse assistant certificate issued by the state department prior to January 1, 1988, may continue to hold himself or herself out as a certified nurse assistant until January 1, 1991. Thereafter, it shall be unlawful for any person not certified under this article to hold himself or herself out to be a certified nurse assistant. Any person willfully making any false representation as being a certified nurse assistant is guilty of a misdemeanor.

(g) Any person who violates this article is guilty of a misdemeanor and, upon a conviction thereof, shall be punished by imprisonment in the county jail for not more than 180 days, or by a fine of not less than twenty dollars (\$20) nor more than one thousand dollars (\$1,000), or by both such fine and imprisonment.

SEC. 3. Section 1337.6 of the Health and Safety Code is amended to read:

1337.6. (a) Certificates issued under this article shall be renewed every two years and renewal shall be conditional upon the occurrence of all of the following:

(1) The certificate holder submitting documentation of completion of 48 hours of in-service training every two years obtained through an approved training program or taught by a director of staff development for a licensed skilled nursing or intermediate care facility that has been approved by the state department, or by individuals or programs approved by the state department. At least 12 of the 48 hours of in-service training shall be completed in each of the two years.

(2) The certificate holder obtaining a criminal record clearance.

(b) Certificates issued under this article shall expire on the certificate holder's birthday. If the certificate is renewed more than 30 days after its expiration, the certificate holder, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this article.

(c) To renew an unexpired certificate, the certificate holder shall, on or before the certificate expiration date, apply for renewal on a

form provided by the state department, pay the renewal fee prescribed by this article, and submit documentation of the required in-service training.

(d) The state department shall give written notice to a certificate holder 90 days in advance of the renewal date and, 90 days in advance of the expiration of the fourth year that a renewal fee has not been paid, and shall give written notice informing the certificate holder, in general terms, of the provisions of this article. Nonreceipt of the renewal notice does not relieve the certificate holder of the obligation to make a timely renewal. Failure to make a timely renewal shall result in expiration of the certificate.

(e) Except as otherwise provided in this article, an expired certificate may be renewed at any time within four years after its expiration on the filing of an application for renewal on a form prescribed by the state department, and payment of the renewal fee in effect on the date the application is filed, and documentation of the required in-service education.

Renewal under this article shall be effective on the date on which the application is filed, on the date when the renewal fee is paid, or on the date on which the delinquency fee is paid, whichever occurs last. If so renewed, the certificate shall continue in effect until the date provided for in this article, when it shall expire if it is not again renewed.

(f) If a certified nurse assistant applies for renewal more than 30 days after expiration but within four years after the expiration, and demonstrates in writing to the state department's satisfaction why the renewal application was late, then the state department shall issue a renewal, upon payment of the renewal fee. If the certified nurse assistant demonstrates in writing to the state department's satisfaction why the certified nurse assistant cannot pay the delinquency fee, then the state department on a case-by-case basis shall consider waiving the delinquency fee. A suspended certificate is subject to expiration and shall be renewed as provided in this article, but this renewal does not entitle the certificate holder, while the certificate remains suspended, and, until it is reinstated, to engage in the certified activity, or in any other activity or conduct in violation of the order or judgment by which the certificate was suspended.

(g) A revoked certificate is subject to expiration as provided in this article, but it cannot be renewed. If reinstatement of the certificate is approved by the state department, the certificate holder, as a condition precedent to reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the date the application for reinstatement is filed, plus the delinquency fee, if any, accrued at the time of its revocation.

(h) A certificate that is not renewed within four years after its expiration cannot be renewed, restored, reissued, or reinstated except upon completion of a certification program unless deemed otherwise by the state department if all of the following conditions

are met:

(1) No fact, circumstance, or condition exists that, if the certificate were issued, would justify its revocation or suspension.

(2) The person pays the application fee provided for by this article.

(3) The person takes and passes any examination that may be required of an applicant for a new certificate at that time, that shall be given by an approved provider of a certification training program.

(i) Certificate holders shall notify the department within 60 days of any change of address. Any notice sent by the department shall be effective if mailed to the current address filed with the department.

SEC. 4. Section 1337.7 of the Health and Safety Code is amended to read:

1337.7. (a) Fees shall be submitted with nurse assistant applications and certificate renewal applications. The department shall collect fees for late renewals and replacement certificates according to the following schedule:

(1) The renewal fee for certified nurse assistants shall be no more than twenty-five dollars (\$25), and shall include the costs for a criminal background check.

(2) The delinquency fee for late renewals is ten dollars (\$10).

(3) The duplicate fee for lost certificates is five dollars (\$5).

(b) The penalty for submitting insufficient funds or any fictitious check, draft, or order on any bank or depository for payment of any fee to the state department shall be ten dollars (\$10).

SEC. 5. Section 1337.8 of the Health and Safety Code is repealed.

SEC. 6. Section 1337.8 is added to the Health and Safety Code, to read:

1337.8. (a) The state department shall investigate complaints concerning misconduct by certified nurse assistants and may take disciplinary action pursuant to Section 1337.9.

(b) The state department shall maintain a registry that includes the certification status of all certified nurse assistants, including the status of any proposed or completed disciplinary actions.

(c) Long-term health care facilities, as defined in Section 1418, that hire certified nursing assistants shall consult the state department's registry prior to hiring these individuals or placing them in direct contact with patients.

SEC. 7. Section 1337.9 is added to the Health and Safety Code, to read:

1337.9. (a) The state department may deny an application for, or initiate an action to suspend or revoke, a nurse assistant, or deny a training and examination application.

(b) The state department shall deny a training and examination application and deny, suspend, or revoke a certificate issued under this article if the applicant or certificate holder has been convicted of a violation or attempted violation of any one or more of the following Penal Code provisions: Section 187, subdivision (a) of Section 192, Section 203, 205, 206, 207, 209, 210, 210.5, 211, 220, 222,

243.4, 245, 261, 262, or 264.1, Sections 265 to 267, inclusive, Section 273a, 273.5, or 285, subdivisions (c), (d), (f), and (g) of Section 286, Section 288, subdivisions (c), (d), (f), and (g) of Section 288a, Section 288.5, 289, 289.5, 368, 451, 459, 470, 475, 484, or 484b, Sections 484d to 484j, inclusive, Section 487, 503, or 518, unless any of the following applies:

(1) The person was convicted of a felony and has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of the Penal Code and the information or accusation against him or her has been dismissed pursuant to Section 1203.4 of the Penal Code.

(2) The person was convicted of a misdemeanor and the information or accusation against him or her has been dismissed pursuant to Section 1203.4 or 1203.4a of the Penal Code.

(3) The certificate holder was convicted of a felony or a misdemeanor, but has previously disclosed the fact of each conviction to the department, and the department has made a determination in accordance with law that the conviction does not disqualify the applicant from certification.

(c) An application or certificate shall be denied, suspended, or revoked upon conviction in another state of an offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses set forth in subdivision (b), unless evidence of rehabilitation comparable to the certificate of rehabilitation or dismissal of a misdemeanor set forth in paragraph (1) or (2) of subdivision (b) is provided.

(d) The state department may deny an application or deny, suspend, or revoke a certificate issued under this article for any of the following:

(1) Unprofessional conduct, including, but not limited to, incompetence, gross negligence unless due to circumstances beyond the nurse assistant's control, physical, mental, or verbal abuse of patients or misappropriation of property of patients or others.

(2) Conviction of a crime substantially related to the qualifications, functions, and duties of a certified nurse assistant, irrespective of a subsequent order under Section 1203.4, 1203.4a, or 4852.13 of the Penal Code, where the state department determines that the applicant or certificate holder has not adequately demonstrated that he or she has been rehabilitated and will present a threat to the health, safety, or welfare of patients.

(3) Conviction for, or use of, any controlled substance as defined in Division 10 (commencing with Section 11000), or any dangerous drug, as defined in Article 7 (commencing with Section 4211) of Chapter 9, or alcoholic beverages, to an extent or in a manner dangerous or injurious to the certified nurse assistant, any other person, or the public, to the extent that this use would impair the ability to conduct, with safety to the public, the practice authorized by a certificate.

(4) Procuring a certified nurse assistant certificate by fraud or

misrepresentation or mistake.

(5) Making or giving any false statement or information in conjunction with the application for issuance of a nurse assistant certificate or training and examination application.

(6) Impersonating any applicant, or acting as proxy for an applicant, in any examination required under this article for the issuance of a certificate.

(7) Impersonating another certified nurse assistant, a licensed vocational nurse, or a registered nurse, or permitting or allowing another person to use a certificate for the purpose of providing nursing services.

(8) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of, this article.

(e) When the state department determines that a certificate shall be suspended, the state department shall specify the period of actual suspension. The state department may determine that the suspension shall be stayed, placing the certificate holder on probation with specified conditions for a period not to exceed two years. When the state department determines that probation is the appropriate action, the certificate holder shall be notified that in lieu of the state department proceeding with a formal action to suspend the certification and in lieu of an appeal pursuant to subdivision (h), the certificate holder may request to enter into a diversion program agreement. A diversion program agreement shall specify terms and conditions related to matters, including, but not limited to, work performance, rehabilitation, training, counseling, progress reports, and treatment programs. If a certificate holder successfully completes a diversion program, no action shall be taken upon the allegations that were the basis for the diversion agreement. Upon failure of the certificate holder to comply with the terms and conditions of an agreement, the state department may proceed with a formal action to suspend or revoke the certification.

(f) A plea or verdict of guilty, or a conviction following a plea of nolo contendere shall be deemed a conviction within the meaning of this article. The state department may deny an application or deny, suspend, or revoke a certification based on a conviction as provided in this article when the judgment of conviction is entered or when an order granting probation is made suspending the imposition of sentence.

(g) Upon determination to deny an application or deny, revoke, or suspend a certificate, the state department shall notify the applicant or certificate holder in writing by certified mail of all of the following:

(1) The reasons for the determination.

(2) The applicant's or certificate holder's right to appeal the determination if the determination was made under subdivision (d).

(h) (1) Upon written notification that the state department has determined that an application shall be denied or a certificate shall

be denied, suspended, or revoked under subdivision (d), the applicant or certificate holder may request an administrative hearing by submitting a written request to the state department within 20 business days of receipt of the written notification. Notwithstanding Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, upon receipt of a written request, the state department shall hold an administrative hearing providing the applicant or certificate holder with all of the following:

(A) The opportunity to present his or her position, orally or in writing, with or without legal representation.

(B) The opportunity to subpoena and cross-examine witnesses.

(2) Hearings under this section shall be conducted by hearing officers designated by the director at a location, other than the work facility, convenient to the applicant or certificate holder. The hearing shall be tape recorded and a written decision shall be sent by certified mail to the applicant or certificate holder within 30 calendar days of the hearing. Except as specified in subdivision (i), the effective date of an action to revoke or suspend a certificate shall be specified in the written decision, or if no administrative hearing is timely requested, the effective date will be 21 business days from written notification of the department's determination to revoke or suspend.

(i) The state department may revoke or suspend a certificate prior to any hearing when immediate action is necessary in the judgment of the director to protect the public welfare. Notice of this action, including a statement of the necessity of immediate action to protect the public welfare, shall be sent in accordance with subdivision (g). If the certificate holder requests an administrative hearing pursuant to subdivision (h), the state department shall hold the administrative hearing as soon as possible but not later than 30 calendar days from receipt of the request for a hearing. A written hearing decision upholding or setting aside the action shall be sent by certified mail to the certificate holder within 30 calendar days of the hearing.

(j) Upon the expiration of the term of suspension, he or she shall be reinstated by the state department and shall be entitled to resume practice unless it is established to the satisfaction of the state department that the person has practiced as a certified nurse assistant in California during the term of suspension. In this event, the state department shall revoke the person's certificate.

(k) Upon a determination to deny an application or deny, revoke, or suspend a certificate, the department shall notify the employer of the applicant or certificate holder in writing of that determination, and whether the determination is final, or whether a hearing is pending relating to this determination. If a licensee or facility is required to deny employment or terminate employment of the employee based upon notice from the state that the employee is determined to be unsuitable for employment under this section, the

licensee or facility shall not incur criminal, civil, unemployment insurance, workers compensation, or administrative liability as a result of that denial or termination.

SEC. 8. Section 1338.5 is added to the Health and Safety Code, to read:

1338.5. A criminal record clearance shall be made for all nurse assistants. This record clearance shall be completed prior to issuing or renewing a certificate. For purposes of this section, the department shall utilize the California Law Enforcement Telecommunications System (CLETS) as established pursuant to Chapter 2.5 (commencing with Section 15150) of Part 6 of Division 3 of Title 2 of the Government Code.

(a) Upon enrolling in a training program for nurse assistant certification, a candidate for training shall submit a training and examination application to the department to receive a criminal record review.

(b) The application shall include a question concerning whether the applicant has been convicted of any crime, other than a minor traffic violation. The department may request any or all of the following information in order to accurately establish the applicant's identity when comparing the information to the CLETS data:

- (1) Name.
- (2) Aliases.
- (3) Address.
- (4) Social security number.
- (5) Date of birth.
- (6) Driver's license number.

(c) If the data obtained from CLETS indicates that the applicant has a criminal conviction other than a minor traffic violation, prior to taking any action, the department shall notify the applicant, within 15 business days upon receipt of the applicant's training and examination application, to request a response. If the applicant disputes that he or she is the subject of this data and the question of identity cannot be resolved, the department may require the applicant to submit fingerprints on cards furnished by the department. If the department determines fingerprints are required, the applicant shall be responsible to pay for the cost of fingerprinting and processing. If the fingerprint search demonstrates that the applicant does not have a criminal conviction, the department shall reimburse the applicant for the cost of fingerprinting and processing. Failure to submit fingerprint cards within 15 days of receipt of notice from the department may result in denial of the training and examination application or immediate suspension of certification pursuant to subdivision (i) of Section 1337.9.

(d) Upon receipt, the department shall submit the fingerprints to the Department of Justice. Submission of the fingerprints to the Federal Bureau of Investigation shall be at the discretion of the state department.

(e) Upon receipt of the fingerprints, the Department of Justice shall notify the state department of the criminal record information, as provided for in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the state department with a statement of that fact. If the fingerprints are illegible, the Department of Justice shall, within 15 calendar days from receipt of the fingerprints, notify the state department of that fact.

(f) The department shall respond to the applicant and employer within 30 days from the date of receipt of the fingerprint cards.

(g) If the state department has reason to believe that the criminal report obtained through CLETS is inaccurate, they may request the provider to submit fingerprints following the process outlined in paragraphs (c), (d), and (e) of this section.

(h) A criminal record clearance, consistent with this section shall be implemented for nursing assistant applicants beginning July 1, 1995, and phased in for all renewals of certificates by June 30, 1997.

(i) If for any reason the department is unable to commence the criminal record clearance requirement for the issuing or renewing of certificates by July 1, 1995, the department shall continue to issue and renew certificates without a criminal records clearance until such time as the department is able to perform these clearances.

SEC. 9. Section 1727 of the Health and Safety Code is amended to read:

1727. (a) "Home health agency" means a private or public organization, including, but not limited to, any partnership, corporation, political subdivision of the state, or other government agency within the state, which provides, or arranges for the provision of, skilled nursing services, to persons in their temporary or permanent place of residence.

(b) "Skilled nursing services" means services provided by a registered nurse or licensed vocational nurse.

(c) "Home Health Aide" means an aide who has successfully completed a state-approved training program, is employed by a home health agency or hospice program, and provides personal care services in the patient's home.

(d) "Home health aide services" means personal care services provided under a plan of treatment prescribed by the patient's physician and surgeon who is licensed to practice medicine in the state. Home health aide services shall be provided by a person certified by the state department as a home health aide pursuant to this chapter. Services which do not involve personal care services provided under a plan of treatment prescribed by a physician and surgeon may be provided by a person who is not a certified home health aide. Home health aide services shall not include services provided pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code.

SEC. 10. Section 1736.1 is added to the Health and Safety Code, to read:

1736.1. (a) An applicant for certification as a certified home health aide shall comply with each of the following requirements:

(1) Have successfully completed a training program approved by the department pursuant to applicable federal and state regulations.

(2) Obtain a criminal record clearance pursuant to Section 1736.6.

(b) Any person who violates this article is guilty of a misdemeanor and, upon a conviction thereof, shall be punished by imprisonment in the county jail for not more than 180 days, or by a fine of not less than twenty dollars (\$20) nor more than one thousand dollars (\$1,000), or by both fine and imprisonment.

SEC. 11. Section 1736.2 is added to the Health and Safety Code, to read:

1736.2. It is the intent of the Legislature that a certificate renewal or alternative process be developed to provide ongoing criminal record checks of certified home health aides by January 1, 1997.

SEC. 12. Section 1736.3 is added to the Health and Safety Code, to read:

1736.3. (a) Fees shall be submitted with home health aide training applications according to the following schedule:

(1) The training application fee shall be fifteen dollars (\$15) which includes the cost of the criminal record check pursuant to Section 1736.6.

(2) The duplicate fee for lost certificates shall be five dollars (\$5).

(b) The penalty for submitting insufficient funds or any fictitious check, draft, or order on any bank or depository for payment of any fee to the state department shall be ten dollars (\$10).

SEC. 13. Section 1736.4 is added to the Health and Safety Code, to read:

1736.4. (a) The state department shall investigate complaints concerning misconduct by certified home health aides and may take disciplinary action pursuant to Section 1736.5.

(b) The department shall maintain a registry that includes the certification status of all certified home health aides, including the status of any proposed or completed disciplinary actions.

(c) Home health agencies, as defined in subdivision (a) of Section 1727, and hospice providers, as defined in subdivision (b) of Section 1745, that hire certified home health aides after July 1, 1997, shall consult the state department's registry prior to hiring these individuals or placing them in direct contact with patients.

SEC. 14. Section 1736.5 is added to the Health and Safety Code, to read:

1736.5. (a) The state department shall deny a training application and deny, suspend, or revoke a certificate issued under this article if the applicant or certificate holder has been convicted of a violation or attempted violation of any of the following Penal Code provisions: Section 187, subdivision (a) of Section 192, Section 203, 205, 206, 207, 209, 210, 210.5, 211, 220, 222, 243.4, 245, 261, 262, or 264.1, Sections 265 to 267, inclusive, Section 273a, 273.5, or 285, subdivisions (c), (d), (f), and (g) of Section 286, Section 288,

subdivisions (c), (d), (f), and (g) of Section 288a, Section 288.5, 289, 289.5, 368, 451, 459, 470, 475, 484, or 484b, Sections 484d to 484j, inclusive, Section 487, 503, or 518, unless any of the following apply:

(1) The person was convicted of a felony and has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of the Penal Code and the information or accusation against him or her has been dismissed pursuant to Section 1203.4 of the Penal Code.

(2) The person was convicted of a misdemeanor and the information or accusation against him or her has been dismissed pursuant to Section 1203.4 or 1203.4a of the Penal Code.

(3) The certificate holder was convicted of a felony or a misdemeanor, but has previously disclosed the fact of each conviction to the department, and the department has made a determination in accordance with law that the conviction does not disqualify the applicant from certification.

(b) An application or certificate shall be denied, suspended, or revoked upon conviction in another state of an offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses set forth in subdivision (a), unless evidence of rehabilitation comparable to the certificate of rehabilitation or dismissal of a misdemeanor set forth in paragraph (1) or (2) of subdivision (a) is provided.

(c) The state department may deny an application or deny, suspend, or revoke a certificate issued under this article for any of the following:

(1) Unprofessional conduct, including, but not limited to, incompetence, gross negligence, physical, mental, or verbal abuse of patients, or misappropriation of property of patients or others.

(2) Conviction of a crime substantially related to the qualifications, functions, and duties of a home health aide, irrespective of a subsequent order under Section 1203.4, 1203.4a, or 4852.13 of the Penal Code, where the state department determines that the applicant or certificate holder has not adequately demonstrated that he or she has been rehabilitated and will present a threat to the health, safety, or welfare of patients.

(3) Conviction for, or use of, any controlled substance as defined in Division 10 (commencing with Section 11000), or any dangerous drug, as defined in Article 7 (commencing with Section 4211) of Chapter 9, or alcoholic beverages, to an extent or in a manner dangerous or injurious to the home health aide, any other person, or the public, to the extent that this use would impair the ability to conduct, with safety to the public, the practice authorized by a certificate.

(4) Procuring a home health aide certificate by fraud or misrepresentation or mistake.

(5) Making or giving any false statement or information in conjunction with the application for issuance of a home health aide certificate or training and examination application.

(6) Impersonating any applicant, or acting as proxy for an applicant, in any examination required under this article for the issuance of a certificate.

(7) Impersonating another home health aide, a licensed vocational nurse, or a registered nurse, or permitting or allowing another person to use a certificate for the purpose of providing nursing services.

(8) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of, this article.

(d) When the state department determines that a certificate shall be suspended, the state department shall specify the period of actual suspension. The state department may determine that the suspension shall be stayed, placing the certificate holder on probation with specified conditions for a period not to exceed two years. When the state department determines that probation is the appropriate action, the certificate holder shall be notified that in lieu of the state department proceeding with a formal action to suspend the certification and in lieu of an appeal pursuant to subdivision (g), the certificate holder may request to enter into a diversion program agreement. A diversion program agreement shall specify terms and conditions related to matters, including, but not limited to, work performance, rehabilitation, training, counseling, progress reports, and treatment programs. If a certificate holder successfully completes a diversion program, no action shall be taken upon the allegations that were the basis for the diversion agreement. Upon failure of the certificate holder to comply with the terms and conditions of an agreement, the state department may proceed with a formal action to suspend or revoke the certification.

(e) A plea or verdict of guilty, or a conviction following a plea of nolo contendere, shall be deemed a conviction within the meaning of this article. The state department may deny an application or deny, suspend, or revoke a certification based on a conviction as provided in this article when the judgment of conviction is entered or when an order granting probation is made suspending the imposition of sentence.

(f) Upon determination to deny an application or deny, revoke, or suspend a certificate, the state department shall notify the applicant or certificate holder in writing by certified mail of all of the following:

(1) The reasons for the determination.

(2) The applicant's or certificate holder's right to appeal the determination if the determination was made under subdivision (c).

(g) (1) Upon written notification that the state department has determined that an application shall be denied or a certificate shall be denied, suspended, or revoked under subdivision (c), the applicant or certificate holder may request an administrative hearing by submitting a written request to the state department within 20 business days of receipt of the written notification.

Notwithstanding Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, upon receipt of a written request, the state department shall hold an administrative hearing providing the applicant or certificate holder with all of the following:

(A) The opportunity to present his or her position, orally or in writing, with or without legal representation.

(B) The opportunity to subpoena and cross-examine witnesses.

(2) Hearings under this section shall be conducted by hearing officers designated by the director at a location other than the work facility convenient to the applicant or certificate holder. The hearing shall be tape recorded and a written decision shall be sent by certified mail to the applicant or certificate holder within 30 calendar days of the hearing. Except as specified in subdivision (h), the effective date of an action to revoke or suspend a certificate shall be specified in the written decision, or if no administrative hearing is timely requested, the effective date will be 21 business days from written notification of the department's determination to revoke or suspend.

(h) The state department may revoke or suspend a certificate prior to any hearing when immediate action is necessary in the judgment of the director to protect the public welfare. Notice of this action, including a statement of the necessity of immediate action to protect the public welfare, shall be sent in accordance with subdivision (f). If the certificate holder requests an administrative hearing pursuant to subdivision (g), the state department shall hold the administrative hearing as soon as possible but not later than 30 calendar days from receipt of the request for a hearing. A written hearing decision upholding or setting aside the action shall be sent by certified mail to the certificate holder within 30 calendar days of the hearing.

(i) Upon the expiration of the term of suspension, he or she shall be reinstated by the state department and shall be entitled to resume practice unless it is established to the satisfaction of the state department that the person has practiced as a home health aide in California during the term of suspension. In this event, the state department shall revoke the person's certificate.

(j) Upon a determination to deny an application or deny, revoke, or suspend a certificate, the department shall notify the employer of the applicant or certificate holder in writing of that determination, and whether the determination is final, or whether a hearing is pending relating to this determination. If a licensee or facility is required to deny employment or terminate employment of the employee based upon notice from the state that the employee is determined to be unsuitable for employment under this section, the licensee or facility shall not incur criminal, civil, unemployment insurance, workers' compensation, or administrative liability as a result of that denial or termination.

SEC. 15. Section 1736.6 is added to the Health and Safety Code,

to read:

1736.6. A criminal record clearance shall be made for all home health aides. This record clearance shall be completed prior to issuing a certificate. For purposes of this section, the state department shall utilize the California Law Enforcement Telecommunications System (CLETS) as established pursuant to Chapter 2.5 (commencing with Section 15150) of Part 6 of Division 3 of Title 2 of the Government Code.

(a) Upon enrolling in a training program for home health aide certification, a candidate for training shall submit a training and examination application to the state department to receive a criminal record review.

(b) The application shall include a question concerning whether the applicant has been convicted of any crime, other than a minor traffic violation. The state department may request any or all of the following information in order to accurately establish the applicant's identity when comparing the information to the CLETS data:

- (1) Name.
- (2) Aliases.
- (3) Address.
- (4) Social security number.
- (5) Date of birth.
- (6) Driver's license number.

(c) If the data obtained from CLETS indicates that the applicant has a criminal conviction other than a minor traffic violation, prior to taking any action, the state department shall notify the applicant within 15 business days upon receipt of the applicant's training and examination application to request a response. If the applicant disputes that he or she is the subject of this data and the question of identity cannot be resolved, the state department may require the applicant to submit fingerprints on cards furnished by the state department. If the state department determines fingerprints are required, the applicant shall be responsible to pay for the cost of fingerprinting and processing. If the fingerprint search demonstrates that the applicant does not have a criminal conviction, the state department shall reimburse the applicant for the cost of fingerprinting and processing. Failure to submit fingerprint cards within 15 days of receipt of notice from the state department may result in denial of the training and examination application or immediate suspension of certification pursuant to subdivision (i) of Section 1337.9.

(d) Upon receipt, the department shall submit the fingerprints to the Department of Justice. Submission of the fingerprints to the Federal Bureau of Investigation shall be at the discretion of the state department.

(e) Upon receipt of the fingerprints, the Department of Justice shall notify the state department of the criminal record information, as provided for in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the state

department with a statement of that fact. If the fingerprints are illegible, the Department of Justice shall, within 15 calendar days from receipt of the fingerprints, notify the state department of that fact.

(f) The department shall respond to the applicant and employer within 30 days from the date of receipt of the fingerprint cards.

(g) If the state department has reason to believe that the criminal report obtained through CLETS is inaccurate, they may request the provider to submit fingerprints following the process outlined in subdivisions (c), (d), and (e).

(h) A criminal record clearance, consistent with this section shall be implemented for home health aide applicants beginning July 1, 1995, and phased in for all certified home health aides by June 30, 1997.

(i) If, for any reason, the department is unable to commence the criminal record clearance requirement for the issuing or renewing of certificates by July 1, 1995, the state department shall continue to issue and renew certificates without a criminal record clearance until the department is able to perform these clearances.

SEC. 16. Article 9 (commencing with Section 15670) is added to Chapter 11 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 9. Paid Care Provider Requirements

15670. The Legislature finds and declares all of the following:

(a) Instances of elder and dependent adult abuse are on the rise, with the majority of the abuse occurring in the home of elderly or dependent person by noncertified caregivers.

(b) This state has a responsibility to protect these persons and to see that they are safeguarded from individuals who may pose a threat to their well-being.

(c) Criminal background checks of individuals who provide personal care services to elder and dependent adults, while not ending all occurrences of abuse, will serve as a factor in reducing some of these occurrences and giving senior citizens, dependent adults, and their families a sense of security that care is not being administered by individuals with dangerous criminal backgrounds.

(d) An effective background check program will be timely, affordable, and encompass caregivers in domestic and institutional settings.

(e) Individuals providing personal care services to elder and dependent adults should be well trained and appropriately compensated for their services to foster the creation of a long-term, professional work force.

(f) Therefore, it is the intent of the Legislature in enacting this article that certified nurse assistants and certified home health aides shall be subject to a criminal background check.

(g) It is the intent of the Legislature that the State Department

of Social Services prepare a plan by January 1, 1996, to implement a program of criminal background checks for in-home care providers employed under the In-Home Supportive Services program (Article 7 (commencing with Section 12300) of Chapter 3 of Part 3). The plan shall be made available to the Legislature upon request.

15671. (a) All initial certified nurse assistant and certified home health aide applicants, shall as a requirement for certification, undergo a criminal background check pursuant to Section 1338.5 of the Health and Safety Code.

(b) The State Department of Health Services may establish a fee for certified home health aide applicants at no more than fifteen dollars (\$15) for purposes of this section.

(c) Commencing July 1, 1997, nurse assistants certified prior to July 1, 1995, shall, as a condition of renewal of their certificates, undergo a criminal background check pursuant to subdivision (a) of Section 1337.6 and Section 1338.5 of the Health and Safety Code. Commencing July 1, 1995, pursuant to Section 1338.5 of the Health and Safety Code, nurse assistant applicants whose applications were submitted on or after July 1, 1995, shall undergo a criminal background check.

(b) Until July 1, 1997, employers shall reimburse certificate holders whom they employ for the amount of seven dollars (\$7) for the cost of the criminal background check upon receipt from the employee of evidence that the application for renewal has been submitted.

15673. (a) Commencing July 1, 1997, home health aides certified prior to July 1, 1995, shall undergo a criminal background check pursuant to Section 1736.6 of the Health and Safety Code. Commencing July 1, 1995, pursuant to Section 1736.6 of the Health and Safety Code, home health aide applicants whose applications are submitted on or after July 1, 1995, shall undergo a criminal background check.

(b) Until July 1, 1997, employers shall reimburse certificate holders whom they employ for the amount of seven dollars (\$7) of the cost of the criminal background check upon receipt from the employee of evidence that the application for renewal has been submitted.

15675. The Department of Justice shall make available to the State Department of Health Services, at no cost, access to the California Law Enforcement Telecommunications System as established pursuant to Chapter 2.5 (commencing with Section 15150) of Part 6 of Division 3 of Title 2 of the Government Code.

SEC. 17. Section 15755 is added to the Welfare and Institutions Code, to read:

15755. A law enforcement agency may seek a search warrant from a magistrate pursuant to the procedures set forth in Chapter 3 (commencing with Section 1523) of Title 12 of Part 2 of the Penal Code to enable a peace officer to have access to, and to inspect, premises if a county welfare worker has been denied access to the

premises by the person or persons in possession of the premises and there is probable cause to believe an elder or dependent adult on those premises is subject to abuse. While executing the search warrant the peace officer may allow a county welfare worker, or any other appropriate person, to accompany him or her.

SEC. 18. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 19. The fees collected pursuant to this act shall not exceed the actual costs of the department in providing the service. Notwithstanding any other provision of law, if the state department adopts regulations to establish fees pursuant to this act, it need not demonstrate that the fees do not exceed the actual costs.

CHAPTER 1247

An act to amend Sections 1871.7, 1872.1, 1872.8, 1875.10, and 1875.15 of the Insurance Code, and to amend Sections 16000, 20003, and 20012 of, and to add Chapter 2.5 (commencing with Section 6150) to Division 3 of, and Chapter 5 (commencing with Section 10900) to Division 4 of, the Vehicle Code, relating to insurance.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 1871.7 of the Insurance Code is amended to read:

1871.7. (a) It is unlawful to knowingly employ runners, cappers, steerers, or other persons to procure clients or patients to perform or obtain services or benefits pursuant to Division 4 (commencing with Section 3200) of the Labor Code or for the purpose of engaging in activities prohibited by Section 549, 550, or 551 of the Penal Code.

(b) Every person who violates any provision of this section shall be subject, in addition to any other penalties that may be prescribed by law, to a civil penalty of not less than five thousand dollars (\$5,000) nor more than ten thousand dollars (\$10,000), plus an assessment of not more than three times the amount of each claim for compensation, as defined in Section 3207 of the Labor Code, or three times the amount of each false or fraudulent claim or activity

punishable under Section 549, 550, or 551 of the Penal Code, submitted in connection with or undertaken in violation of this section.

(c) Any person who violates subdivision (a) and who has a prior felony conviction of an offense set forth in Section 1871.4, or in Section 549, 550, or 551 of the Penal Code, shall be subject, in addition to the penalties set forth in subdivision (b), to a civil penalty of five thousand dollars (\$5,000) for each item, service, claim, or activity with respect to which a violation of subdivision (a) occurred.

(d) The Attorney General or district attorney may bring a civil action under this section.

(e) (1) Any interested persons may bring a civil action for a violation of this section for the person and for the State of California. The action shall be brought in the name of the state. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the state. The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The Attorney General or local district attorney may elect to intervene and proceed with the action within 60 days after he or she receives both the complaint and the material evidence and information. If both the Attorney General and the district attorney elect to intervene, the Attorney General shall have precedence.

(3) The Attorney General or district attorney may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). The motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant.

(4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3), the Attorney General or district attorney shall either:

(A) Proceed with the action, in which case the action shall be conducted by the Attorney General or district attorney.

(B) Notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

(5) When a person brings an action under this section, no person other than the Attorney General or district attorney may intervene or bring a related action based on the facts underlying the pending action.

(f) (1) If the Attorney General or district attorney proceeds with the action, he or she shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. That person shall have the right to continue as

a party to the action, subject to the limitations set forth in paragraph (2).

(2) (A) The Attorney General or district attorney may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the Attorney General or district attorney of the filing of the motion, and the court has provided the person with an opportunity for a hearing on the motion.

(B) The Attorney General or district attorney may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, the hearing may be held in camera.

(C) Upon a showing by the Attorney General or district attorney that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Attorney General's or district attorney's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, including, but not limited to, the following:

- (i) Limiting the number of witnesses the person may call.
- (ii) Limiting the length of the testimony of such witnesses.
- (iii) Limiting the person's cross-examination of witnesses.
- (iv) Otherwise limiting the participation by the person in the litigation.

(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(3) If the Attorney General or district attorney elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the Attorney General or district attorney so requests, he or she shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts, at the Attorney General's or district attorney's expense. When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the Attorney General or district attorney to intervene at a later date upon a showing of good cause.

(4) Whether or not the Attorney General or district attorney proceeds with the action, upon a showing by the Attorney General or district attorney that certain actions of discovery by the person initiating the action would interfere with the Attorney General's or district attorney's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. A hearing on a request for the stay shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the

Attorney General or district attorney has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(5) Notwithstanding subdivision (e), the Attorney General or district attorney may elect to pursue its claim through any alternate remedy available to the Attorney General or district attorney. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in that proceeding as the person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in the other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court, if all time for filing an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(g) (1) If the Attorney General or district attorney proceeds with an action brought by a person under subdivision (e), that person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one that the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All of those expenses, fees, and costs shall be awarded against the defendant.

(2) If the Attorney General or district attorney does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount that the court decides is reasonable for collecting the civil penalty and damages. The amount shall not be less than 25 percent and not more than 30 percent of the proceeds of the action or settlement and shall be paid out of the proceeds. That person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All of those expenses, fees, and costs shall be awarded against the defendant.

(3) Whether or not the Attorney General or district attorney

proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of this section, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. The dismissal shall not prejudice the right of the Attorney General or district attorney to continue the action on behalf of the state.

(4) If the Attorney General or district attorney does not proceed with the action, and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(h) (1) In no event may a person bring an action under subdivision (e) that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil money penalty proceeding in which the Attorney General or district attorney is already a party.

(2) (A) No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing in a legislative or administrative report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

(B) For purposes of this paragraph, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Attorney General or district attorney before filing an action under this section which is based on the information.

(i) The Attorney General or district attorney is not liable for expenses that a person incurs in bringing an action under this section.

(j) In civil actions brought under this section by the Attorney General or district attorney, the court shall award to a prevailing defendant reasonable attorneys' fees and expenses unless the court finds that the position of the Attorney General or district attorney was substantially justified or that special circumstances make an award unjust.

(k) Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. That relief shall include reinstatement with the same seniority status the employee would have had but for the discrimination, two times the amount of

back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate superior court for the relief provided in this subdivision. The remedies under this section are in addition to any other remedies provided by existing law.

SEC. 2. Section 1872.1 of the Insurance Code is amended to read:

1872.1. (a) There is created within the Bureau of Fraudulent Claims an advisory committee on automobile insurance fraud and economic automobile theft prevention, investigation, and prosecution, as provided in this chapter. The committee shall be composed of the Chief of the Bureau of Fraudulent Claims, a representative from the Department of Justice, the Department of Motor Vehicles, the Division of Investigation of the Department of Consumer Affairs, the Department of the California Highway Patrol, the Bureau of Automotive Repair, the State Bar of California, the Medical Board of California, two representatives from local law enforcement agencies, one of whom shall be a prosecutor, and representatives of three insurers assessed pursuant to Section 1872.8.

(b) The commissioner shall select representatives from local law enforcement agencies from names submitted from local law enforcement agencies. The commissioner shall select one insurer representative from each of the following three categories from nominees submitted by insurers in each category: one representative of insurers with average annual automobile liability premiums in California of less than one hundred million dollars (\$100,000,000) in the preceding three years; one representative of insurers with average annual automobile liability premiums in California between one hundred million dollars (\$100,000,000) and seven hundred million dollars (\$700,000,000) in the preceding three years; and one representative of insurers with average annual automobile liability premiums in California exceeding seven hundred million dollars (\$700,000,000) in the preceding three years. At least one insurer representative shall be employed by an insurer having its principal headquarters in California. Members appointed by the commissioner shall serve at the pleasure of the commissioner. Representatives from other agencies shall be selected by the agencies represented.

(c) The advisory committee shall elect one of its members annually to chair its meetings. The chair shall conduct quarterly meetings of the committee in California and at such other times as he or she deems appropriate. Members of the committee shall serve without compensation except for expenses incidental to attendance at meetings called by the chair. A report of the committee's activities shall be included in the report required under Section 1872.9.

(d) The purpose and goals of the advisory committee are as follows:

(1) Recommend to the Bureau of Fraudulent Claims and other appropriate public agencies and private sector entities ways to coordinate the investigation, prosecution, and prevention of

automobile insurance claims fraud, including economic automobile theft.

(2) Provide assistance to the bureau towards implementing the goal of reducing the frequency and severity of fraudulent automobile insurance claims (adjusted for population growth and inflation) of 20 percent in urban areas and 10 percent in rural areas of the state within a 24-month period from the effective date of this chapter by utilizing resources set forth in Section 1872.8.

(3) Assure that preventive, investigative, prosecutive, and data collection efforts undertaken by the bureau pursuant to this chapter are efficient, cost-effective, and complement similar efforts undertaken by law enforcement agencies and insurers.

(4) Make recommendations for inclusion in the bureau's annual report required by Section 1872.9.

SEC. 3. Section 1872.8 of the Insurance Code is amended to read:

1872.8. (a) Each insurer doing business in this state shall pay an annual fee to be determined by the commissioner, but not to exceed one dollar (\$1) annually for each vehicle insured under an insurance policy it issues in this state, in order to fund increased investigation and prosecution of fraudulent automobile insurance claims and economic automobile theft. Thirty-four percent of those funds received from 95 cents (\$.95) of the assessment fee per insured vehicle shall be distributed to the Bureau of Fraudulent Claims for enhanced investigative efforts, 15 percent of that 95 cents (\$.95) shall be deposited in the Motor Vehicle Account for appropriation to the Department of the California Highway Patrol for enhanced prevention and investigative efforts to deter economic automobile theft, and 51 percent of that 95 cents (\$.95) shall be distributed to district attorneys for purposes of investigation and prosecution of automobile insurance fraud cases.

(b) The commissioner shall award funds to district attorneys according to population. The commissioner may alter this distribution formula as necessary to achieve the most effective distribution of funds. Each local district attorney desiring a portion of those funds shall submit to the commissioner a plan detailing their projected use of any moneys which may be provided. The plan shall include a detailed accounting of assessed funds received and expended in prior years, including at a minimum (1) the amount of funds received and expended; (2) the uses to which those funds were put, including payment of salaries and expenses, purchase of equipment and supplies, and other expenditures by type; (3) results achieved as a consequence of expenditures made, including the number of investigations, arrests, indictments, convictions, and the amounts originally claimed in cases prosecuted compared to payments actually made in those cases; and (4) other relevant information as the commissioner may reasonably require. Any district attorney who fails to submit an application within 90 days of the commissioner's deadline for applications shall be subject to loss of distribution of the money. The commissioner may consider

recommendations and advice of the bureau and the Commissioner of the California Highway Patrol in allocating moneys to local district attorneys. Any district attorney that receives funds shall submit an annual report to the commissioner, which may be made public, as to the success of the program that they have administered. The report shall provide information and statistics on the number of active investigations, arrests, indictments, and convictions. Both the application for moneys and the distribution of moneys shall be public documents. Information submitted to the commissioner pursuant to this section concerning active cases shall be confidential.

(c) The remaining five cents (\$.05) shall be spent pursuant to Article 6 (commencing with Section 1876).

(d) Except for funds to be deposited in the Motor Vehicle Account for allocation to the Department of the California Highway Patrol for purposes of the Motor Vehicle Theft Prevention Act (Chapter 5 (commencing with Section 10900) of Division 4 of the Vehicle Code), the funds received under this section shall be deposited in the Insurance Fund and be expended and distributed when appropriated by the Legislature.

(e) In the course of its investigations, the Bureau of Fraudulent Claims shall aggressively pursue all reported incidents of probable fraud and, in addition, shall forward to the appropriate disciplinary body the names of any individuals licensed under the Business and Professions Code who are suspected of actively engaging in fraudulent activity along with all relevant supporting evidence.

(f) As used in this section, "economic automobile theft" means automobile theft perpetrated for financial gain, including, but not limited to, the following:

- (1) Theft of an entire automobile for financial gain.
- (2) Reporting an automobile stolen for the purpose of filing a false insurance claim.
- (3) Engaging in any act prohibited by Chapter 3.5 (commencing with Section 10801) of Division 4 of the Vehicle Code.
- (4) Switching of vehicle identification numbers to obtain title to a stolen or illegally acquired automobile.

SEC. 4. Section 1875.10 of the Insurance Code is amended to read:

1875.10. The Legislature finds and declares as follows:

(a) That the business of insurance involves many transactions which have potential for abuse and illegal activities.

(b) That insurers and their policyholders ultimately pay the cost of fraudulent insurance claims.

(c) That the operation of insurance claims analysis bureaus would be to the benefit of the public, regulators, law enforcement, prosecutors, and insurers in suppressing and preventing insurance claims fraud.

(d) That the purpose of insurance claims analysis bureaus is to provide a data service to encourage the identification of utilization patterns by individuals or businesses who provide services in support

of insurance claims, and by individual claimants themselves, in order to facilitate the identification and prevention of fraudulent activities.

(e) That promotion of an effective public-private partnership between the insurance industry and the commissioner to share data on suspected fraudulent claims is necessary to avoid unnecessary duplication and expense in reporting that data.

(f) It is the intent of the Legislature that, to promote a data-sharing partnership that is efficient and cost-effective, the commissioner and the bureau make every effort to obtain suspected fraudulent claims data from reporting and collection sources already in existence and supported by the insurance industry, by licensing those sources as claims analysis bureaus, as provided in this chapter.

SEC. 5. Section 1875.15 of the Insurance Code is amended to read:

1875.15. (a) A licensed insurance claims analysis bureau shall develop rules governing the kind, quality, and frequency of data reporting, which shall be binding on all subscribers or members. The commissioner may require development of new claims categories for the suppression and prevention of fraud.

(b) Every member or subscriber shall report, at a minimum, the following regarding any category of claims:

- (1) Name of claimant.
- (2) Address of claimant.
- (3) Date of accident or incident.
- (4) Identification of medical provider, if applicable.
- (5) Identification of property repair vendor, if applicable.
- (6) Identification of members or subscribers and, if applicable, adjusters.
- (7) Identification of attorneys representing claimants, if applicable.
- (8) Description of claim.
- (9) Claimant's driver's license or California identification card number, if applicable.
- (10) Claimant's social security number, if known to the insurer.
- (11) Vehicle license numbers, if the claim involves automobile insurance.
- (12) Vehicle identification numbers, if known and the claim involves automobile insurance.

SEC. 6. Chapter 2.5 (commencing with Section 6150) is added to Division 3 of the Vehicle Code, to read:

CHAPTER 2.5. MISCELLANEOUS TITLE PROVISIONS

Article 1. Certificate of Title as Evidence

6150. In any criminal proceeding in which ownership, possession, or use of a motor vehicle is an issue, a copy certified by the department as its record of title on file, or with the official custodian of those documents of another state, shall be admissible as evidence

of ownership of the motor vehicle. Upon the introduction of evidence that the legal owner of a motor vehicle is not named in the certificate of title or that use or possession was with the consent or authority of the owner, a reasonable continuance shall be granted any party to enable the owner of the vehicle to be brought into court to testify.

6151. A party to a proceeding described in Section 6150 may provide notice to the opposing party that a showing of need will be made at the arraignment or at any other pretrial hearing, and upon the proof of that notice and the showing of need, the court shall take testimony from the owner or person in control of the motor vehicle which shall be admissible at trial.

6152. At any hearing, including, but not limited to, a scheduled trial date, involving a proceeding described in Section 6150, upon a showing of need, the court shall order as a condition of granting a continuance that the testimony of a witness then present in court be taken and preserved for subsequent use at a trial or any other stage of the proceeding.

6153. Where testimony is taken and preserved for use at trial or other stage of the proceeding pursuant to Sections 6151 and 6152, the witness shall be examined in open court by the party on whose behalf he or she is present, and the adverse party shall have the right of cross-examination.

6154. If any provision of this act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Article 2. Inspection and Cancellation of Titles for Exported Vehicles

6160. The Legislature finds and declares that when vehicles are exported and their title records are not amended to reflect exportation, it is conducive to vehicle theft and insurance fraud. The certificates of title issued by this state are used in insurance frauds in which a claimant falsely states that a vehicle has been stolen or uses that certificate to fraudulently procure insurance when in fact the vehicle has previously been exported from the United States. In the interest of the general welfare of the people of this state, and in order to combat vehicle theft and insurance fraud, it is necessary that the department's record of title reflect the fact that a vehicle is being exported either temporarily or permanently, based upon the true owner's declaration prior to exportation.

6161. For the purposes of this act, the term:

(a) "Certified record of permanent exportation" shall include the following:

- (1) Titled owner's name and address.
- (2) Description of the vehicle, including year, make, body type,

vehicle identification number, license registration number, and state registration.

(3) Destination of vehicle.

(4) Purpose of export, whether sale, lease, or personal use.

(b) "Declaration that the vehicle will not be permanently located outside the United States" shall include the items specified in paragraphs (1) to (3), inclusive, of subdivision (a), and shall also state the period of time for which it is anticipated that the vehicle will be outside the United States.

(c) "Export" means the shipping or transporting of a vehicle out of the United States by means other than its own power or that of a vehicle drawing or towing it.

(d) "Owner" means the owner of record indicated in a certificate of title issued by this state and includes an agent of that owner acting under a valid power of attorney executed by an owner.

(e) "Title" means the certificate of ownership issued by the department pursuant to Section 4450, but excludes a salvage certificate as described in Section 11515 and an acquisition bill of sale as described in Section 11519.

(f) "Vehicle" means every device designed for transportation of persons or property upon land, for which a certificate of title is required.

6162. An owner of a vehicle who seeks to export a vehicle titled in this state shall appear at the department with the certificate of title to ascertain whether there are any liens of record outstanding and whether the person exporting the vehicle is the lawful owner. If the certificates of title is found to be in proper order and no unsatisfied lien appears, the department shall enter into its record of title that the vehicle is intended for permanent exportation from the United States. If the owner certifies by filing a declaration with the department that the vehicle will not be permanently located outside the United States, and that he or she intends to return the vehicle to the United States, the department shall enter into its record of title a declaration that the vehicle will not be permanently located outside the United States until notification by the owner that the vehicle has been returned.

Article 3. Return of Stolen Motor Vehicle Retained as Evidence

6171. When criminal charges have been filed involving a motor vehicle alleged to have been stolen and the vehicle is in the custody of a peace officer for evidentiary purposes, it shall be held in custody or, if a request for its release from custody is made, until the prosecutor has notified the defendant or his or her attorney of that request and both the prosecution and defense have been afforded a reasonable opportunity for an examination of the motor vehicle to determine its true value and to produce or reproduce, by photographs or other identifying techniques, legally sufficient evidence for introduction at trial or other criminal proceedings.

6172. Upon expiration of a reasonable time for the completion of the examination, which in no event shall exceed 30 days from the date of service of the notice of request or return of the motor vehicle as provided in Section 6171, the property shall be released to the person making that request after satisfactory proof of the person's entitlement to the possession. Notwithstanding the foregoing, upon ex parte application by either party with notice to the other, the court may grant additional time for the examination or order retention of the motor vehicle if it determines that either is necessary to further the interests of justice; however, this provision shall not be construed to require a noticed hearing.

SEC. 7. Chapter 5 (commencing with Section 10900) is added to Division 4 of the Vehicle Code, to read:

CHAPTER 5. MOTOR VEHICLE THEFT PREVENTION

10900. This chapter shall be known and may be cited as the "Motor Vehicle Theft Prevention Act."

10901. (a) Pursuant to Section 1872.8 of the Insurance Code, proceeds from the assessment imposed thereunder shall be used to fund prevention and increased investigation of economic automobile theft. Funds received pursuant to Section 1872.8 of the Insurance Code shall be deposited in the Motor Vehicle Account and appropriated to the Department of the California Highway Patrol for prevention and enhanced investigative efforts to deter economic automobile theft.

(b) Moneys received by the commissioner pursuant to this section shall be used to fund (1) enhanced programs to prevent and investigate economic automobile theft; (2) a program directed at investigating and interdicting the export of stolen motor vehicles and stolen motor vehicle components across an international border; and (3) to operate the CAL H.E.A.T. (Californians Help Eliminate Auto Theft) program. Moneys received by a local law enforcement agency pursuant to this section shall be used to fund enhanced programs to prevent and investigate economic automobile theft and shall not be used to supplant or replace funding of existing personnel or equipment.

The commissioner shall submit an annual report to the Legislature, no later than 90 days following the completion of the fiscal year, accounting for all funds received and disbursed pursuant to this section. The report shall detail (A) the uses to which those funds were put, including payment of salaries and expenses, purchase of equipment and supplies, and other expenditures by type; and (B) results achieved as a consequence of expenditures made, including the number of investigations, arrests, complaints filed, convictions, and the number of vehicles recovered and amounts of property losses saved.

(c) As used in this section, "economic automobile theft" means automobile theft perpetrated for financial gain, including, but not

limited to, the following:

- (1) Theft of a motor vehicle for financial gain.
- (2) Reporting that a motor vehicle has been stolen for the purpose of filing a false insurance claim.
- (3) Engaging in any act prohibited by Chapter 3.5 (commencing with Section 10801) of Division 4.
- (4) Switching of vehicle identification numbers to obtain title to a stolen motor vehicle.

10902. The Department of the California Highway Patrol shall establish a program entitled "CAL H.E.A.T." (Californians Help Eliminate Auto Theft) for the purpose of reducing the incidence of economic auto theft in California. The program shall be an anti-auto theft program with a toll-free telephone hotline operator funded by the department using funds distributed to it pursuant to Section 10901. The hotline operator shall channel reports from the public regarding auto thefts to state and local law enforcement agencies. In the annual report, the commissioner shall report on the results of this program, including the number of calls from the public reporting a suspected motor vehicle theft, the number of arrests, complaints filed, convictions, and vehicles recovered, and the amount of property losses saved as a result of the program.

If funded by admitted insurers in this state, the program may offer rewards for reports that lead to the arrest and conviction of a person engaged in economic automobile theft. If so funded, the Department of the California Highway Patrol shall establish a claims board, which shall include appointments from state and local law enforcement agencies and the insurance industry, to determine the amount of individual awards.

SEC. 8. Section 16000 of the Vehicle Code is amended to read:
16000. (a) The driver of every motor vehicle who is in any manner involved in an accident originating from the operation of a motor vehicle on any street or highway or any reportable off-highway accident defined in Section 16000.1 which has resulted in damage to the property of any one person in excess of five hundred dollars (\$500) or in bodily injury or in the death of any person shall, within 10 days after the accident, report the accident, either personally or through an insurance agent, broker, or legal representative, on a form approved by the department to the office of the department at Sacramento, subject to the provisions of this chapter. The driver shall identify on the form, by name and current residence address, if available, any person involved in the accident complaining of bodily injury.

(b) A report is not required pursuant to subdivision (a) if the motor vehicle involved in the accident was owned or leased by, or under the direction of, the United States, this state, another state, or a local agency.

SEC. 9. Section 20003 of the Vehicle Code is amended to read:
20003. (a) The driver of any vehicle involved in an accident resulting in injury to or death of any person shall also give his or her

name, current residence address, the names and current residence addresses of any occupant of the driver's vehicle injured in the accident, the registration number of the vehicle he or she is driving, and the name and current residence address of the owner to the person struck or the driver or occupants of any vehicle collided with, and shall give the information to any traffic or police officer at the scene of the accident. The driver also shall render to any person injured in the accident reasonable assistance, including transporting, or making arrangements for transporting, any injured person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that treatment is necessary or if that transportation is requested by any injured person.

(b) Any driver or injured occupant of a driver's vehicle subject to the provisions of subdivision (a) shall also, upon being requested, exhibit his or her driver's license, if available, or, in the case of an injured occupant, any other available identification, to the person struck or to the driver or occupants of any vehicle collided with, and to any traffic or police officer at the scene of the accident.

SEC. 10. Section 20012 of the Vehicle Code is amended to read:

20012. All required accident reports, and supplemental reports, shall be without prejudice to the individual so reporting and shall be for the confidential use of the Department of Motor Vehicles and the Department of the California Highway Patrol, except that the Department of the California Highway Patrol or the law enforcement agency to whom the accident was reported shall disclose the entire contents of the reports, including, but not limited to, the names and addresses of persons involved or injured in, or witnesses to, an accident, the registration numbers and descriptions of vehicles involved, the date, time and location of an accident, all diagrams, statements of the drivers involved or occupants injured in the accident and the statements of all witnesses, to any person who may have a proper interest therein, including, but not limited to, the driver or drivers involved, or the guardian or conservator thereof, the parent of a minor driver, the authorized representative of a driver, or to any named person injured therein, the owners of vehicles or property damaged thereby, persons who may incur civil liability, including liability based upon a breach of warranty arising out of the accident, and any attorney who declares under penalty of perjury that he or she represents any of the above persons.

A request for a copy of an accident report shall be accompanied by payment of a fee, provided such fee shall not exceed the actual cost of providing the copy.

SEC. 11. Sections 3, 5, and 7 of this act shall not become operative unless Senate Bill 1743 is enacted.

SEC. 12. In enacting the provisions of Section 6 of this act, the Legislature finds and declares that deliberate overpricing of necessary materials and services by contractors to repair or replace dwellings or fixtures following catastrophic loss with the intent to file inflated insurance claims adds significantly to total losses paid by

insurers. These practices inflate the costs of catastrophic loss insurance to policyholders unfairly and unnecessarily.

CHAPTER 1248

An act to amend Sections 1872.8, 1875.15, and 1876.2 of the Insurance Code, and to add Section 2413 to, and to add Chapter 5 (commencing with Section 10900) to Division 4 of, the Vehicle Code, relating to motor vehicle theft.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 1872.8 of the Insurance Code is amended to read:

1872.8. (a) Each insurer doing business in this state shall pay an annual fee to be determined by the commissioner, but not to exceed one dollar (\$1) annually for each vehicle insured under an insurance policy it issues in this state, in order to fund increased investigation and prosecution of fraudulent automobile insurance claims and economic automobile theft. Thirty-four percent of those funds received from ninety-five cents (\$.95) of the assessment fee per insured vehicle shall be distributed to the Bureau of Fraudulent Claims for enhanced investigative efforts, 15 percent of that ninety-five cents (\$.95) shall be deposited in the Motor Vehicle Account for appropriation to the Department of the California Highway Patrol for enhanced prevention and investigative efforts to deter economic automobile theft, and 51 percent of the funds shall be distributed to district attorneys for purposes of investigation and prosecution of automobile insurance fraud cases, including fraud involving economic automobile theft.

(b) The commissioner shall award funds to district attorneys according to population. The commissioner may alter this distribution formula as necessary to achieve the most effective distribution of funds. Each local district attorney desiring a portion of those funds shall submit to the commissioner an application detailing their proposed use of any moneys which may be provided. The application shall include a detailed accounting of assessment funds received and expended in prior years, including at a minimum (1) the amount of funds received and expended; (2) the uses to which those funds were put, including payment of salaries and expenses, purchase of equipment and supplies, and other expenditures by type; (3) results achieved as a consequence of expenditures made, including the number of investigations, arrests, complaints filed, convictions, and the amounts originally claimed in cases prosecuted compared to payments actually made in those

cases; and (4) other relevant information as the commissioner may reasonably require. Any district attorney who fails to submit an application within 90 days of the commissioner's deadline for applications shall be subject to loss of distribution of the money. The commissioner may consider recommendations and advice of the bureau and the Commissioner of the California Highway Patrol in allocating moneys to local district attorneys. Any district attorney that receives funds shall submit an annual report to the commissioner, which may be made public, as to the success of the program that they have administered. The report shall provide information and statistics on the number of active investigations, arrests, indictments, and convictions. Both the application for moneys and the distribution of moneys shall be public documents. Information submitted to the commissioner pursuant to this section concerning active cases shall be confidential.

(c) The remaining five cents (\$.05) shall be spent pursuant to Article 6 (commencing with Section 1876) of this chapter.

(d) Except for funds to be deposited in the Motor Vehicle Account for allocation to the California Highway Patrol for purposes of the Motor Vehicle Prevention Act, (Chapter 5 (commencing with Section 10900) of Division 4 of the Vehicle Code), the funds received under this section shall be deposited in the Insurance Fund and be expended and distributed when appropriated by the Legislature.

(e) In the course of its investigations, the Bureau of Fraudulent Claims shall aggressively pursue all reported incidents of probable fraud and, in addition, shall forward to the appropriate disciplinary body the names of any individuals licensed under the Business and Professions Code who are suspected of actively engaging in fraudulent activity along with all relevant supporting evidence.

(f) As used in this section "economic automobile theft" means automobile theft perpetrated for financial gain, including, but not limited to, the following:

- (1) Theft of a motor vehicle for financial gain.
- (2) Reporting that a motor vehicle has been stolen for the purpose of filing a false insurance claim.
- (3) Engaging in any act prohibited by Chapter 3.5 (commencing with Section 10801) of Division 4 of the Vehicle Code.
- (4) Switching of vehicle identification numbers to obtain title to a stolen motor vehicle.

SEC. 2. Section 1875.15 of the Insurance Code is amended to read:

1875.15. (a) A licensed insurance claims analysis bureau shall develop rules governing the kind, quality, and frequency of data reporting, which shall be binding on all subscribers or members. The commissioner may require development of new claims categories for the suppression and prevention of fraud.

(b) Every member or subscriber shall report, at a minimum, the following regarding any category of claims:

- (1) Name of claimant.

- (2) Address of claimant.
- (3) Date of accident or incident.
- (4) Identification of medical provider, if applicable.
- (5) Identification of property repair vendor, if applicable.
- (6) Identification of members or subscribers and, if applicable, adjusters.
- (7) Identification of attorneys representing claimants, if applicable.
- (8) Description of claim.
- (9) Claimant's driver license or California Identification card number, if applicable.
- (10) Claimant's social security number, if known to the insurer.
- (11) Vehicle license numbers, if the claim involves automobile insurance.
- (12) Vehicle identification numbers, if known and the claim involves automobile insurance.

SEC. 3. Section 1876.2 of the Insurance Code is amended to read:

1876.2. Every insurer who receives a bodily injury, medical payment, or uninsured motorist claim made under a policy of automobile liability insurance defined in Section 660 or Section 11622 shall within 20 days of the receipt of that claim deposit that claim information with a licensed insurance claims analysis bureau or, for insurers subject to Section 1876.20, with the Automobile Insurance Claims Depository. The bureau shall establish the claim information to be deposited in its prescribed format for insurers depositing the claim information directly pursuant to Section 1876.20. The claims information deposited pursuant to this section shall include at least the following: (1) the the claimant's driver's license number or California identification card number, if applicable; (2) the vehicle license number; (3) the vehicle identification number, if known; and (4) the claimant's social security number, if known to the insurer.

SEC. 4. Section 2413 is added to the Vehicle Code, to read:

2413. The Commissioner of the California Highway Patrol is designated as the Statewide Vehicle Theft Investigation and Apprehension Coordinator. The commissioner may establish vehicle theft prevention, investigation, and apprehension programs. The commissioner may assist local, state, and federal law enforcement agencies by coordinating multijurisdictional vehicle theft investigations and may establish programs to improve the ability of law enforcement to combat vehicle theft.

SEC. 5. Chapter 5 (commencing with Section 10900) is added to Division 4 of the Vehicle Code, to read:

CHAPTER 5. MOTOR VEHICLE THEFT PREVENTION

10900. This chapter shall be known and may be cited as the "Motor Vehicle Theft Prevention Act."

10901. (a) Pursuant to Section 1872.8 of the Insurance Code, proceeds from the assessment imposed thereunder shall be used to

fund prevention and increased investigation of economic automobile theft. Funds received pursuant to Section 1872.8 shall be deposited in the Motor Vehicle Account and appropriated to the Department of the California Highway Patrol for prevention and enhanced investigative efforts to deter economic automobile theft.

(b) Moneys received by the commissioner pursuant to this section shall be used to fund (1) enhanced programs to prevent and investigate economic automobile theft; (2) a program directed at investigating and interdicting the export of stolen motor vehicles and stolen motor vehicle components across an international border; and (3) to operate the CAL H.E.A.T (Californians Help Eliminate Auto Theft) program. Moneys received by a local law enforcement agency pursuant to this section shall be used to fund enhanced programs to prevent and investigate economic automobile theft and shall not be used to supplant or replace funding of existing personnel or equipment.

The commissioner shall submit an annual report to the Legislature, no later than 90 days following the completion of the fiscal year, accounting for all funds received and disbursed pursuant to this section. The report shall detail (A) the uses to which those funds were put, including payment of salaries and expenses, purchase of equipment and supplies, and other expenditures by type; and (B) results achieved as a consequence of expenditures made, including the number of investigations, arrests, complaints filed, convictions, and the number of vehicles recovered and amounts of property losses saved.

(c) As used in this section, "economic automobile theft" means automobile theft perpetrated for financial gain, including, but not limited to, the following:

- (1) Theft of a motor vehicle for financial gain.
- (2) Reporting that a motor vehicle has been stolen for the purpose of filing a false insurance claim.
- (3) Engaging in any act prohibited by Chapter 3.5 (commencing with Section 10801) of Division 4 this code.
- (4) Switching of vehicle identification numbers to obtain title to a stolen motor vehicle.

10902. The Department of the California Highway Patrol shall establish a program entitled "CAL H.E.A.T." (Help Eliminate Auto Theft) for the purpose of reducing the incidence of economic auto theft in California. The program shall be an anti-auto theft program with a toll-free telephone hotline operator funded by the department using funds distributed to it pursuant to Section 10901. The hotline operator shall channel reports from the public regarding auto thefts to state and local law enforcement agencies. In the annual report, the commissioner shall report on the results of this program, including the number of calls from the public reporting a suspected motor vehicle theft, the number of arrests, complaints filed, convictions, and vehicles recovered, and the amount of property losses saved as a result of the program.

If funded by admitted insurers in this state, the program may offer rewards for reports that lead to the arrest and conviction of a person engaged in economic automobile theft. If so funded, the Department of the California Highway Patrol shall establish a claims board, which shall include appointments from state and local law enforcement agencies and the insurance industry, to determine the amount of individual awards.

SEC. 6. It is the intent of the Legislature that district attorneys continue to exercise their discretion to utilize resources allocated pursuant to Section 1872.8 of the Insurance Code to prosecute those priority cases in the areas of automobile insurance fraud, including fraud involving economic automobile theft that involves large monetary claims or large numbers of defendants. It is the further intent of the Legislature that district attorneys receiving funding under Section 1872.8 of the Insurance Code inform the Insurance Commissioner and the Legislature of the number of cases that are not prosecuted because of limited resources and, if applicable, the amount of additional financial resources necessary to prosecute priority cases in areas of automobile insurance fraud and economic automobile theft that are not currently prosecuted.

SEC. 7. It is the intent of the Legislature that if this bill and Assembly Bill 1926 are both chaptered and take effect on or before January 1, 1995, regardless of the order of chaptering, Section 1872.8 of the Insurance Code as amended by Section 1 of this bill, Section 1875.15 of the Insurance Code as amended by Section 2 of this bill, and Chapter 5 (commencing with Section 10900) as added to Division 4 of the Vehicle Code by Section 5 of this bill shall prevail over provisions which also amend or add those provisions and are contained in Assembly Bill 1926.

CHAPTER 1249

An act to add Section 13825 to the Penal Code, relating to graffiti.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 13825 is added to the Penal Code, to read:
13825. The State Graffiti Clearinghouse is hereby created in the Office of Criminal Justice Planning. The State Graffiti Clearinghouse shall do all of the following, subject to federal funding:

(a) Assess and estimate the present costs to state and local agencies for graffiti abatement.

(b) Award grants to state and local agencies that have demonstrated implementation of effective graffiti reduction and abatement programs.

(c) Receive and disburse funds to effectuate the purposes of the clearinghouse.

SEC. 2. It is the intent of the Legislature to create an entity that will improve graffiti removal efforts through programs financed by grants from private foundations, donations from individual citizens, and contributions from federal agencies that believe their graffiti removal efforts will be enhanced by a voluntary contribution to support the State Graffiti Clearinghouse.

CHAPTER 1250

An act to amend Section 17060.2 of the Health and Safety Code, relating to housing.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 17060.2 of the Health and Safety Code is amended to read:

17060.2. (a) Notwithstanding any other provision of law, the operator of employee housing shall provide a resident of every unit in the employee housing with a written copy in English and Spanish of every order or notice of violation issued by an enforcement agency accompanied by an explanation of the owner's or operator's anticipated response to the order or notice. Each notice shall also advise the occupants of the right to a hardship deferral and the procedure for obtaining this, as set forth in subdivision (c). These copies may be provided by first-class mail or by posting a copy of the notice in a prominent place on each residential unit.

(b) (1) (A) The enforcement agency shall not require the vacating of all or any part of an accommodation unless it concurrently orders the operator to provide for the relocation of the tenants consistent with the requirements of Section 17062 prior to the date the vacating is required and requires expeditious demolition or repair to comply with this part, the building standards related to employee housing, or other rules and regulations adopted pursuant to this part. Any local government may, prior to January 1, 1994, enact a local relocation ordinance that imposes requirements more stringent than those contained in this section. The tenant or tenant association may enforce the relocation remedies of this section, and the enforcement agency, to the extent feasible, shall cooperate in these efforts. The enforcement agency may require vacation and demolition or itself vacate the building, repair or demolish the building, or institute any other appropriate action or proceeding, if either of the following occurs:

(i) The repair work is not done as scheduled or cannot be

completed within a reasonable period of time.

(ii) There is a significant threat to the residents' or public health and safety.

(B) In any civil action brought by a private person or entity to obtain relocation assistance pursuant to subparagraph (A) of paragraph (1) of subdivision (b), following an enforcement agency's order to vacate all or any part of an accommodation, and the failure to comply with the agency's order to provide for the relocation of the tenants, the private person or entity, if he, she, or it is the prevailing party, may be granted reasonable attorney's fees and costs, in addition to any other remedy granted.

(2) Prior to vacating and demolishing the accommodation, the public agency shall exert every reasonable effort to obtain or cause repairs. In addition, to the extent feasible, if the public entity causes vacation of the accommodation, it shall cooperate in efforts to obtain compensation from the owner or operator to compensate the displaced residents for their relocation expenses, including rent differentials.

(c) The enforcement agency or a court of competent jurisdiction may, in cases of extreme hardship to tenants of employee housing, provide for deferral of the effective date of orders of abatement. Any deferral of the effective date of any order of abatement shall include conditions, including, but not limited to, payment of rent to an appropriate receiver, which will ensure progress towards correcting defects, or assist in relocation of tenants prior to closure of the employee housing.

CHAPTER 1251

An act to amend Sections 16144, 51201, 51231, and 51238 of, and to add Sections 51238.1, 51238.2, and 51238.3 to, the Government Code, relating to land use.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 16144 of the Government Code is amended to read:

16144. On or before October 31 each year, the governing body of each county, city, or city and county shall report to the Secretary of the Resources Agency the number of acres of land under its regulatory jurisdiction which qualify for state payments pursuant to the various categories enumerated in Section 16142, together with supporting documentation as the secretary by regulation may require. The secretary, after reviewing the report and determining the eligibility of the local government to receive payment and the

actual amount to which it is entitled, shall certify that amount to the Controller for payment, and the Controller shall make the payment on or before June 30 of each year.

The secretary may make supplemental reports to the Controller as he or she deems necessary throughout the year to give effect to new or additional information received from local governing bodies, correct errors, and dispose of contested or conditional situations. Upon receiving the reports, the Controller shall pay any amount certified therein, and may withhold and deduct any certified overpayment from the amount that would otherwise be paid to the local government in the next succeeding year, including any cancellation fees that have not been collected and transmitted pursuant to Section 51283.

SEC. 2. Section 51201 of the Government Code is amended to read:

51201. As used in this chapter, unless otherwise apparent from the context:

(a) "Agricultural commodity" means any and all plant and animal products produced in this state for commercial purposes.

(b) "Agricultural use" means use of land for the purpose of producing an agricultural commodity for commercial purposes.

(c) "Prime agricultural land" means any of the following:

(1) All land which qualifies for rating as class I or class II in the Soil Conservation Service land use capability classifications.

(2) Land which qualifies for rating 80 through 100 in the Storie Index Rating.

(3) Land which supports livestock used for the production of food and fiber and which has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture.

(4) Land planted with fruit- or nut-bearing trees, vines, bushes or crops which have a nonbearing period of less than five years and which will normally return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than two hundred dollars (\$200) per acre.

(5) Land which has returned from the production of unprocessed agricultural plant products an annual gross value of not less than two hundred dollars (\$200) per acre for three of the previous five years.

(d) "Agricultural preserve" means an area devoted to either agricultural use, as defined in subdivision (b), recreational use as defined in subdivision (n), or open-space use as defined in subdivision (o), or any combination of those uses and which is established in accordance with the provisions of this chapter.

(e) "Compatible use" is any use determined by the county or city administering the preserve pursuant to Section 51231, 51238, or 51238.1 or by this act to be compatible with the agricultural, recreational, or open-space use of land within the preserve and subject to contract. "Compatible use" includes agricultural use, recreational use or open-space use unless the board or council finds

after notice and hearing that the use is not compatible with the agricultural, recreational or open-space use to which the land is restricted by contract pursuant to this chapter.

(f) "Board" means the board of supervisors of a county which establishes or proposes to establish an agricultural preserve or which enters or proposes to enter into a contract on land within an agricultural preserve pursuant to this chapter.

(g) "Council" means the city council of a city which establishes or proposes to establish an agricultural preserve or which enters or proposes to enter into a contract on land within an agricultural preserve pursuant to this chapter.

(h) Except where it is otherwise apparent from the context, "county" or "city" means the county or city having jurisdiction over the land.

(i) A "scenic highway corridor" is an area adjacent to, and within view of, the right-of-way of:

(1) An existing or proposed state scenic highway in the state scenic highway system established by the Legislature pursuant to Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code and which has been officially designated by the Department of Transportation as an official state scenic highway; or

(2) A county scenic highway established pursuant to Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code, if each of the following conditions have been met:

(A) The scenic highway is included in an adopted general plan of the county or city; and

(B) The scenic highway corridor is included in an adopted specific plan of the county or city; and

(C) Specific proposals for implementing the plan, including regulation of land use, have been approved by the Advisory Committee on a Master Plan for Scenic Highways, and the county or city highway has been officially designated by the Department of Transportation as an official county scenic highway.

(j) A "wildlife habitat area" is a land or water area designated by a board or council, after consulting with and considering the recommendation of the Department of Fish and Game, as an area of great importance for the protection or enhancement of the wildlife resources of the state.

(k) A "saltpond" is an area which, for at least three consecutive years immediately prior to being placed within an agricultural preserve pursuant to this chapter, has been used for the solar evaporation of sea water in the course of salt production for commercial purposes.

(l) A "managed wetland area" is an area, which may be an area diked off from the ocean or any bay, river or stream to which water is occasionally admitted, and which, for at least three consecutive years immediately prior to being placed within an agricultural

preserve pursuant to this chapter, was used and maintained as a waterfowl hunting preserve or game refuge or for agricultural purposes.

(m) A "submerged area" is any land determined by the board or council to be submerged or subject to tidal action and found by the board or council to be of great value to the state as open space.

(n) "Recreational use" is the use of land by the public, with or without charge, for any of the following: walking, hiking, picnicking, camping, swimming, boating, fishing, hunting, or other outdoor games or sports for which facilities are provided for public participation. Any fee charged for the recreational use of land as defined in this subdivision shall be in a reasonable amount and shall not have the effect of unduly limiting its use by the public.

(o) "Open-space use" is the use or maintenance of land in a manner that preserves its natural characteristics, beauty, or openness for the benefit and enjoyment of the public, to provide essential habitat for wildlife, or for the solar evaporation of sea water in the course of salt production for commercial purposes, if the land is within:

- (1) A scenic highway corridor, as defined in subdivision (i).
- (2) A wildlife habitat area, as defined in subdivision (j).
- (3) A saltpond, as defined in subdivision (k).
- (4) A managed wetland area, as defined in subdivision (l).
- (5) A submerged area, as defined in subdivision (m).

SEC. 3. Section 51231 of the Government Code is amended to read:

51231. For the purposes of this chapter, the board or council, by resolution, shall adopt rules governing the administration of agricultural preserves, including procedures for initiating, filing, and processing requests to establish agricultural preserves. Rules related to compatible uses shall be consistent with the principles set forth in Section 51238.1. Those rules shall be applied uniformly throughout the preserve. The board or council may require the payment of a reasonable application fee. The same procedure that is required to establish an agricultural preserve shall be used to disestablish or to enlarge or diminish the size of an agricultural preserve. In adopting rules related to compatible uses, the board or council may enumerate those uses, including agricultural laborer housing which are to be considered to be compatible uses on contracted lands separately from those uses which are to be considered to be compatible uses on lands not under contract within the agricultural preserve.

SEC. 4. Section 51238 of the Government Code is amended to read:

51238. Notwithstanding any determination of compatible uses by the county or city pursuant to this article, unless the board or council after notice and hearing makes a finding to the contrary, the erection, construction, alteration, or maintenance of gas, electric, water, communication, or agricultural laborer housing facilities are hereby determined to be compatible uses within any agricultural

preserve. No land occupied by gas, electric, water, communication, or agricultural laborer housing facilities shall be excluded from an agricultural preserve by reason of that use.

The board of supervisors may impose conditions on lands or land uses to be placed within preserves to permit and encourage compatible uses in conformity with Section 51238.1, particularly public outdoor recreational uses.

SEC. 5. Section 51238.1 is added to the Government Code, to read:

51238.1. (a) Uses approved on contracted lands shall be consistent with all of the following principles of compatibility:

(1) The use will not significantly compromise the long-term productive agricultural capability of the subject contracted parcel or parcels or on other contracted lands in agricultural preserves.

(2) The use will not significantly displace or impair current or reasonably foreseeable agricultural operations on the subject contracted parcel or parcels or on other contracted lands in agricultural preserves. Uses that significantly displace agricultural operations on the subject contracted parcel or parcels may be deemed compatible if they relate directly to the production of commercial agricultural products on the subject contracted parcel or parcels or neighboring lands, including activities such as harvesting, processing, or shipping.

(3) The use will not result in the significant removal of adjacent contracted land from agricultural or open-space use.

In evaluating compatibility a board or council shall consider the impacts on noncontracted lands in the agricultural preserve or preserves.

(b) A board or council may include in its compatible use rules or ordinance conditional uses which, without conditions or mitigations, would not be in compliance with this section. These conditional uses shall conform to the principles of compatibility set forth in subdivision (a) or, for nonprime lands only, satisfy the requirements of subdivision (c).

(c) In applying the criteria pursuant to subdivision (a), the board or council may approve a use on nonprime land which, because of onsite or offsite impacts, would not be in compliance with paragraphs (1) and (2) of subdivision (a), provided the use is approved pursuant to a conditional use permit that shall set forth findings, based on substantial evidence in the record, demonstrating the following:

(1) Conditions have been required for, or incorporated into, the use that mitigate or avoid those onsite and offsite impacts so as to make the use consistent with the principles set forth in paragraphs (1) and (2) of subdivision (a) to the greatest extent possible while maintaining the purpose of the use.

(2) The productive capability of the subject land has been considered as well as the extent to which the use may displace or impair agricultural operations.

(3) The use is consistent with the purposes of this chapter to

preserve agricultural and open-space land or supports the continuation of agricultural uses, as defined in Section 51205, or the use or conservation of natural resources, on the subject parcel or on other parcels in the agricultural preserve. The use of mineral resources shall comply with Section 51238.2.

(4) The use does not include a residential subdivision.

For the purposes of this section, a board or council may define nonprime land as land not defined as "prime agricultural land" pursuant to subdivision (c) of Section 51201 or as land not classified as "agricultural land" pursuant to subdivision (a) of Section 21060.1 of the Public Resources Code.

Nothing in this section shall be construed to overrule, rescind, or modify the requirements contained in Sections 51230 and 51238 related to noncontracted lands within agricultural preserves.

SEC. 6. Section 51238.2 is added to the Government Code, to read:

51238.2. Mineral extraction that is unable to meet the principles of Section 51238.1 may nevertheless be approved as compatible use if the board or council is able to document that (a) the underlying contractual commitment to preserve prime land as defined in subdivision (c) of Section 51201, or (b) the underlying contractual commitment to preserve nonprime land for open-space use as defined in subdivision (c) of Section 51201, will not be significantly impaired.

Conditions imposed on mineral extraction as a compatible use of contracted land shall include compliance with the reclamation standards adopted by the Mining and Geology Board pursuant to Section 2773 of the Public Resources Code, including the applicable performance standards for prime agricultural land and other agricultural land, and no exception to these standards may be permitted.

For purposes of this section, "contracted land" means all land under a single contract for which an applicant seeks a compatible use permit.

SEC. 7. Section 51238.3 is added to the Government Code, to read:

51238.3. (a) The requirements of Sections 51238.1 and 51238.2 shall not apply to compatible uses for which an application was submitted to the city or county prior to June 7, 1994, provided that the use constituted a "compatible use" as that term was defined by this chapter either at the time the application was submitted, or at the time the Williamson Act contract was signed with respect to the subject contract lands, whichever is later.

(b) Neither shall the requirements of Sections 51238.1 and 51238.2 apply to land uses of contracted lands in place prior to June 7, 1994, that constituted a "compatible use" as the term "compatible use" was defined by this chapter either at the time the use was initiated, or at the time the Williamson Act contract was signed with respect to the subject contract lands, whichever is later.

(c) Neither shall the requirements of Sections 51238.1 and 51238.2 apply to uses that are expressly specified within the contract itself prior to June 7, 1994, and that constituted a "compatible use" as the term "compatible use" was defined by this chapter at the time that Williamson Act contract was signed with respect to the subject contract lands, or at the time the contract was amended to include the uses, whichever is later. For purposes of this subdivision, the requirements of Sections 51238.1 and 51238.2, effective January 1, 1995, shall apply to contracts for which contract nonrenewal was initiated and was withdrawn after January 1, 1995.

SEC. 8. The Legislature finds and declares that for the purposes of subdivision (c) of Section 51238.1 of the Government Code, the goal of preserving the maximum amount of nonprime agricultural land can be met by allowing other compatible uses, in compliance with subdivision (c) of Section 51238.1 of the Government Code, that sustain the economic viability of those lands while maintaining their open-space quality.

CHAPTER 1252

An act to amend Section 11580.9 of the Insurance Code, relating to motor vehicle insurance.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 11580.9 of the Insurance Code is amended to read:

11580.9. (a) Where two or more policies affording valid and collectible automobile liability insurance apply to the same motor vehicle in an occurrence out of which a liability loss shall arise, and one policy affords coverage to a named insured engaged in the business of selling, repairing, servicing, delivering, testing, road-testing, parking, or storing motor vehicles, then both of the following shall be conclusively presumed:

(1) If, at the time of loss, the motor vehicle is being operated by any person engaged in any of these businesses, or by his or her employee or agent, the insurance afforded by the policy issued to the person engaged in the business shall be primary, and the insurance afforded by any other policy shall be excess.

(2) If, at the time of loss, the motor vehicle is being operated by any person other than as described in paragraph (1), the insurance afforded by the policy issued to any person engaged in any of these businesses shall be excess over all other insurance available to the operator as a named insured or otherwise.

(b) Where two or more policies apply to the same loss, and one

policy affords coverage to a named insured engaged in the business of renting or leasing motor vehicles without operators, it shall be conclusively presumed that the insurance afforded by that policy to a person other than the named insured or his or her agent or employee, shall be excess over and not concurrent with, any other valid and collectible insurance applicable to the same loss covering the person as a named insured or as an additional insured under a policy with limits at least equal to the financial responsibility requirements specified in Section 16056 of the Vehicle Code. The presumption provided by this subdivision shall apply only if, at the time of the loss, the involved motor vehicle either:

(1) Qualifies as a "commercial vehicle" as that term is used in Section 260 of the Vehicle Code.

(2) Has been leased for a term of six months or longer.

(c) Where two or more policies are applicable to the same loss arising out of the loading or unloading of a motor vehicle, and one or more of the policies is issued to the owner, tenant, or lessee of the premises on which the loading or unloading occurs, it shall be conclusively presumed that the insurance afforded by the policy covering the motor vehicle shall not be primary, notwithstanding anything to the contrary in any endorsement required by law to be placed on the policy, but shall be excess over all other valid and collectible insurance applicable to the same loss with limits up to the financial responsibility requirements specified in Section 16056 of the Vehicle Code; and, in that event, the two or more policies shall not be construed as providing concurrent coverage, and only the insurance afforded by the policy or policies covering the premises on which the loading or unloading occurs shall be primary and the policy or policies shall cover as an additional insured with respect to the loading or unloading operations all employees of the owner, tenant, or lessee while acting in the course and scope of their employment.

(d) Except as provided in subdivisions (a), (b), and (c), where two or more policies affording valid and collectible liability insurance apply to the same motor vehicle or vehicles in an occurrence out of which a liability loss shall arise, it shall be conclusively presumed that the insurance afforded by that policy in which the motor vehicle is described or rated as an owned automobile shall be primary and the insurance afforded by any other policy or policies shall be excess.

(e) Any insurance policy which, under the terms of subdivisions (a) to (d), inclusive, applies as excess coverage may provide with respect to any primary policy or to any loss to which primary insurance is not valid and collectible in whole or in part, that the excess policy shall apply only to the extent necessary to provide the insured with the coverage limits specified in Section 16056 of the Vehicle Code.

(f) The presumptions stated in subdivisions (a) to (d), inclusive, may be modified or amended only by written agreement signed by all insurers who have issued a policy or policies applicable to a loss

described in these subdivisions and all named insureds under these policies.

(g) Where two or more personal policies affording valid and collectible liability insurance apply to the same motor vehicle in an occurrence out of which a loss shall arise, and one policy, as defined in subdivision (a) of Section 660, is primary, either by its terms or by operation of law, and one or more of the personal policies providing liability insurance, as defined in Section 108, are excess, either by their terms or by operation of law, then the following shall apply:

(1) Each insurer shall pay its share of the defense costs. Each insurer's share of the defense costs shall be the percentage of the total defense costs equal to the amount of damage paid by that insurer as a percentage of total damages paid by all insurers whose policies apply to that motor vehicle.

(2) The term "defense costs" means, for purposes of this subdivision, reasonable attorney's fees and expenses, investigation expenses, expert witness fees, and costs allowable under Section 1033.5 of the Code of Civil Procedure.

(h) For purposes of this article, a certificate of self-insurance issued pursuant to Section 16053 of the Vehicle Code or a deposit of cash made pursuant to Section 16054.2 of the Vehicle Code or a bond in effect pursuant to Section 16054 of the Vehicle Code or a report of governmental ownership or lease filed pursuant to Section 16051 of the Vehicle Code shall be considered a policy of automobile liability insurance. However, this subdivision does not establish or provide the basis for any other form of liability for or upon a self-insurer or other person or entity holding, issuing, or establishing any form of security as described herein.

CHAPTER 1253

An act to amend Section 12150 of the Insurance Code, and to amend Sections 286, 430, 1671, 9262, 11713, 11713.1, and 11713.3 of, and to add Sections 166, 232.5, 11735, 11736, 11737, and 11738, and 11739 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

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

(a) The distribution, sale, and service of new motor vehicles in the State of California vitally affects the general economy of the state and the public welfare.

(b) The new motor vehicle franchise system, that operates within a strictly defined and highly regulated statutory scheme, assures the

consuming public of a well organized distribution system for the availability and sale of new motor vehicles throughout the state; a network of quality warranty and repair facilities to maintain those vehicles; and a cost-effective method for the state to police those systems through the licensing of private sector franchisors and franchisees.

(c) It is the intent of the Legislature in enacting this act to protect the integrity and benefits of the new motor vehicle franchise system, while also affording consumers the choice and flexibility of utilizing the services of an autobroker to arrange or negotiate new car purchases within a framework that ensures a high level of consumer protection and accountability. This act is intended to legitimize the activity of motor vehicle brokering by defining that activity and permitting any holder of a motor vehicle dealer license to register with the Department of Motor Vehicles as an autobroker and thereafter engage in brokering activities pursuant to the provisions of this act.

SEC. 2. Section 12150 of the Insurance Code is amended to read:

12150. (a) Buying and selling service is an arrangement by a motor club whereby the holder of a service contract with a motor club is aided in any way in the purchase or sale of an automobile.

(b) (1) If a motor club offers a service that refers members to a new motor vehicle dealer for the purchase of a new motor vehicle, and the dealer pays the motor club any compensation, including, but not limited to, an advertising, promotional, or marketing fee, any advertisement of that service shall clearly and conspicuously disclose that the dealer has paid the fee and shall have the following statement: "All new cars arranged for sale are subject to availability and a price prearranged with the selling franchised new car dealer."

(2) In a printed advertisement, the disclosures required by paragraph (1) shall be in not less than 10-point bold type and shall be textually segregated from the other portions of the advertisement.

(3) The disclosures required by paragraph (1) do not apply to general advertisements of a motor club that merely list an auto buying service as one of several services offered by the motor club and that do not provide any details of the auto buying service.

SEC. 3. Section 166 is added to the Vehicle Code, to read:

166. An "autobroker" or "auto buying service" is a dealer, as defined in Section 285, who engages in the business of brokering, as defined in Section 232.5.

SEC. 4. Section 232.5 is added to the Vehicle Code, to read:

232.5. "Brokering" is an arrangement under which a dealer, for a fee or other consideration, regardless of the form or time of payment, provides or offers to provide the service of arranging, negotiating, assisting, or effectuating the purchase of a new or used motor vehicle, not owned by the dealer, for another or others.

SEC. 5. Section 286 of the Vehicle Code is amended to read:

286. The term "dealer" does not include any of the following:

(a) Insurance companies, banks, finance companies, public officials, or any other person coming into possession of vehicles in the regular course of business, who sells vehicles under a contractual right or obligation, in performance of an official duty, or in authority of any court of law, if the sale is for the purpose of saving the seller from loss or pursuant to the authority of a court.

(b) Persons who sell or distribute vehicles of a type subject to registration for a manufacturer to vehicle dealers licensed under this code, or who are employed by manufacturers or distributors to promote the sale of vehicles dealt in by those manufacturers or distributors. However, any of those persons who also sell vehicles at retail are vehicle dealers and are subject to this code.

(c) Persons regularly employed as salespersons by vehicle dealers licensed under this code while acting within the scope of that employment.

(d) Persons engaged exclusively in the bona fide business of exporting vehicles or of soliciting orders for the sale and delivery of vehicles outside the territorial limits of the United States, if no federal excise tax is legally payable or refundable on any of the transactions. Persons not engaged exclusively in the bona fide business of exporting vehicles, but who are engaged in the business of soliciting orders for the sale and delivery of vehicles, outside the territorial limits of the United States are exempt from licensure as dealers only if their sales of vehicles produce less than 10 percent of their total gross revenue from all business transacted.

(e) Persons not engaged in the purchase or sale of vehicles as a business, who dispose of any vehicle acquired and used in good faith, for their own personal use, or for use in their business, and not for the purpose of avoiding the provisions of this code.

(f) Persons who are engaged in the purchase, sale, or exchange of vehicles, other than motorcycles subject to identification under this code, which are not intended for use on the highways.

(g) Persons temporarily retained as auctioneers solely for the purpose of disposing of vehicle stock inventories by means of public auction on behalf of the owners at the owners' place of business, or as otherwise approved by the department, if intermediate physical possession or control of, or an ownership interest in, the inventory is not conveyed to the persons so retained.

(h) Persons who are engaged exclusively in the business of purchasing, selling, servicing, or exchanging racing vehicles, parts for racing vehicles, and trailers designed and intended by the manufacturer to be used exclusively for carrying racing vehicles. For purposes of this subdivision, "racing vehicle" means a motor vehicle of a type used exclusively in a contest of speed or in a competitive trial of speed which is not intended for use on the highways.

(i) Any person who is a lessor.

(j) Any person who is a renter.

(k) Any salvage pool.

(l) Any yacht broker who is subject to the Yacht and Ship Brokers

Act (Article 2 (commencing with Section 700) of Chapter 5 of Division 3 of the Harbors and Navigation Code) and who sells used boat trailers in conjunction with the sale of a vessel.

(m) Any licensed automobile dismantler who sells vehicles that have been reported for dismantling as provided in Section 11520.

(n) The Director of Corrections when selling vehicles pursuant to Section 2813.5 of the Penal Code.

(o) Any public or private nonprofit charitable, religious, or educational institution or organization that sells vehicles if all of the following conditions are met:

(1) The proceeds of the sale of the vehicles are retained by that institution or organization for its charitable, religious, or educational purposes.

(2) The vehicles sold were donated to the institution or organization.

(3) They meet all of the applicable equipment requirements of Division 12 (commencing with Section 24000) and have been issued a certificate pursuant to Section 44015 of the Health and Safety Code.

(4) The institution or organization has qualified for state tax-exempt status under Section 23701d of the Revenue and Taxation Code, and federal tax-exempt status under Section 501 (c) (3) of the Internal Revenue Code.

(p) Any motor club, as defined in Section 12142 of the Insurance Code, that does not arrange or negotiate individual motor vehicle purchase transactions on behalf of its members but refers members to a new motor vehicle dealer for the purchase of a new motor vehicle and does not receive a fee from the dealer contingent upon the sale of the vehicle.

SEC. 6. Section 430 of the Vehicle Code is amended to read:

430. A "new vehicle" is a vehicle constructed entirely from new parts that has never been the subject of a retail sale, or registered with the department, or registered with the appropriate agency or authority of any other state, District of Columbia, territory or possession of the United States, or foreign state, province, or country.

SEC. 7. Section 1671 of the Vehicle Code is amended to read:

1671. (a) The established place of business of a dealer, remanufacturer, remanufacturer branch, manufacturer, manufacturer branch, distributor, distributor branch, automobile driving school, or traffic violator school shall have an office and a dealer, manufacturer, or remanufacturer shall also have a display or manufacturing area situated on the same property where the business peculiar to the type of license issued by the department is or may be transacted. When a room or rooms in a hotel, roominghouse, apartment house building, or a part of any single- or multiple-unit dwelling house is used as an office or offices of an established place of business, the room or rooms shall be devoted exclusively to and occupied for the office or offices of the dealer, manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, automobile

driving school, or traffic violator school, shall be located on the ground floor, and shall be so constructed as to provide a direct entrance into the room or rooms from the exterior of the building. A dealer who does not offer new or used vehicles for sale at retail, a dealer registered with the department as an autobroker and who does not also sell or buy new or used motor vehicles at retail, or a dealer who is a wholesaler involved for profit only in the sale of vehicles between licensed dealers, shall have an office, but a display area is not required.

(b) The established place of business of an automobile dismantler shall have an office and a dismantling area located in a zone property zoned for that purpose by the city or county.

SEC. 8. Section 9262 of the Vehicle Code is amended to read:

9262. (a) The fee for a license issued to dealers and lessor-retailers is as follows:

(1) For the original license, or an ownership change which requires a new application, except as provided by Section 42231, a nonrefundable fee of one hundred fifty dollars (\$150).

(2) For the annual renewal of a license, a fee of one hundred dollars (\$100).

(3) If an alteration of an existing license is caused by a firm name change, address change, change in the corporate officer structure, or the addition of a branch location, a fee of seventy dollars (\$70).

(b) The fee for a license issued to dismantlers, manufacturers, manufacturer branches, remanufacturers, remanufacturer branches, transporters, distributors, and distributor branches is as follows:

(1) For the original license, or an ownership change which requires a new application, except as provided by Section 42231, a nonrefundable fee of one hundred dollars (\$100).

(2) For the annual renewal of a license, a fee of eighty-five dollars (\$85).

(3) If an alteration of an existing license is caused by a firm name change, address change, or the addition of a branch location, a fee of fifty dollars (\$50).

(4) If an alteration of an existing license is caused by a change in the corporate officer structure, a fee of seventy dollars (\$70).

(c) The fee for a license issued to representatives is as follows:

(1) For the original license, or an ownership change which requires a new application, except as provided by Section 42231, a nonrefundable fee of fifty dollars (\$50).

(2) For the annual renewal of a license, a fee of eighty-five dollars (\$85).

(d) The fee for registration by a dealer as an autobroker is as follows:

(1) For the original registration, a nonrefundable fee of fifty dollars (\$50).

(2) For the annual registration, a fee of twenty-five dollars (\$25).

(e) When the holder of a license for which a fee is provided in this section applies for special plates as provided in subdivision (b) of

Section 11505 or subdivision (b) of Section 11714, the fee for the plates and the annual renewal of the plates is the prevailing vehicle registration fee as set forth in Section 9250 for the period for which the special plates are issued or renewed.

SEC. 9. Section 11713 of the Vehicle Code is amended to read:

11713. No holder of any license issued under this article shall do any of the following:

(a) Make or disseminate, or cause to be made or disseminated, before the public in this state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, any statement which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading; or to so make or disseminate, or cause to be so disseminated, any such statement as part of a plan or scheme with the intent not to sell any vehicle or service so advertised at the price stated therein, or as so advertised.

(b) (1) (A) Advertise or offer for sale or exchange in any manner, any vehicle not actually for sale at the premises of the dealer or available to the dealer directly from the manufacturer or distributor of the vehicle at the time of the advertisement or offer. However, a dealer registered with the department as an autobroker may advertise its service of arranging or negotiating the purchase of a new motor vehicle from a franchised new motor vehicle dealer and specify the line-makes and models of those new vehicles. Autobrokering service advertisements may not advertise the price or payment terms of any vehicle and shall disclose that the advertiser is an autobroker or auto buying service, and shall clearly and conspicuously state the following: "All new cars arranged for sale are subject to price and availability from the selling franchised new car dealer."

(B) As to printed advertisements, the disclosure statement required by subparagraph (A) shall be printed in not less than 10-point bold type size and shall be textually segregated from the other portions of the printed advertisement.

(2) Notwithstanding subparagraph (A), classified advertisements for autobrokering services that measure two column inches or less are exempt from the disclosure statement in subparagraph (A) pertaining to price and availability.

(3) Radio advertisements of a duration of less than 11 seconds that do not reference specific line-makes or models of motor vehicles are exempt from the disclosure statement required in subparagraph (A).

(c) Fail, within 48 hours, in writing to withdraw any advertisement of a vehicle that has been sold or withdrawn from sale.

(d) Advertise or represent a vehicle as a new vehicle if the vehicle is a used vehicle.

(e) Engage in the business for which the licensee is licensed without having in force and effect a bond as required by this article.

(f) Engage in the business for which the dealer is licensed without

at all times maintaining an established place of business as required by this code.

(g) Include, as an added cost to the selling price of a vehicle, an amount for licensing or transfer of title of the vehicle, which is not due to the state unless, prior to the sale, that amount has been paid by a dealer to the state in order to avoid penalties that would have accrued because of late payment of the fees. However, a dealer may collect from the second purchaser of a vehicle a prorated fee based upon the number of months remaining in the registration year for that vehicle, if the vehicle had been previously sold by the dealer and the sale was subsequently rescinded and all the fees that were paid, as required by this code and Chapter 2 (commencing with Section 10751) of Division 2 of the Revenue and Taxation Code, were returned to the first purchaser of the vehicle.

(h) Employ any person as a salesperson who has not been licensed pursuant to Article 2 (commencing with Section 11800), and whose license is not displayed on the premises of the dealer as required by Section 11812, or willfully fail to notify the department by mail within 10 days of the employment or termination of employment of a salesperson.

(i) Deliver, following sale, a vehicle for operation on California highways, if the vehicle does not meet all of the equipment requirements of Division 12 (commencing with Section 24000).

(j) Use, or permit the use of, the special plates assigned to him or her for any purpose other than as permitted by Section 11715.

(k) Advertise or otherwise represent, or knowingly allow to be advertised or represented on behalf of, or at the place of business of, the licenseholder that no downpayment is required in connection with the sale of a vehicle when a downpayment is in fact required and the buyer is advised or induced to finance the downpayment by a loan in addition to any other loan financing the remainder of the purchase price of the vehicle.

(l) Participate in the sale of a vehicle reported to the Department of Motor Vehicles under Section 5900 or 5901 without making the return and payment of any sales tax due and required by Section 6451 of the Revenue and Taxation Code.

(m) Permit the use of the dealer's license, supplies, or books by any other person for the purpose of permitting that person to engage in the purchase or sale of vehicles required to be registered under this code, or permit the use of the dealer's license, supplies, or books to operate a branch location to be used by any other person, whether or not the licensee has any financial or equitable interest or investment in the vehicles purchased or sold by, or the business of, or branch location used by, the other person.

(n) Violate any provision of Article 10 (commencing with Section 28050) of Chapter 5 of Division 12.

(o) Sell a previously unregistered vehicle without disclosing in writing to the purchaser the date on which any manufacturer's or distributor's warranty commenced.

(p) Accept a purchase deposit relative to the sale of a vehicle, unless the vehicle is present at the premises of the dealer or available to the dealer directly from the manufacturer or distributor of the vehicle at the time the dealer accepts the deposit. Purchase deposits accepted by an autobroker when brokering a retail sale shall be governed by Sections 11736 and 11737.

(q) Consign for sale to another dealer a new vehicle.

(r) Display a vehicle for sale at a location other than an established place of business authorized by the department for that dealer or display a new motor vehicle at the business premises of another dealer registered as an autobroker. This subdivision does not apply to the display of a vehicle pursuant to subdivision (b) of Section 11709 or the demonstration of the qualities of a motor vehicle by way of a test drive.

SEC. 10. Section 11713.1 of the Vehicle Code is amended to read: 11713.1. It is a violation of this code for the holder of any dealer's license issued under this article to do any of the following:

(a) Advertise any specific vehicle for sale without identifying the vehicle by either its vehicle identification number or license number.

(b) Advertise the total price of a vehicle without including all costs to the purchaser at time of sale, except taxes, vehicle registration fees, certificate of compliance or noncompliance fees not exceeding thirty-five dollars (\$35) pursuant to any statute, finance charges, and any dealer document preparation charge. The dealer document preparation charge shall not exceed thirty-five dollars (\$35).

(c) Exclude from the newspaper display advertisement of a vehicle for sale that there will be added to the advertised total price at the time of sale, charges for sales tax, vehicle registration fees, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute, finance charges, and any dealer document preparation charge.

For purposes of this subdivision, "newspaper display advertisement" means any advertisement in a newspaper which is two or more newspaper columns in width or one newspaper column in width and more than seven inches in length.

(d) Represent the dealer document preparation charge or certificate of compliance or noncompliance fee, as a governmental fee.

(e) Fail to sell a vehicle to any person at the advertised total price, exclusive of taxes, vehicle registration fees, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute, finance charges, mobilehome escrow fees, the amount of any city, county, or city and county imposed fee or tax for a mobilehome, and any dealer document preparation charge, which charges shall not exceed thirty-five dollars (\$35) for the document preparation charge and thirty-five dollars (\$35) for the certificate of compliance or

noncompliance pursuant to any statute, while the vehicle remains unsold, unless the advertisement states the advertised total price is good only for a specified time and the time has elapsed.

(f) Advertise for sale or sell any new vehicle of a line-make for which the dealer does not hold a franchise.

This subdivision does not apply to any transaction involving a mobilehome, a recreational vehicle as defined in Section 18010 of the Health and Safety Code, a commercial coach as defined in Section 18001.8 of the Health and Safety Code, an off-highway motor vehicle subject to identification as defined in Section 38012, or a commercial vehicle.

(g) Sell a park trailer, as specified in subdivision (b) of Section 18010 of the Health and Safety Code, without disclosing in writing to the purchaser that a park trailer is required to be moved by a transporter or a licensed manufacturer or dealer under a permit issued by the Department of Transportation or a local authority with respect to highways under their respective jurisdictions.

(h) Advertise free merchandise, gifts, or services provided by a dealer contingent on the purchase of a vehicle. The term "free" includes merchandise or services offered for sale at a price less than the seller's cost of the merchandise or services.

(i) Advertise vehicles, and related goods or services, at a specified dealer price, with the intent not to supply reasonably expectable demand, unless the advertisement discloses the number of vehicles in stock at the advertised price. In addition, whether or not there are sufficient vehicles in stock to supply a reasonably expectable demand, when phrases such as "starting at," "from," "beginning as low as," or words of similar import are used in reference to an advertised price, the advertisement shall disclose the number of vehicles available at that advertised price.

For purposes of this subdivision, in any newspaper advertisement for a vehicle that is two model years old or newer, the actual phrase that states the number of vehicles in stock at the advertised price shall be (1) printed in a type size that is at least equal to one-quarter of the type size, and in the same style and color of type, used for the advertised price, however, in no case shall the phrase be printed in less than 8-point type size, and (2) be disclosed immediately above, below, or beside the advertised price without any intervening words, pictures, marks, or symbols.

The disclosure required by this subdivision is in addition to any other disclosure required by this code or any regulation regarding identifying vehicles advertised for sale.

(j) Use the term "rebate" or similar words such as "cash back" in advertising the sale of a vehicle unless the rebate is expressed in a specific dollar amount and is in fact a rebate offered by the vehicle manufacturer or distributor directly to the retail purchaser of the vehicle or to the assignee of the retail purchaser.

(k) Require a person to pay a higher price for a vehicle and related goods or services for receiving advertised credit terms than

the cash price the same person would have to pay to purchase the same vehicle and related goods or services. For the purpose of this subdivision, "cash price" has the meaning as defined in subdivision (e) of Section 2981 of the Civil Code.

(l) Advertise a guaranteed trade-in allowance unless the guarantee is provided by the manufacturer or distributor.

(m) Misrepresent the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction.

(n) (1) Advertise that the selling price of a vehicle is above, below, or at either of the following:

(A) The manufacturer's or distributor's invoice price to a dealer.

(B) A dealer's cost.

(2) This subdivision does not apply to either of the following:

(A) Any communication occurring during face-to-face negotiations for the purchase of a specific vehicle.

(B) Any communication between a dealer and a prospective commercial purchaser that is not disseminated to the general public. For purposes of this subparagraph, a "commercial purchaser" means a dealer, lessor, lessor-retailer, manufacturer, remanufacturer, distributor, financial institution, governmental entity, or person who purchases 10 or more vehicles during a year.

(o) Violate any law prohibiting bait and switch advertising, including, but not limited to, the guides against bait advertising set forth in Part 238 (commencing with Section 238) of Title 16 of the Code of Federal Regulations, as those regulations read on January 1, 1988.

(p) Make any untrue or misleading statement indicating that a vehicle is equipped with all the factory installed optional equipment the manufacturer offers, including, but not limited to, a false statement that a vehicle is "fully factory equipped."

(q) Affix on any new vehicle a supplemental price sticker containing a price that represents the dealer's asking price which exceeds the manufacturer's suggested retail price unless all of the following occur:

(1) The supplemental sticker clearly and conspicuously discloses in the largest print appearing on the sticker, other than the print size used for the dealer's name, that the supplemental sticker price is the dealer's asking price, or words of similar import, and that it is not the manufacturer's suggested retail price.

(2) The supplemental sticker clearly and conspicuously discloses the manufacturer's suggested retail price.

(3) The supplemental sticker lists each item which is not included in the manufacturer's suggested retail price, and discloses the additional price of each item. If the supplemental sticker price is greater than the sum of the manufacturer's suggested retail price and the price of the items added by the dealer, then the supplemental sticker price shall set forth that difference and describe it as "added mark-up."

(r) Advertise any underselling claim, such as "we have the lowest

prices” or “we will beat any dealer’s price,” unless the dealer has conducted a recent survey showing that the dealer sells its vehicles at lower prices than any other licensee in its trade area and maintains records to adequately substantiate the claims. The substantiating records shall be made available to the department upon request.

(s) Advertise any incentive offered by the manufacturer or distributor if the dealer is required to contribute to the cost of the incentive as a condition of participating in the incentive program, unless the dealer discloses in a clear and conspicuous manner that dealer participation may affect consumer cost.

For purposes of this subdivision, “incentive” means anything of value offered to induce people to purchase a vehicle, including, but not limited to, discounts, savings claims, rebates, below-market finance rates, and free merchandise or services.

(t) Display or offer for sale any used vehicle unless there is affixed to the vehicle the Federal Trade Commission’s Buyer’s Guide as required by Part 455 of Title 16 of the Code of Federal Regulations.

(u) Fail to disclose in writing to the franchisor of a new motor vehicle dealer the name of the purchaser, date of sale, and the vehicle identification number of each new motor vehicle sold of the line-make of that franchisor, or intentionally submit to that franchisor a false name for the purchaser or false date for the date of sale.

(v) Enter into a contract for the retail sale of a motor vehicle unless the contract clearly and conspicuously discloses whether the vehicle is being sold as a new vehicle or a used vehicle, as defined in this code.

(w) Use a simulated check, as defined in subdivision (a) of Section 22433 of the Business and Professions Code, in an advertisement for the sale or lease of a vehicle.

(x) Fail to disclose, in a clear and conspicuous manner in at least 10-point bold type on the face of any contract for the retail sale of a new motor vehicle that this transaction is, or is not, subject to a fee received by an autobroker from the selling new motor vehicle dealer, and the name of the autobroker, if applicable.

SEC. 11. Section 11713.3 of the Vehicle Code is amended to read: 11713.3. It is unlawful and a violation of this code for any manufacturer, manufacturer branch, distributor, or distributor branch licensed under this code to do any of the following:

(a) To refuse or fail to deliver in reasonable quantities and within a reasonable time after receipt of an order from a dealer having a franchise for the retail sale of any new vehicle sold or distributed by the manufacturer or distributor, any new vehicle or parts or accessories to new vehicles as are covered by the franchise, if the vehicle, parts, or accessories are publicly advertised as being available for delivery or actually being delivered. This subdivision is not violated, however, if the failure is caused by acts or causes beyond the control of the manufacturer, manufacturer branch, distributor, or distributor branch.

(b) To prevent or require, or attempt to prevent or require, by contract or otherwise, any change in the capital structure of a dealership or the means by or through which the dealer finances the operation of the dealership, provided that the dealer at all times meets any reasonable capital standards agreed to by the dealer and the manufacturer or distributor, and also provided that no change in capital structure shall cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor.

(c) To prevent or require, or attempt to prevent or require, a dealer to change the executive management of a dealership, other than the principal dealership operator or operators if the franchise was granted the dealer in reliance upon the personal qualifications of such person or persons.

(d) To prevent or require, or attempt to prevent or require, by contract or otherwise, any dealer, or any officer, partner, or stockholder of any dealership, the sale or transfer of any part of the interest of any of them to any other person or persons. No dealer, officer, partner, or stockholder shall, however, have the right to sell, transfer, or assign the franchise, or any right thereunder, without the consent of the manufacturer or distributor except that the consent shall not be unreasonably withheld.

(e) To prevent, or attempt to prevent, a dealer from receiving fair and reasonable compensation for the value of the franchised business. There shall be no transfer or assignment of the dealer's franchise without the consent of the manufacturer or distributor, which consent shall not be unreasonably withheld.

(f) To obtain money, goods, service, or any other benefit from any other person with whom the dealer does business, on account of, or in relation to, the transaction between the dealer and that other person, other than for compensation for services rendered, unless the benefit is promptly accounted for, and transmitted to, the dealer.

(g) To require a dealer to prospectively assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability to be imposed by this article or to require any controversy between a dealer and a manufacturer, distributor, or representative, to be referred to any person other than the board, if the referral would be binding on the dealer. This subdivision does not, however, prohibit arbitration before an independent arbitrator.

(h) To increase prices of motor vehicles which the dealer had ordered for private retail consumers prior to the dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer is evidence of each such order. In the event of manufacturer price reductions, the amount of the reduction received by a dealer shall be passed on to the private retail consumer by the dealer if the retail price was negotiated on the basis of the previous higher price to the dealer. Price reductions apply to all vehicles in the dealer's inventory which were subject to the price reduction. Price differences applicable to new model or series motor

vehicles at the time of the introduction of new models or series shall not be considered a price increase or price decrease. Price changes caused by either (1) the addition to a motor vehicle of required or optional equipment pursuant to state or federal law, or (2) revaluation of the United States dollar in the case of foreign-make vehicles, are not subject to this subdivision.

(i) To fail to pay to a dealer, within a reasonable time following receipt of a valid claim by a dealer thereof, any payment agreed to be made by the manufacturer or distributor to the dealer by reason of the fact that a new vehicle of a prior year model is in the dealer's inventory at the time of introduction of new model vehicles. A manufacturer or distributor shall not authorize or enable any new model or series passenger vehicle or station wagon to be delivered by dealers at retail more than 30 days prior to the eligibility date of the model change allowance payment for prior year model vehicles.

(j) To deny the widow or heirs designated by a deceased owner of a dealership, the opportunity to participate in the ownership of the dealership or successor dealership under a valid franchise for a reasonable time after the death of the owner.

(k) To offer any refunds or other types of inducements to any person for the purchase of new motor vehicles of a certain line-make to be sold to the state or any political subdivision thereof without making the same offer to all other dealers in the same line-make within the relevant market area.

(l) To modify, replace, enter into, relocate, terminate or refuse to renew a franchise in violation of Article 4 (commencing with Section 3060) of Chapter 6 of Division 2.

(m) To employ a person as a representative who has not been licensed pursuant to Article 3 (commencing with Section 11900) of Chapter 4 of Division 5.

(n) To deny any dealer the right of free association with any other dealer for any lawful purpose.

(o) To compete with a dealer in the same line-make operating under an agreement or franchise from a manufacturer or distributor in the relevant market area. A manufacturer or distributor shall not, however, be deemed to be competing when operating a dealership either temporarily for a reasonable period, or in a bona fide retail operation which is for sale to any qualified independent person at a fair and reasonable price, or in a bona fide relationship in which an independent person has made a significant investment subject to loss in the dealership and can reasonably expect to acquire full ownership of the dealership on reasonable terms and conditions. A distributor shall not be deemed to be competing when a wholly owned subsidiary corporation of the distributor sells motor vehicles at retail, if, for at least three years prior to January 1, 1973, the subsidiary corporation has been a wholly owned subsidiary of the distributor and engaged in the sale of vehicles at retail.

(p) To unfairly discriminate among its franchisees with respect to warranty reimbursement or authority granted its franchisees to

make warranty adjustments with retail customers.

(q) To sell vehicles to persons not licensed under this chapter for resale.

(r) To fail to affix an identification number to any park trailer, as described in subdivision (b) of Section 18010 of the Health and Safety Code, which is manufactured on or after January 1, 1987, and which does not clearly identify the unit as a park trailer to the department. The configuration of the identification number shall be approved by the department.

(s) To dishonor a warranty, rebate, or other incentive offered to the public or a dealer in connection with the retail sale of a new motor vehicle, based solely upon the fact that an autobroker arranged or negotiated the sale. This subdivision shall not prohibit the disallowance of that rebate or incentive if the purchaser or dealer is ineligible to receive the rebate or incentive pursuant to any other term or condition of a rebate or incentive program.

SEC. 12. Section 11735 is added to the Vehicle Code, to read:

11735. (a) No dealer shall engage in brokering a retail sales transaction without first registering with the department as an autobroker and paying the fee required by subdivision (d) of Section 9262. An autobroker registration shall be automatically canceled upon cancellation, suspension, revocation, surrender, or expiration of the dealer license of the autobroker.

(b) Upon registration with the department as an autobroker, the department shall furnish the dealer with an autobroker registration certificate and an autobroker log. The autobroker log shall remain the property of the department and may be taken up at any time for inspection.

(c) The autobroker log shall contain spaces sufficient for the dealer to record the following information with respect to each retail sale brokered by that dealer:

- (1) Vehicle identification number of brokered vehicle.
- (2) Date of brokering agreement.
- (3) Selling dealer's name, address, and dealer number.
- (4) Name of consumer.

(d) Nothing in this code prohibits a dealer registered as an autobroker from delivering, with the selling dealer's written approval, motor vehicles that have been sold pursuant to a duly executed motor vehicle purchase agreement or obtaining a consumer's signature on a selling dealer's motor vehicle purchase agreement that has already been executed by the selling dealer.

(e) When brokering a retail sale as an agent of the consumer, selling dealer, or both, the brokering dealer owes a fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with its principal or principals.

(f) For purposes of this section and Sections 11736, 11737, and 11738, "consumer" means any person who retains a dealer to perform brokering services in connection with a retail sale.

SEC. 13. Section 11736 is added to the Vehicle Code, to read:

11736. It is unlawful for any dealer licensed under this article to do any of the following when brokering a retail sale:

(a) Fail to execute a written brokering agreement, as described in Section 11738, and provide a completed copy to both of the following:

(1) Any consumer entering into the brokering agreement. The completed copy shall be provided prior to the consumer's signing of an agreement for the purchase of the vehicle described in the brokering agreement or, prior to accepting one hundred dollars (\$100) or more from that consumer, whichever occurs first.

(2) The selling dealer. The completed copy shall be provided prior to the selling dealer's entering into a purchase agreement with the consumer.

(b) Accept a purchase deposit from any consumer that exceeds 2.5 percent of the selling price of the vehicle described in the brokering agreement.

(c) Fail to refund any purchase money, including purchase deposits, upon demand by a consumer at any time prior to the consumer's signing of a vehicle purchase agreement with a selling dealer and taking delivery of the vehicle described in the brokering agreement.

(d) Fail to cancel a brokering agreement and refund, upon demand, any money paid by a consumer, including any brokerage fee, under any of the following circumstances:

(1) When the final price of the brokered vehicle exceeds the purchase price listed in the brokering agreement.

(2) When the vehicle delivered is not as described in the brokering agreement.

(3) When the brokering agreement expires prior to the customer being presented with a purchase agreement from a selling dealer arranged through the brokering dealer that contains a purchase price at or below the price listed in the brokering agreement.

(e) Act as a seller and provide brokering services, both in the same transaction.

(f) Fail to disclose to the consumer and selling dealer, as soon as practicable, whether the autobroker receives or does not receive a fee or other compensation, regardless of the form or time of payment, from the selling dealer and the dollar amount of any fee that the consumer is obligated to pay to the autobroker. This arrangement shall be confirmed in a brokering agreement.

(g) Fail to record in the dealer's autobroker log, for each brokered sale, all of the following:

(1) The vehicle identification number.

(2) The date of the broker agreement.

(3) The selling dealer's name, address, and dealer number.

(4) The name of the consumer.

(h) Fail to maintain for a minimum of three years a copy of the executed brokering agreement and other notices and documents related to each brokered transaction.

(i) Fail to advise the consumer, prior to accepting any money, that

a full refund will be given if the motor vehicle ordered through the autobroker is not obtained for the consumer or if the service orally contracted for is not provided.

SEC. 14. Section 11737 is added to the Vehicle Code, to read:

11737. (a) A dealer who brokers a motor vehicle sale shall deposit directly into a trust account any purchase money, including purchase deposits, it receives from a consumer or a consumer's lender. This subdivision does not require a separate trust account for each brokered transaction.

(b) The brokering dealer shall not in any manner encumber the corpus of the trust account except as follows:

(1) In partial or full payment to a selling dealer for a vehicle purchased by the brokering dealer's consumer.

(2) To make refunds.

(c) Subdivision (b) shall not prevent payment of the interest earned on the trust account to the brokering dealer.

(d) The brokering dealer shall serve as trustee of the trust account required by this section. If the brokering dealer is a partnership or a corporation, the managing partner of the partnership or the chief executive officer of the corporation shall be the trustee. The trustee may designate in writing that an officer or employee may manage the trust account if that officer or employee is under the trustee's supervision and control, and the original of that writing is on file with the department.

(e) All trust accounts required by this section shall be maintained at a branch of a bank, savings and loan association, or credit union regulated by the state or the government of the United States.

(f) The brokering dealer has a fiduciary responsibility with respect to all purchase money received from a consumer or consumer's lender relative to a brokered sale transaction.

(g) The following are deemed to be held in trust for consumers who have paid purchase money to a brokering dealer:

(1) All sums received by the brokering dealer whether or not required to be deposited in an actual trust account and regardless of whether any of these sums were required to be deposited or actually were deposited in a trust account.

(2) All property with which any of the sums described in paragraph (1) has been commingled if any of these sums cannot be identified because of the commingling.

(h) Upon any judicially ordered distribution of any money or property required to be held in trust and after all expenses of distribution approved by the court have been paid, every consumer of a brokering dealer has a claim on the trust for purchase money payments made to the brokering dealer. Unless a consumer can identify his or her funds in the trust within the time established by the court, each consumer shall receive a proportional share based on the amount paid.

SEC. 15. Section 11738 is added to the Vehicle Code, to read:

11738. The brokering agreement required by Section 11736 shall

be printed in no smaller than 10-point type and shall contain not less than the following terms, conditions, requirements, and disclosures:

(a) The name, address, license number, and telephone number of the autobroker.

(b) A complete description, including line-make, model, year model, and color, of the vehicle and the desired options.

(c) The following statement:

“The following information shall be completed prior to the signing of this brokering agreement:

Dollar Purchase Price of Vehicle: _____.

Date this agreement will expire if a purchase agreement from a selling dealer is not presented for your signature: _____.

Fee that you will be obligated to pay us, if any: _____.”

(d) One of the following notices, as appropriate, printed in at least 10-point bold type and placed immediately below the statement required by subdivision (c):

(1) “We do not receive a fee from the selling dealer.”

(2) “We receive a fee from the selling dealer.”

(e) The following notice on the face of the brokering agreement with a heading in at least 14-point bold type and the text in at least 10-point bold type, circumscribed by a line, that reads as follows:

NOTICE

This is an agreement to provide services; it is not an agreement for the purchase of a vehicle. California law gives you the following rights and protection:

Once you have signed this agreement, you have the right to cancel it and receive a full refund of any money paid, including any brokerage fee you may have paid, under any of the following circumstances:

(1) The final price of the vehicle exceeds the purchase price listed above.

(2) The vehicle is not as described above upon delivery.

(3) This agreement expires prior to your being presented with a selling dealer's purchase agreement.

If you have paid a purchase deposit, you have the right to receive a refund of that deposit at any time prior to your signing a vehicle purchase agreement with a selling dealer. Purchase deposits are limited by law to no more than 2.5 percent of the purchase price of a vehicle and must be deposited by an autobroker or auto buying service in a federally insured trust account. If you are unable to resolve a dispute with your autobroker or auto buying service, please contact the Department of Motor Vehicles, Division of Investigations and Occupational Licensing, via your local office of the Department of Motor Vehicles.

(f) The date the agreement is executed.

(g) The signature of the autobroker and consumer.

SEC. 16. Section 11739 is added to the Vehicle Code, to read:

11739. For purposes of title registration, warranties, rebates, and incentives, in a brokered retail new motor vehicle sale, the selling, franchised new car dealer, and not the autobroker, is responsible to apply for title in the name of the purchaser, to secure vehicle registration and the license plates for the purchaser, to secure the manufacturer's warranty in the name of the purchaser, and to make all applications for any manufacturer's rebates and incentives due the purchaser. If there is a manufacturer's recall, the consumer shall be notified directly by the manufacturer.

SEC. 17. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become

operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1254

An act to amend Section 798.42 of the Civil Code, relating to mobilehome parks.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 798.42 of the Civil Code is amended to read:
798.42. (a) The management shall not charge or impose upon a homeowner any fee or increase in rent which reflects the cost to the management of any fine, forfeiture, penalty, money damages, or fee assessed or awarded by a court of law against the management for a violation of this chapter, including any attorney's fees and costs incurred by the management in connection therewith.

(b) A court shall consider the remoteness in time of the assessment or award against the management of any fine, forfeiture, penalty, money damages, or fee in determining whether the homeowner has met the burden of proof that the fee or increase in rent is in violation of this section.

(c) Any provision in a rental agreement entered into, renewed, or modified on or after January 1, 1995, that permits a fee or increase in rent that reflects the cost to the management of any money damages awarded against the management for a violation of this chapter shall be void.

CHAPTER 1255

An act to add and repeal Part 26.9 (commencing with Section 47700) of Division 4 of Title 2 of the Education Code, relating to juvenile offenders.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Part 26.9 (commencing with Section 47700) is added to Division 4 of Title 2 of the Education Code, to read:

PART 26.9. EDUCATIONAL PROGRAMS FOR JUVENILE
OFFENDERS

47700. There is hereby established in the Department of the Youth Authority a program of financial assistance to county offices of education for the operation of school activities within existing camps, ranches, and boot camps for juvenile offenders. All funds appropriated to the Department of the Youth Authority for the purposes of this part shall be administered and disbursed by the director of that department to county offices of education, pursuant to a formula based on population, and in response to a request for proposals issued by the department. Moneys for the support of this program shall be derived solely from federal funds for juvenile crime prevention programs or activities made available for these purposes.

47701. The Department of the Youth Authority shall select three counties, one in the northern, one in the central, and one in the southern part of the state, from those counties that have responded to the department's request for proposals. In selecting the counties, preference shall be given to those programs for juvenile offenders that conduct combined custodial and educational activities on a 24-hour basis within a military boot camp environment, and whose county office of education proposal specifies that the educational activities and the job training activities are to be provided at a cost not to exceed the statewide average per pupil that the state appropriates for programs identified as juvenile court schools.

47702. At the discretion of a judge of the juvenile court, any habitual juvenile offender may be committed to a camp, ranch, or boot camp with an educational and job training program as described in this part until age 18 years or completion of the 12th grade or its equivalent and obtaining a marketable job skill, whichever comes first.

47703. Each educational program for juvenile offenders shall be administered by the county office of education under the direction of the county superintendent of schools within county facilities for juvenile offenders.

47704. Academic coursework shall include only those subjects which will prepare the juvenile to obtain a 12th grade diploma or its equivalent. Emphasis shall be placed on mastering the subjects and skills needed for success in an industrialized, modern society.

47705. If the juvenile reaches the age of 17 years without completion of the 12th grade or its equivalent and attaining a vocational skill, and requests release from the camp, ranch, or boot camp, he or she shall be returned to the juvenile court for a determination as to whether the courts' jurisdiction should be terminated.

47710. A county's response to a request for proposals shall include a program evaluation component that assesses the educational and job training achievements of the offenders in the program. The department shall prepare a composite evaluation of each funded

program and report its findings and recommendations for program approval, modification, retention, termination, or expansion to the Governor and the Legislature within 36 months of the initial award of funding to a county office of education.

SEC. 2. This part shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

SEC. 3. This act shall only become operative if California receives federal funds for juvenile crime prevention programs or activities and made available the general purpose of funding schools that target juvenile offenders. Any such federal funds received by California shall be subject to appropriation in the annual Budget Act.

CHAPTER 1256

An act to add Section 1820.47 to the Welfare and Institutions Code, relating to juveniles.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. The Legislature finds and declares the following:

(a) With the growth of serious, violent crime committed by and against California's youth, the need for alternatives to the existing juvenile justice system has significantly increased.

(b) Although there are a few local programs for young, first-time offenders, most communities lack the ability to impose intermediate sanctions.

(c) While programs such as boot camps have been found to be an effective alternative to traditional incarceration, particularly for young, first-time offenders, few resources are available to state and local officials for technical assistance in the development and establishment of these programs.

(d) There are significant federal funds available for local youth offender programs, and the state should authorize local governments to use existing state resources, such as the Military Department, to assist in the establishment of boot camp and similar facilities.

(e) The Military Department is a valuable resource to this state, and its personnel have technical skills and expert knowledge in the development, establishment, and operation of boot camp facilities that should be exploited by local governments in creating boot camp and similar programs for young, first-time offenders.

SEC. 2. Section 1820.47 is added to the Welfare and Institutions Code, to read:

1820.47. In order to develop, establish, and operate boot camp and similar programs for young, first-time offenders, a county may

contract with the Military Department for the provision of the following services:

(a) Program planning assistance for counties contemplating the development of boot camp and similar programs.

(b) Training of personnel for boot camp and similar programs.

(c) Technical assistance for existing boot camp and similar programs.

(d) Assistance in establishing cooperative innovative military projects and career training (IMPACT) programs.

A county that contracts with the Military Department for any of these services shall be reimbursed for its costs to the extent that funds are made available in the annual Budget Act for these purposes.

CHAPTER 1257

An act to amend Sections 54, 54.1, 54.2, 54.3, 54.4, 54.5, 54.6, 54.7, and 55.1 of the Civil Code, to amend Section 39839 of the Education Code, to add Chapter 3.5 (commencing with Section 30850) to Division 14 of the Food and Agricultural Code, and to amend Section 365.5 of, and to add Sections 365.7, 600.2, and 600.5 to, the Penal Code, relating to disabled persons.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 54 of the Civil Code is amended to read:

54. (a) Individuals with disabilities shall have the same right as the general public to the full and free use of the streets, highways, sidewalks, walkways, public buildings, medical facilities, including hospitals, clinics, and physicians' offices, public facilities, and other public places.

(b) "Disability," as used in this part, means any of the following with respect to an individual:

(1) A physical or mental impairment that substantially limits one or more of the major life activities of the individual.

(2) A record of such an impairment.

(3) Being regarded as having such an impairment.

SEC. 2. Section 54.1 of the Civil Code is amended to read:

54.1. (a) (1) Individuals with disabilities shall be entitled to full and equal access, as other members of the general public, to accommodations, advantages, facilities, medical facilities, including hospitals, clinics, and physicians' offices, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motorbuses, streetcars, boats, or any other public conveyances or modes of transportation (whether private, public, franchised, licensed, contracted, or otherwise provided), telephone facilities, adoption

agencies, private schools, hotels, lodging places, places of public accommodation, amusement, or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons.

(2) As used in this section, "telephone facilities" means tariff items and other equipment and services which have been approved by the Public Utilities Commission to be used by individuals with disabilities in a manner feasible and compatible with the existing telephone network proved by the telephone companies.

(3) "Full and equal access," for purposes of this section in its application to transportation, means access that meets the standards of Titles II and III of the Americans with Disabilities Act of 1990 (Public Law 101-336) and federal regulations adopted pursuant thereto, except that, if the laws of this state prescribe higher standards, it shall mean access that meets those higher standards.

(b) (1) Individuals with disabilities shall be entitled to full and equal access, as other members of the general public, to all housing accommodations offered for rent, lease, or compensation in this state, subject to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons.

(2) "Housing accommodations" means any real property, or portion thereof, which is used or occupied, or is intended, arranged, or designed to be used or occupied, as the home, residence, or sleeping place of one or more human beings, but shall not include any accommodations included within subdivision (a) or any single-family residence the occupants of which rent, lease, or furnish for compensation not more than one room therein.

(3) (A) Any person renting, leasing, or otherwise providing real property for compensation shall not refuse to permit an individual with a disability, at that person's expense, to make reasonable modifications of the existing rented premises if the modifications are necessary to afford the person full enjoyment of the premises. However, any modifications under this paragraph may be conditioned on the disabled tenant entering into an agreement to restore the interior of the premises to the condition existing prior to the modifications. No additional security may be required on account of an election to make modifications to the rented premises under this paragraph, but the lessor and tenant may negotiate, as part of the agreement to restore the premises, a provision requiring the disabled tenant to pay an amount into an escrow account, not to exceed a reasonable estimate of the cost of restoring the premises.

(B) Any person renting, leasing, or otherwise providing real property for compensation shall not refuse to make reasonable accommodations in rules, policies, practices, or services, when those accommodations may be necessary to afford individuals with a disability equal opportunity to use and enjoy the premises.

(4) Nothing in this subdivision shall require any person renting, leasing, or providing for compensation real property to modify his or

her property in any way or provide a higher degree of care for an individual with a disability than for an individual who is not disabled.

(5) Except as provided in paragraph (6) of this subdivision, nothing in this part shall require any person renting, leasing, or providing for compensation real property, if that person refuses to accept tenants who have dogs, to accept as a tenant an individual with a disability who has a dog.

(6) (A) It shall be deemed a denial of equal access to housing accommodations within the meaning of this subdivision for any person, firm, or corporation to refuse to lease or rent housing accommodations to an individual who is blind or visually impaired on the basis that the individual uses the services of a guide dog, an individual who is deaf or hearing impaired on the basis that the individual uses the services of a signal dog, or to an individual with any other disability on the basis that the individual uses the services of a service dog, or to refuse to permit such an individual who is blind or visually impaired to keep a guide dog, an individual who is deaf or hearing impaired to keep a signal dog, or an individual with any other disability to keep a service dog on the premises.

(B) Except in the normal performance of duty as a mobility or signal aid, nothing contained in this paragraph shall be construed to prevent the owner of a housing accommodation from establishing terms in a lease or rental agreement which reasonably regulate the presence of guide dogs, signal dogs, or service dogs on the premises of a housing accommodation, nor shall this paragraph be construed to relieve a tenant from any liability otherwise imposed by law for real and personal property damages caused by such a dog when proof of same exists.

(C) (i) As used in this subdivision, "guide dog" means any guide dog which was trained by a person licensed under the provisions of Chapter 9.5 (commencing with Section 7200) of Division 3 of the Business and Professions Code or as defined in the regulations implementing Title III of the Americans with Disabilities Act of 1990 (Public Law 101-336).

(ii) As used in this subdivision, "signal dog" means any dog trained to alert an individual who is deaf or hearing impaired to intruders or sounds.

(iii) As used in this subdivision, "service dog" means any dog individually trained to the requirements of the individual with a disability, including, but not limited to, minimal protection work, rescue work, pulling a wheelchair, or fetching dropped items.

(7) It shall be deemed a denial of equal access to housing accommodations within the meaning of this subdivision for any person, firm, or corporation to refuse to lease or rent housing accommodations to an individual who is blind or visually impaired, an individual who is deaf or hearing impaired, or other individual with a disability on the basis that the individual with a disability is partially or wholly dependent upon the income of his or her spouse, if the spouse is a party to the lease or rental agreement. Nothing in

this subdivision shall, however, prohibit a lessor or landlord from considering the aggregate financial status of an individual with a disability and his or her spouse.

(c) Visually impaired or blind persons and persons licensed to train guide dogs for individuals who are visually impaired or blind pursuant to Chapter 9.5 (commencing with Section 7200) of Division 3 of the Business and Professions Code or guide dogs as defined in the regulations implementing Title III of the Americans with Disabilities Act of 1990 (Public Law 101-336), and persons who are deaf or hearing impaired and persons authorized to train signal dogs for individuals who are deaf or hearing impaired, and other individuals with a disability and persons authorized to train service dogs for individuals with a disability, may take dogs, for the purpose of training them as guide dogs, signal dogs, or service dogs in any of the places specified in subdivisions (a) and (b). These persons shall ensure the dog is on a leash and tagged as a guide dog, signal dog, or service dog by identification tag issued by the county clerk, animal control department, or other agency, as authorized by Chapter 3.5 (commencing with Section 30850) of Title 14 of the Food and Agricultural Code.

Nothing in this subdivision shall be construed to impose limitation to access to any person in violation of the Americans with Disabilities Act of 1990 (Public Law 101-336).

(d) Nothing in this section shall preclude the requirement of the showing of a license plate or disabled placard when required by enforcement units enforcing disabled persons parking violations pursuant to Sections 22507.8 and 22511.8 of the Vehicle Code.

SEC. 3. Section 54.2 of the Civil Code is amended to read:

54.2. (a) Every individual with a disability shall have the right to be accompanied by a guide dog, signal dog, or service dog, especially trained for the purpose, in any of the places specified in Section 54.1 without being required to pay an extra charge or security deposit for the guide dog, signal dog, or service dog. However, the individual shall be liable for any damage done to the premises or facilities by his or her dog.

(b) Individuals who are blind or otherwise visually impaired and persons licensed to train guide dogs for individuals who are blind or visually impaired pursuant to Chapter 9.5 (commencing with Section 7200) of Division 3 of the Business and Professions Code or as defined in regulations implementing Title III of the Americans with Disabilities Act of 1990 (Public Law 101-336), and individuals who are deaf or hearing impaired and persons authorized to train signal dogs for individuals who are deaf or hearing impaired, and individuals with a disability and persons who are authorized to train service dogs for the individuals with a disability may take dogs, for the purpose of training them as guide dogs, signal dogs, or service dogs in any of the places specified in Section 54.1 without being required to pay an extra charge or security deposit for the guide dog, signal dog, or service dog. However, the person shall be liable for any

damage done to the premises or facilities by his or her dog. These persons shall ensure the dog is on a leash and tagged as a guide dog, signal dog, or service dog by identification tag issued by the county clerk, animal control department, or other agency, as authorized by Chapter 3.5 (commencing with Section 30850) of Title 14 of the Food and Agricultural Code.

Nothing in this subdivision shall be construed to impose limitation to access to any person in violation of the Americans with Disabilities Act of 1990 (Public Law 101-336).

(c) As used in this section, the terms "guide dog," "signal dog," and "service dog" have the same meanings as specified in Section 54.1.

(d) Nothing in this section shall preclude the requirement of the showing of a license plate or disabled placard when required by enforcement units enforcing disabled persons parking violations pursuant to Sections 22507.8 and 22511.8 of the Vehicle Code.

SEC. 4. Section 54.3 of the Civil Code is amended to read:

54.3. (a) Any person or persons, firm or corporation who denies or interferes with admittance to or enjoyment of the public facilities as specified in Sections 54 and 54.1 or otherwise interferes with the rights of an individual with a disability under Sections 54, 54.1 and 54.2 is liable for each offense for the actual damages and any amount as may be determined by a jury, or the court sitting without a jury, up to a maximum of three times the amount of actual damages but in no case less than seven hundred fifty dollars (\$750), and such attorney's fees as may be determined by the court in addition thereto, suffered by any person denied any of the rights provided in Sections 54, 54.1, and 54.2. "Interfere," for purposes of this section, includes, but is not limited to, preventing or causing the prevention of a guide, signal, or service dog from carrying out its functions in assisting a disabled person.

(b) The remedies in this section are nonexclusive and are in addition to any other remedy provided by law, including, but not limited to, any action for injunctive or other equitable relief available to the aggrieved party or brought in the name of the people of this state or of the United States.

SEC. 5. Section 54.4 of the Civil Code is amended to read:

54.4. A blind or otherwise visually impaired pedestrian shall have all of the rights and privileges conferred by law upon other persons in any of the places, accommodations, or conveyances specified in Sections 54 and 54.1, notwithstanding the fact that the person is not carrying a predominantly white cane (with or without a red tip), or using a guide dog. The failure of a blind or otherwise visually impaired person to carry such a cane or to use such a guide dog shall not constitute negligence per se.

SEC. 6. Section 54.5 of the Civil Code is amended to read:

54.5. Each year, the Governor shall publicly proclaim October 15 as White Cane Safety Day. He or she shall issue a proclamation in which:

(a) Comments shall be made upon the significance of this chapter.
(b) Citizens of the state are called upon to observe the provisions of this chapter and to take precautions necessary to the safety of disabled persons.

(c) Citizens of the state are reminded of the policies with respect to disabled persons declared in this chapter and he urges the citizens to cooperate in giving effect to them.

(d) Emphasis shall be made on the need of the citizenry to be aware of the presence of disabled persons in the community and to keep safe and functional for the disabled the streets, highways, sidewalks, walkways, public buildings, public facilities, other public places, places of public accommodation, amusement and resort, and other places to which the public is invited, and to offer assistance to disabled persons upon appropriate occasions.

(e) It is the policy of this state to encourage and enable disabled persons to participate fully in the social and economic life of the state and to engage in remunerative employment.

SEC. 7. Section 54.6 of the Civil Code is amended to read:

54.6. As used in this part, "visually impaired" includes blindness and means having central visual acuity not to exceed 20/200 in the better eye, with corrected lenses, as measured by the Snellen test, or visual acuity greater than 20/200, but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle is not greater than 20 degrees.

SEC. 8. Section 54.7 of the Civil Code is amended to read:

54.7. (a) Notwithstanding any other provision of law, the provisions of this part shall not be construed to require zoos or wild animal parks to allow guide dogs, signal dogs, or service dogs to accompany individuals with a disability in areas of the zoo or park where zoo or park animals are not separated from members of the public by a physical barrier. As used in this section, "physical barrier" does not include an automobile or other conveyance.

(b) Any zoo or wild animal park that does not permit guide dogs, signal dogs, or service dogs to accompany individuals with a disability therein shall maintain, free of charge, adequate kennel facilities for the use of guide dogs, signal dogs, or service dogs belonging to these persons. These facilities shall be of a character commensurate with the anticipated daily attendance of individuals with a disability. The facilities shall be in an area not accessible to the general public, shall be equipped with water and utensils for the consumption thereof, and shall otherwise be safe, clean, and comfortable.

(c) Any zoo or wild animal park that does not permit guide dogs to accompany blind or visually impaired persons therein shall provide free transportation to blind or visually impaired persons on any mode of transportation provided for members of the public.

Each zoo or wild animal park that does not permit service dogs to accompany individuals with a disability shall provide free transportation to individuals with a disability on any mode of transportation provided for a member of the public in cases where

the person uses a wheelchair and it is readily apparent that the person is unable to maintain complete or independent mobility without the aid of the service dog.

(d) Any zoo or wild animal park that does not permit guide dogs to accompany blind or otherwise visually impaired persons therein shall provide sighted escorts for blind or otherwise visually impaired persons if they are unaccompanied by a sighted person.

(e) As used in this section, "wild animal park" means any entity open to the public on a regular basis, licensed by the United States Department of Agriculture under the Animal Welfare Act as an exhibit, and operating for the primary purposes of conserving, propagating, and exhibiting wild and exotic animals, and any marine, mammal, or aquatic park open to the general public.

SEC. 9. Section 55.1 of the Civil Code is amended to read:

55.1. In addition to any remedies available under the federal Americans with Disabilities Act of 1990, Public Law 101-336 (42 U.S.C. Sec. 12102), or other provisions of law, the district attorney, the city attorney, the Department of Rehabilitation acting through the Attorney General, or the Attorney General may bring an action to enjoin any violation of Section 54 or 54.1.

SEC. 10. Section 39839 of the Education Code is amended to read:

39839. Guide dogs, signal dogs, and service dogs trained to provide assistance to individuals with a disability may be transported in a schoolbus when accompanied by disabled pupils enrolled in a public or private school or by disabled teachers employed in a public or private school or community college or by persons training the dogs.

SEC. 10.5. Chapter 3.5 (commencing with Section 30850) is added to Division 14 of the Food and Agricultural Code, to read:

CHAPTER 3.5. GUIDE DOGS, SIGNAL DOGS, AND SERVICE DOGS

30850. The county clerk or animal control department shall endorse upon the application for an assistance dog identification tag the number of the identification tag issued. As used in this chapter, "assistance dogs" are dogs specially trained as guide dogs, signal dogs, or service dogs. All applications which have been endorsed shall be kept on file in the office of the county clerk or animal control department and shall be open to public inspection.

30851. The owners of assistance dogs shall comply with all state and local ordinances regarding health and licensure requirements for dogs.

30852. The tag identifying a dog as an assistance dog to be used only by a person with a disability or a trainer of an assistance dog shall be of such uniform statewide shape, size, and color as to be easily recognized. The Department of Food and Agriculture, in consultation with the State Department of Health Services, shall specify the shape, size, and color of the tags.

SEC. 11. Section 365.5 of the Penal Code is amended to read:

365.5. (a) Any blind person, deaf person, or disabled person who is a passenger on any common carrier, airplane, motor vehicle, railway train, motorbus, streetcar, boat, or any other public conveyance or mode of transportation operating within this state, shall be entitled to have with him or her a specially trained guide dog, signal dog, or service dog.

(b) No blind person, deaf person, or disabled person and his or her specially trained guide dog, signal dog, or service dog shall be denied admittance to hotels, restaurants, lodging places, places of public accommodation, amusement, or resort or other places to which the general public is invited within this state because of that guide dog, signal dog, or service dog.

(c) Any person, firm, association, or corporation, or the agent of any person, firm, association, or corporation, who prevents a disabled person from exercising, or interferes with a disabled person in the exercise of, the rights specified in this section is guilty of a misdemeanor punishable by a fine not exceeding two thousand five hundred dollars (\$2,500).

(d) As used in this section, "guide dog" means any guide dog or Seeing Eye dog which was trained by a person licensed under Chapter 9.5 (commencing with Section 7200) of Division 3 of the Business and Professions Code or which meets the definitional criteria under federal regulations adopted to implement Title III of the Americans with Disabilities Act of 1990 (Public Law 101-336).

(e) As used in this section, "signal dog" means any dog trained to alert a deaf person, or a person whose hearing is impaired, to intruders or sounds.

(f) As used in this section "service dog" means any dog individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, minimal protection work, rescue work, pulling a wheelchair, or fetching dropped items.

(g) Nothing in this section is intended to affect any civil remedies available for a violation of this section.

(h) The exercise of rights specified in subdivisions (a) and (b) by any person may not be conditioned upon payment of any extra charge, provided that the person shall be liable for any provable damage done to the premises or facilities by his or her dog.

(i) Any trainer or individual with a disability may take dogs in any of the places specified in subdivisions (a) and (b) for the purpose of training the dogs as guide dogs, signal dogs, or service dogs. However, the person shall be liable for any provable damage done to the premises or facilities by his or her dog.

SEC. 12. Section 365.7 is added to the Penal Code, to read:

365.7. (a) Any person who knowingly and fraudulently represents himself or herself, through verbal or written notice, to be the owner or trainer of any canine licensed as, to be qualified as, or identified as, a guide, signal, or service dog, as defined in subdivisions (d), (e), and (f) of Section 365.5 and paragraph (6) of subdivision (b)

of Section 54.1 of the Civil Code, shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months, by a fine not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment.

(b) As used in this section, "owner" means any person who owns a guide, signal, or service dog, or who is authorized by the owner to use the guide, signal, or service dog.

SEC. 13. Section 600.2 is added to the Penal Code, to read:

600.2. (a) It is unlawful and constitutes an infraction for any person to permit any dog which is owned, harbored, or controlled by him or her to cause injury to or the death of any guide, signal, or service dog, as defined by Section 54.1 of the Civil Code, while the guide, signal, or service dog is in discharge of its duties.

(b) In any case in which a defendant is convicted of a violation of this section, the defendant shall be ordered to make restitution to the disabled person who has custody or ownership of the guide, signal, or service dog for any veterinary bills and replacement costs of the dog if it is disabled or killed.

SEC. 14. Section 600.5 is added to the Penal Code, to read:

600.5. (a) Any person who intentionally causes injury to or the death of any guide, signal, or service dog, as defined by Section 54.1 of the Civil Code, while the dog is in discharge of its duties, is guilty of a misdemeanor, punishable by imprisonment in the county jail not exceeding one year, or by a fine not exceeding five thousand dollars (\$5,000), or by both a fine and imprisonment.

(b) In any case in which a defendant is convicted of a violation of this section, the defendant shall be ordered to make restitution to the disabled person who has custody or ownership of the dog for any veterinary bills and replacement costs of the dog if it is disabled or killed.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 1258

An act to amend Sections 1524.5 and 1562 of, and to add Sections 1536.3 and 1562.3 to, the Health and Safety Code, relating to residential care.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 1524.5 of the Health and Safety Code is amended to read:

1524.5. (a) In addition to any other requirements of this chapter, any community care facility providing residential care for six or fewer persons shall provide a procedure approved by the licensing agency for immediate response to incidents and complaints. This procedure shall include a method of assuring that the owner, licensee, or person designated by the owner or licensee is notified of the incident, that the owner, licensee, or person designated by the owner or licensee has personally investigated the matter, and that the person making the complaint or reporting the incident has received a written response of action taken or a reason why no action needs to be taken.

(b) In order to assure the opportunity for complaints to be made directly to the owner, licensee, or person designated by the owner or licensee, and to provide the opportunity for the owner, licensee, or person designated by the owner or licensee to meet residents and learn of problems in the neighborhood, any facility shall establish a fixed time on a weekly basis when the owner, licensee, or person designated by the owner or licensee will be present.

(c) Facilities shall establish procedures to comply with the requirements of this section on or before July 1, 1995.

SEC. 2. Section 1536.3 is added to the Health and Safety Code, to read:

1536.3. A public agency social worker shall, in determining whether to refer an individual to an adult residential care facility, take into account the compatibility of the individual with the other residents in light of any medical diagnoses or behavioral problems.

SEC. 3. Section 1562 of the Health and Safety Code is amended to read:

1562. The director shall ensure that operators and staffs of community care facilities have appropriate training to provide the care and services for which a license or certificate is issued.

SEC. 4. Section 1562.3 is added to the Health and Safety Code, to read:

1562.3. (a) The State Director of Social Services, in consultation with the Director of Mental Health and the State Director of Developmental Services, shall administer a training program to

ensure that operators and staffs of adult residential facilities have appropriate training to provide the care and services for which a license or certificate is issued.

(b) (1) An administrator of an adult residential care facility shall be required to successfully complete a department approved training program prior to employment.

(2) In those cases where the individual is both the licensee and the administrator of a facility, the individual shall comply with the requirements of this section unless he or she qualifies for the exemption provided for in subdivision (c).

(3) Failure to comply with this section shall constitute cause for revocation of the license of the facility where the individual is functioning as the administrator.

(c) (1) Individuals seeking exemptions under paragraph (2) of subdivision (b) shall meet the following criteria and fulfill the required portions of the training program, as the case may be.

(2) In those cases where the individual was both the licensee and administrator on or before July 1, 1995, the individual shall be required to complete all the areas specified for the training program but shall not be required to take the written test required by this section. Those individuals exempted from the written test shall be issued a conditional certification that is valid only as being the administrator of the facility for which the exemption was granted:

(A) As a condition to becoming an administrator of another facility, the individual shall be required to pass the written test provided for in this section.

(B) As a condition to applying for a new facility license, the individual shall demonstrate successful completion of the training program by passing a written test and receiving a certificate of completion.

(d) (1) The administrator of the training program shall require a minimum of 20 hours of classroom instruction that provides training on a uniform core of knowledge in each of the following areas:

(A) Laws, regulations, and policies and procedural standards that impact the operations of the type of facility for which the applicant will be an administrator.

(B) Business operations.

(C) Management and supervision of staff.

(D) Psychosocial needs of the facility residents.

(E) Community and support services.

(F) Physical needs for facility residents.

(G) Use, misuse, and interaction of medication commonly used by facility residents.

(H) Resident admission, retention, and assessment procedures.

(2) Successful completion of the training program shall be demonstrated by passing a written test administered by the State Department of Social Services.

(e) The department shall issue a certificate upon receipt of all of the following:

(1) A certificate of completion of the administrator training required pursuant to this chapter.

(2) The fee required for issuance of the certificate. A fee of one hundred dollars (\$100) shall be charged by the department to cover the costs for the issuance of a certificate.

(3) Documentation of passing the written test, unless exempt from the written test pursuant to subdivision (c).

(4) Submission of fingerprints. The department and the Department of Justice shall expedite the criminal record clearance for holders of certificates.

(f) It shall be unlawful for any person not certified under this section to hold himself or herself out as a certified administrator of an adult residential facility. Any person willfully making any false representation as being a certified administrator is guilty of a misdemeanor.

(g) (1) Certificates issued under this section shall be renewed every three years and renewal shall be conditional upon the certificate holder submitting documentation of completion of 20 hours of continuing education related to the core of knowledge specified in paragraph (1) of subdivision (d).

(2) Every administrator of an adult residential facility is required to complete the continuing education requirements of this subdivision whether he or she is certified according to subdivision (b) or (c).

(3) Certificates issued under this section shall expire on the certificate holder's birthday. The department may send a renewal notice to the certificate holder 90 days prior to the expiration date of the certificate. If the certificate is not renewed prior to its expiration date, reinstatement shall only be permitted after the certificate holder has paid a delinquency fee equal to three times the renewal fee and has provided evidence of completion of the continuing education required.

(4) To renew a certificate, the certificate holder shall, on or before the certificate expiration date, request renewal by submitting to the department documentation of completion of the required continuing education courses and pay the renewal fee of one hundred dollars (\$100), irrespective of receipt of the department's notification of the renewal. A renewal request postmarked on or before the expiration of the certificate is proof of compliance with this paragraph.

(5) A suspended or revoked certificate is subject to expiration as provided for in this section. If reinstatement of the certificate is approved by the department, the certificate holder, as a condition precedent to reinstatement, shall pay a fee in an amount equal to the renewal fee, plus the delinquency fee, if any, accrued at the time of its revocation or suspension.

(6) A certificate that is not renewed within four years after its expiration shall not be renewed, restored, reissued, or reinstated except upon completion of a training program, passing any test that

may be required of an applicant for a new certificate at that time, and paying the appropriate fees provided for in this section.

(h) The department may revoke a certificate issued under this section for any of the following:

(1) Procuring a certificate by fraud or misrepresentation.

(2) Knowingly making or giving any false statement or information in conjunction with the application for issuance of a certificate.

(3) Criminal conviction unless an exemption is granted pursuant to Section 1522.

(i) The certificate shall be considered forfeited under the following conditions:

(1) The administrator has had a license revoked, suspended, or denied as authorized under Section 1552.

(2) The administrator has been denied employment, residence, or presence in a facility based on action resulting from an administrative hearing pursuant to Section 1552.5.

(j) (1) The State Department of Social Services, in consultation with the Department of Mental Health and the State Department of Developmental Services, shall establish, by regulation, the program content, the testing instrument, the process for approving training programs, and criteria to be used in authorizing individuals, organizations, or educational institutions to conduct training programs and continuing education courses. These regulations shall be developed in consultation with provider organizations, and shall be made available at least six months prior to the deadline required for certification.

(2) The State Department of Social Services shall prepare and maintain an updated list of approved training vendors.

(3) The State Department of Social Services may inspect training programs and continuing education courses to determine if content and teaching methods comply with regulations. If the department determines that any vendor is not complying with the intent of this section, the department shall take appropriate action to bring the program into compliance, which may include removing the vendor from the approved list.

(4) The department shall establish reasonable procedures and timeframes not to exceed 30 days for the approval of vendor training programs.

(5) The department may charge a reasonable fee, not to exceed one hundred fifty dollars (\$150) every two years to certify program vendors for review and approval of the initial 20-hour training program pursuant to subdivision (d). The department may also charge the vendor a fee not to exceed one hundred dollars (\$100) every two years for the review and approval of the continuing education courses needed for recertification pursuant to this subdivision.

(k) This section shall be operative upon regulations being adopted by the department to implement the administrator

certification program as provided for in this section.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution as a result of costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

Moreover, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Also, notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1259

An act to amend Section 3303 of the Government Code, relating to public safety officers.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 3303 of the Government Code is amended to read:

3303. When any public safety officer is under investigation and subjected to interrogation by his or her commanding officer, or any other member of the employing public safety department, that could lead to punitive action, the interrogation shall be conducted under the following conditions. For the purpose of this chapter, punitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.

(a) The interrogation shall be conducted at a reasonable hour, preferably at a time when the public safety officer is on duty, or during the normal waking hours for the public safety officer, unless the seriousness of the investigation requires otherwise. If the interrogation does occur during off-duty time of the public safety officer being interrogated, the public safety officer shall be compensated for any off-duty time in accordance with regular department procedures, and the public safety officer shall not be

released from employment for any work missed.

(b) The public safety officer under investigation shall be informed prior to the interrogation of the rank, name, and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation. All questions directed to the public safety officer under interrogation shall be asked by and through no more than two interrogators at one time.

(c) The public safety officer under investigation shall be informed of the nature of the investigation prior to any interrogation.

(d) The interrogating session shall be for a reasonable period taking into consideration gravity and complexity of the issue being investigated. The person under interrogation shall be allowed to attend to his or her own personal physical necessities.

(e) The public safety officer under interrogation shall not be subjected to offensive language or threatened with punitive action, except that an officer refusing to respond to questions or submit to interrogations shall be informed that failure to answer questions directly related to the investigation or interrogation may result in punitive action. No promise of reward shall be made as an inducement to answering any question. The employer shall not cause the public safety officer under interrogation to be subjected to visits by the press or news media without his or her express consent nor shall his or her home address or photograph be given to the press or news media without his or her express consent.

(f) No statement made during interrogation by a public safety officer under duress, coercion, or threat of punitive action shall be admissible in any subsequent civil proceeding. This subdivision is subject to the following qualifications:

(1) This subdivision shall not limit the use of statements made by a public safety officer when the employing public safety department is seeking civil sanctions against any public safety officer, including disciplinary action brought under Section 19572.

(2) This subdivision shall not prevent the admissibility of statements made by the public safety officer under interrogation in any civil action, including administrative actions, brought by that public safety officer, or that officer's exclusive representative, arising out of a disciplinary action.

(3) This subdivision shall not prevent statements made by a public safety officer under interrogation from being used to impeach the testimony of that officer after an in camera review to determine whether the statements serve to impeach the testimony of the officer.

(4) This subdivision shall not otherwise prevent the admissibility of statements made by a public safety officer under interrogation if that officer subsequently is deceased.

(g) The complete interrogation of a public safety officer may be recorded. If a tape recording is made of the interrogation, the public safety officer shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a

subsequent time. The public safety officer shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential. No notes or reports that are deemed to be confidential may be entered in the officer's personnel file. The public safety officer being interrogated shall have the right to bring his or her own recording device and record any and all aspects of the interrogation.

(h) If prior to or during the interrogation of a public safety officer it is deemed that he or she may be charged with a criminal offense, he or she shall be immediately informed of his or her constitutional rights.

(i) Upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters that are likely to result in punitive action against any public safety officer, that officer, at his or her request, shall have the right to be represented by a representative of his or her choice who may be present at all times during the interrogation. The representative shall not be a person subject to the same investigation. The representative shall not be required to disclose, nor be subject to any punitive action for refusing to disclose, any information received from the officer under investigation for noncriminal matters.

This section shall not apply to any interrogation of a public safety officer in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer, nor shall this section apply to an investigation concerned solely and directly with alleged criminal activities.

(j) No public safety officer shall be loaned or temporarily reassigned to a location or duty assignment if a sworn member of his or her department would not normally be sent to that location or would not normally be given that duty assignment under similar circumstances.

CHAPTER 1260

An act to amend Section 709 of, and to add Section 709.5 to, the Public Utilities Code, relating to public utilities.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. The Legislature finds and declares as follows:

(a) Competition is emerging in telecommunications market sectors, including local telephone service and video service.

(b) The development of competition can be fostered through

appropriate statutory and regulatory changes at the federal, state, and local levels.

(c) Appropriate interconnection arrangements, appropriate telephone number portability, appropriate equal access to all competitors, and appropriate network unbundling are necessary in order to fully develop competition in local telecommunications markets.

(d) Some local exchange telephone corporations are seeking to enter the market for cable television and similar services. California's two largest local exchange telephone corporations have requested authority from the Federal Communications Commission to offer video dialtone service within their franchised service areas. Those same corporations have also initiated court action to enter into the provision of cable television service within their service areas. Any local exchange telephone corporation may provide cable television service outside its service area consistent with federal and state law.

(e) In order to facilitate and initiate the development of competition in local telecommunications markets, interim arrangements for interconnection and network unbundling are feasible and desirable.

(f) Competitive markets generally encourage greater efficiency, lower prices, and more consumer choice than noncompetitive markets.

(g) Competitive markets do not serve all consumers well. Consequently, for essential services, such as telecommunications services, other mechanisms are necessary to remedy these market failures. Competitive markets also fail to ensure that certain societal goals are met, such as universal service. Attaining these goals requires the establishment of other mechanisms.

It is explicitly the intent of the Legislature in enacting this act not to affirm or abrogate any contractual agreements between cable operators and their respective franchising authorities.

SEC. 2. Section 709 of the Public Utilities Code is amended to read:

709. The Legislature hereby finds and declares that the policies for telecommunications in California are as follows:

(a) To continue our universal service commitment by assuring the continued affordability and widespread availability of high-quality telecommunications service to all Californians.

(b) To encourage the development and deployment of new technologies and the equitable provision of services in a way which efficiently meets consumer need and encourages the ubiquitous availability of a wide choice of state-of-the-art services.

(c) To promote economic growth, job creation, and the substantial social benefits that will result from the rapid implementation of advanced information and communications technologies by assuring adequate long-term investment in the necessary infrastructure.

(d) To promote lower prices, broader consumer choice, and

avoidance of anticompetitive conduct.

SEC. 2.5. Section 709 of the Public Utilities Code is amended to read:

709. The Legislature hereby finds and declares that the policies for telecommunications in California are as follows:

(a) To continue our universal service commitment by assuring the continued affordability and widespread availability of high-quality telecommunications service to all Californians.

(b) To encourage the development and deployment of new technologies and the equitable provision of services in a way which efficiently meets consumer need and encourages the ubiquitous availability of a wide choice of state-of-the-art services.

(c) To promote economic growth, job creation, and the substantial social benefits that will result from the rapid implementation of advanced information and communications technologies by adequate long-term investment in the necessary infrastructure.

(d) To promote lower prices, broader consumer choice, and avoidance of anticompetitive conduct.

(e) To remove the barriers to open and competitive markets and promote fair product and price competition in a way that encourages greater efficiency, lower prices, and more consumer choice.

SEC. 3. Section 709.5 is added to the Public Utilities Code, to read:

709.5. (a) It is the intent of the Legislature that all telecommunications markets subject to commission jurisdiction be opened to competition not later than January 1, 1997. The commission shall take steps to ensure that competition in telecommunications markets is fair and that the state's universal service policy is observed.

(b) To the extent possible, competition in intraexchange telecommunications markets shall be coincident with competition in video markets.

(c) The commission shall expedite its open network architecture and network development, interconnection, universal service, and other related dockets so that whatever additional rules and regulations that may be necessary to achieve fair local exchange competition shall be in place no later than January 1, 1997.

(d) If any local exchange telephone company obtains the right to offer cable television or video dialtone service within its service territory from a regulatory body or court of competent jurisdiction, any cable television corporation or its affiliates may immediately have the right to enter into the intraexchange market within the service territory of that local exchange carrier by filing for approval of a certificate of public convenience and necessity, if necessary, which shall be expeditiously reviewed by the commission.

(e) If the local exchange corporation is subject to the commission's standards for the interconnection of networks, network unbundling, and service quality, the cable television corporation or

its affiliates may be subject to the commission's standards for the interconnection of networks, network unbundling, and service quality, for that portion of their network dedicated to intraexchange telecommunications service. In addition, all corporations offering intraexchange telecommunications service shall be subject to the commission's consumer protection regulations.

SEC. 4. Section 2.5 of this bill incorporates amendments to Section 709 of the Public Utilities Code proposed by both this bill and SB 1966. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 709 of the Public Utilities Code, and (3) this bill is enacted after SB 1966, in which case Section 2 of this bill shall not become operative.

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

CHAPTER 1261

An act to amend Sections 15346, 15346.1, and 15346.2 of, to amend and renumber the heading of Article 3.6 (commencing with Section 15346) of Chapter 1 of Part 6.7 of Division 3 of Title 2 of, to add Section 15346.10 to, and to add and repeal Article 6 (commencing with Section 65050) of Chapter 1.5 of Division 1 of Title 7 of, the Government Code, relating to economic development.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. The heading of Article 3.6 (commencing with Section 15346) of Chapter 1 of Part 6.7 of Division 3 of Title 2 of the Government Code is amended and renumbered to read:

Article 3.7. California Defense Conversion and Military Base
Reuse Act

SEC. 2. Section 15346 of the Government Code is amended to read:

15346. This article shall be known and may be cited as the

California Defense Conversion and Military Base Reuse Act.

SEC. 3. Section 15346.1 of the Government Code is amended to read:

15346.1. The Legislature declares as follows:

(a) For over half a century, California's industries, universities, businesses, and workers have contributed to our nation's defense, utilizing their capital, talents, and skills to develop and bring to production important new technologies and advanced weapons systems, aircraft, and missiles.

(b) The nation now confronts the challenge of working together to resolve issues related to base closure and reuse, and converting our defense dependent economic sector to meet the rigors of commercial competition. California industries and workers have earned their government's gratitude and deserve our assistance in this transition. Communities that have housed military facilities require assistance as those facilities close due to reductions in military spending.

(c) Defense spending in California peaked at 60 billion dollars (\$60,000,000,000) in 1988. Since then, it has decreased by 16 percent with the resulting loss of 126,000 jobs. The Commission on State Finance projects a further 22 percent reduction to 37 billion dollars (\$37,000,000,000) in 1997, with a loss of another 81,000 jobs. California is expected to experience the most severe impact of defense cuts in 1994.

(d) California has experienced many rounds of base closures resulting in the closure or realignment of several bases since 1988. Additional bases may be considered for closure as part of round four in 1995.

(e) California will lose more federal payroll jobs from its 22 military base closures under rounds one to three than all of the rest of the states put together. The reduced military payroll (military and civilian employees) in California will be about 101,000 jobs. About 300,000 private sector defense industry jobs in California will be lost.

(f) California needs a coordinated base closure and defense conversion program within the state in order to expedite reuse and realignment, and to transition to a lower level of defense expenditures and peacetime economic pursuits.

(g) Just as the state is a leader in the nation's defense effort, so it must now assume a leadership role in converting to a peacetime economy. That role will require a coordinated effort to ensure that California benefits from federal programs, assists local governments to plan and provide for needed services, encourages the development of new technologies and their application by California industries, provides worker retraining, and builds an infrastructure for the future.

SEC. 4. Section 15346.2 of the Government Code is amended to read:

15346.2. The Legislature recognizes that fundamental shifts occur within the economy that result in the closure of existing

production facilities, retail establishments, and business institutions, or in severe reduction of employment opportunities. Reductions in the federal defense budget are creating that shift. Therefore, to promote integration in federal, state, and local government reuse and realignment policies, as well as defense conversion policies and programs, to foster an active information exchange between public and private sectors, and to build on the wealth of human and industrial capital that comprises California's defense dependent economic sector, the California Defense Conversion Council is hereby created in the Trade and Commerce Agency.

SEC. 5. Section 15346.10 is added to the Government Code, to read:

15346.10. In addition to the duties specified in Section 15346.5, the council shall do all of the following:

(a) Hold special information meetings throughout the state on base reuse problems and issues.

(b) Request and review plans of all state agencies that may have programmatic, assistance, or regulatory roles that may substantially affect military base reuse and offer comments or suggest changes to better integrate these plans into the overall state strategic plan required pursuant to subdivision (a) of Section 15346.5.

(c) Suggest, where appropriate, areas of specialization or differentiation for individual local military base reuse plans if similar, potentially competing reuse concepts are emerging at two or more bases.

SEC. 6. Article 6 (commencing with Section 65050) is added to Chapter 1.5 of Division 1 of Title 7 of the Government Code, to read:

Article 6. Local Base Reuse Entities

65050. (a) As used in this article, the following phrases have the following meanings:

(1) "Military base" means a military base that is designated for closure or downward realignment pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act (P.L. 100-526), the Defense Base Closure and Realignment Act of 1990 (P.L. 101-510), or any subsequent closure or realignment approved by the President of the United States without objection by the Congress.

(2) "Effective date of a base closure" means the date a base closure decision becomes final under the terms specified by federal law. These decisions become final 45 legislative days after the date the federal Base Closure Commission submits its recommendations to the President, he or she approves those recommendations, and the Congress does not disapprove those recommendations or adjourns.

(b) It is not the intent of the Legislature in enacting this section to preempt local planning efforts or to supersede any existing or subsequent authority invested in the Defense Conversion Council, as established by Article 3.7 (commencing with Section 15346). It is the

intent of this act to provide a means of conflict resolution.

(c) For the purposes of this article, a single local base reuse entity shall be recognized pursuant to the provisions of this section for each military base closure in this state.

(d) The following entities or their successors, including, but not limited to, separate airport or port authorities, are recognized as the single local base reuse entity for the military bases listed:

Military Base	Local Reuse Entity
George Air Force Base	Victor Valley Economic Development Authority
Hamilton Army Base	City of Novato
Mather Air Force Base	County of Sacramento
Norton Air Force Base	Inland Valley Development Authority
Presidio Army Base	City and County of San Francisco
Salton Sea Navy Base	Imperial County
Castle Air Force Base	Castle Joint Powers Authority
Hunters Point Naval Annex	City and County of San Francisco
Long Beach Naval Station	City of Long Beach
MCAS Tustin	City of Tustin
Sacramento Army Depot	City of Sacramento
MCAS El Toro	El Toro Reuse Planning Authority
March Air Force Base	March Joint Powers Authority
Mare Island Naval Shipyard	City of Vallejo
Naval Training Center, San Diego	City of San Diego
NS Treasure Island	City and County of San Francisco
NAS Alameda, San Francisco Bay Public Works Center, Alameda Naval Aviation Depot	Alameda Reuse and Redevelopment Authority
Oakland Navy Hospital	City of Oakland
Fort Ord Army Base	Fort Ord Reuse Authority

Any military base reuse authority created pursuant to Title 7.86 (commencing with Section 67800).

(e) For any military base that is closed and not listed in subdivision (a), a single local reuse entity shall be recognized for the base by the state if resolutions acknowledging the entity as the single base reuse entity are adopted by the affected county board of supervisors and the city council of each city located wholly or partly within the boundaries of a military base or having a sphere of

influence over any portion of the base and are forwarded to the Defense Conversion Council and the Office of Planning and Research within 60 days after the effective date of a base closure decision or within 60 days after the date on which this section becomes operative, whichever date is later.

(f) If the necessary resolutions are not adopted within the time limit specified in subdivision (e), the Director of the Office of Planning and Research may select a mediator, from a list submitted by the Defense Conversion Council containing no fewer than seven recommendations, to reach agreement among the affected jurisdictions on a single local reuse entity. In selecting a mediator, the director shall appoint a neutral person or persons, with experience in local land use issues, to facilitate communication between the disputants and assist them in reaching a mutually acceptable agreement.

(g) As a last resort, and only if no recognition is made pursuant to the procedure specified in subdivisions (e) and (f) within 120 days after a base closure decision has become final or within 120 days after the date on which this section becomes operative, whichever date is later, the Defense Conversion Council, created pursuant to Article 3.6 (commencing with Section 15346) of Chapter 1 of Part 6.7 of Division 3 of Title 2, shall hold public hearings and recognize a single local base reuse entity for each closing base for which agreement is reached among the local jurisdictions with responsibility for complying with Chapter 3 (commencing with Section 65100) and Chapter 4 (commencing with Section 65800) on the base, or recommend legislation or action by the local agency formation commission if necessary to implement a proposed recognition.

(h) In recognizing a single local reuse entity pursuant to this section, preference shall be given to existing entities and entities with responsibility for complying with Chapter 3 (commencing with Section 65100) and Chapter 4 (commencing with Section 65800).

(i) Any recognition of a single local reuse entity made pursuant to subdivision (e), (f), or (g) shall be submitted by the Director of the Office of Planning and Research to the Governor, the Legislature, and the United States Department of Defense.

65051. The single local base reuse authority shall be recognized by all state agencies as the single base reuse planning authority for the base. The state shall encourage the federal government and other local jurisdictions to recognize similarly the authorities designated pursuant to Section 65050 for the purposes of reuse planning and property transfers pursuant to Title XXIX (commencing with Section 2901) of the National Defense Authorization Act for Fiscal Year 1993 (P.L. 103-160).

65052. All state agencies shall consult with the affected single local reuse authority recognized pursuant to Section 65050 prior to submitting any public benefit conveyance requests to the federal government. The single local reuse entity is the only entity that is eligible for the following state benefits for use on the base, unless the

entity notifies the relevant state agency that a city or county having jurisdiction over a portion of the base shall be eligible for the state benefit.

(a) State grants for base reuse planning.

(b) Local Area Military Base Recovery Act (LAMBRA) designation.

(c) Air emissions reduction credits for base property, as permitted by law.

(d) Targeted permit assistance pursuant to Chapter 11 (commencing with Section 15399.50) of Part 6.7 of Division 3 of Title 2.

(e) Consultation on toxic cleanup priorities.

65053. This article shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2001, deletes or extends that date.

SEC. 7. This act shall only become effective if Assembly Bill No. 3759 of the 1993-94 Regular Session is enacted and becomes effective.

CHAPTER 1262

An act to amend Sections 35160.5, 46601.5, 48204, 48209.1, 48209.3, 48209.9, and 48980 of the Education Code, relating to school attendance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 35160.5 of the Education Code is amended to read:

35160.5. (a) On or before December 1, 1984, the governing board of each school district shall, as a condition for the receipt of school apportionments from the State School Fund, adopt rules and regulations establishing school district policies as they relate to the following:

(1) Certification that personnel assigned to evaluate teachers have demonstrated competence in instructional methodologies and evaluation for teachers they are assigned to evaluate. The determination of whether school personnel meet the district's adopted policies shall be made by the governing board.

(2) The establishment of district policies ensuring that each probationary certificated employee is assigned to a school within the district with assurances that his or her status as a new teacher and his or her potential needs for training, assistance, and evaluations will be recognized by the district.

(3) The establishment of policies and procedures that parents or

guardians of pupils enrolled in the district may use to present complaints regarding employees of the district. These policies and procedures shall provide for appropriate mechanisms to respond to, and where possible, to resolve the complaints.

(b) The governing board of each school district that maintains one or more schools containing any of grades 7 to 12, inclusive, shall, as a condition for the receipt of an inflation adjustment pursuant to Section 42238.1, establish a school district policy regarding participation in extracurricular and cocurricular activities by pupils in grades 7 to 12, inclusive. The criteria, which shall be applied to extracurricular and cocurricular activities, shall ensure that pupil participation is conditioned upon satisfactory educational progress in the previous grading period. Pupils who are eligible for differential standards of proficiency pursuant to subdivision (d) of Section 51215 are covered by this section consistent with that subdivision. No person shall classify a pupil as eligible for differential standards of proficiency pursuant to subdivision (d) of Section 51215 for the purpose of circumventing the intent of this subdivision.

(1) For purposes of this subdivision, "extracurricular activity" means a program that has all of the following characteristics:

(A) The program is supervised or financed by the school district.

(B) Pupils participating in the program represent the school district.

(C) Pupils exercise some degree of freedom in either the selection, planning, or control of the program.

(D) The program includes both preparation for performance and performance before an audience or spectators.

(2) For purposes of this subdivision, an "extracurricular activity" is not part of the regular school curriculum, is not graded, does not offer credit, and does not take place during classroom time.

(3) For purposes of this subdivision, a "cocurricular activity" is defined as a program that may be associated with the curriculum in a regular classroom.

(4) Any teacher graded or required program or activity for a course which satisfies the entrance requirements for admission to the California State University or the University of California, is not an extracurricular or cocurricular activity as defined by this section.

(5) For purposes of this subdivision, "satisfactory educational progress" shall include, but not be limited to, the following:

(A) Maintenance of minimum passing grades, which is defined as at least a 2.0 grade point average in all enrolled courses on a 4.0 scale.

(B) Maintenance of minimum progress toward meeting the high school graduation requirements prescribed by the governing board.

(6) For purposes of this subdivision, "previous grading period" does not include any grading period in which the pupil was not in attendance for all, or a majority of, the grading period due to absences excused by the school for reasons such as serious illness or injury, approved travel, or work. In that event, "previous grading period" is deemed to mean the grading period immediately prior to

the grading period or periods excluded pursuant to this paragraph.

(7) A program that has, as its primary goal, the improvement of academic or educational achievements of pupils is not an extracurricular or cocurricular activity as defined by this section.

(8) The governing board of each school district may adopt, as part of its policy established pursuant to this subdivision, provisions that would allow a pupil who does not achieve satisfactory educational progress, as defined in paragraph (4), in the previous grading period to remain eligible to participate in extracurricular and cocurricular activities during a probationary period. The probationary period shall not exceed one semester in length, but may be for a shorter period of time, as determined by the governing board of the school district. A pupil who does not achieve satisfactory educational progress, as defined in paragraph (4), during the probationary period shall not be allowed to participate in extracurricular and cocurricular activities in the subsequent grading period.

(9) Nothing in this subdivision shall preclude the governing board of a school district from imposing a more stringent academic standard than that imposed by this subdivision. If the governing board of a school district imposes a more stringent academic standard, the governing board shall establish the criteria for participation in extracurricular and cocurricular activities at a meeting open to the public pursuant to Section 35145.

The governing board of each school district shall annually review the school district policies adopted pursuant to the requirements of this section.

(c) (1) On or before July 1, 1994, the governing board of each school district shall, as a condition for the receipt of school apportionments from the state school fund, adopt rules and regulations establishing a policy of open enrollment within the district for residents of the district. This requirement does not apply to any school district that has only one school or any school district with schools that do not serve any of the same grade level.

(2) The policy shall include all of the following elements:

(A) It shall provide that the parents or guardian of each schoolage child who is a resident in the district may select the schools the child shall attend, irrespective of the particular locations of his or her residence within the district, except that school districts shall retain the authority to maintain appropriate racial and ethnic balances among their respective schools at the school districts' discretion or as specified in applicable court-ordered or voluntary desegregation plans.

(B) It shall include a selection policy for any school that receives requests for admission in excess of the capacity of the school that ensures that selection of pupils to enroll in the school is made through a random, unbiased process that prohibits an evaluation of whether any pupil should be enrolled based upon his or her academic or athletic performance. For purposes of this subdivision, the governing board of the school district shall determine the

capacity of the schools in its district. However, school districts may employ existing entrance criteria for specialized schools or programs if the criteria are uniformly applied to all applicants. This subdivision shall not be construed to prohibit school districts from using academic performance to determine eligibility for, or placement in, programs for gifted and talented pupils established pursuant to Chapter 8 (commencing with Section 52200) of Part 28.

(C) It shall provide that no pupil who currently resides in the attendance area of a school shall be displaced by pupils transferring from outside the attendance area.

(3) The policy may include any of the following elements:

(A) It may provide that special circumstances exist that might be harmful or dangerous to a particular pupil in the current attendance area of the pupil, including, but not limited to, threats of bodily harm or threats to the emotional stability of the pupil, that serve as a basis for granting a priority of attendance outside the current attendance area of the pupil. A finding of harmful or dangerous special circumstances shall be based upon either of the following:

(i) A written statement from a representative of the appropriate state or local agency, including, but not limited to, a law enforcement official or a social worker, or properly licensed or registered professionals, including, but not limited to, psychiatrists, psychologists, or marriage, family and child counselors.

(ii) A court order, including a temporary restraining order and injunction, issued by a judge.

A finding of harmful or dangerous special circumstances pursuant to this subparagraph may be used by a school district to approve transfers within the district to schools that have been deemed by the school district to be at capacity and otherwise closed to transfers that are not based on harmful or dangerous special circumstances.

(B) It may provide that any pupil attending a school prior to July 1, 1994, may be considered a current resident of that school for purposes of this section until the pupil is promoted or graduates from that school.

(C) It may provide that no pupil who was on a waiting list for a school or specialized program, on or before July 1, 1994, pursuant to a then-existing district policy on transfers within the district, shall be displaced by pupils transferring after July 1, 1994, from outside the attendance area, as long as the continued maintenance on a waiting list remains consistent with the former policy.

(D) It may provide that schools receiving requests for admission shall give priority for attendance to siblings of children already in attendance in that school.

(4) It is the intent of the Legislature that, upon the request of the pupil's parent or guardian and demonstration of financial need, each school district provide transportation assistance to the pupil to the extent that the district otherwise provides transportation assistance to pupils.

SEC. 2. Section 46601.5 of the Education Code is amended to

read:

46601.5. (a) The governing boards of any two school districts that have been requested by a pupil's parent or legal guardian to enter into an agreement for interdistrict attendance pursuant to Section 46600 shall, in considering that request, give consideration to the child care needs of the pupil.

(b) The governing board of any school district that has entered into an agreement for the interdistrict attendance of a pupil based on that pupil's child care needs shall allow that pupil to remain continuously enrolled in the school district of choice if the parent or guardian so chooses, subject to paragraphs (1) to (6), inclusive, of subdivision (f) of Section 48204.

(c) The governing board of any high school district whose feeder elementary school has entered into an agreement with another school district for the interdistrict attendance of a pupil based on that pupil's child care needs shall allow that pupil to continue to attend school through the 12th grade in the same district if the parent or guardian so chooses, subject to paragraphs (1) to (6), inclusive, of subdivision (f) of Section 48204.

(d) This section shall remain in effect only until July 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 1998, deletes or extends that date.

SEC. 3. Section 48204 of the Education Code, as amended by Section 2 of Chapter 98 of the Statutes of 1994, is amended to read:

48204. Notwithstanding Section 48200, a pupil shall be deemed to have complied with the residency requirements for school attendance in a school district, provided he or she is any of the following:

(a) A pupil placed within the boundaries of that school district in a regularly established licensed children's institution, or a licensed foster home, or a family home pursuant to a commitment or placement under Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code. An agency placing a pupil in a home or institution described in this subdivision shall provide evidence to the school that the placement or commitment is pursuant to law.

(b) A pupil for whom interdistrict attendance has been approved pursuant to Chapter 5 (commencing with Section 46600) of Part 26.

(c) A pupil whose residence is located within the boundaries of that school district and whose parent or legal guardian is relieved of responsibility, control, and authority through emancipation.

(d) A pupil who lives in the home of a caregiving adult that is located within the boundaries of that school district. Execution of an affidavit under penalty of perjury pursuant to Part 1.5 (commencing with Section 6550) of Division 11 of the Family Code by the caregiving adult shall be a sufficient basis for a determination that the pupil lives in the caregiver's home, unless the school district determines from actual facts that the pupil is not living in the caregiver's home.

(e) A pupil residing in a state hospital located within the boundaries of that school district.

(f) An elementary school pupil, one or both of whose parents, or whose legal guardian, is employed within the boundaries of that school district.

(1) Nothing in this subdivision requires the school district within which the pupil's parents or guardians are employed to admit the pupil to its schools. Districts may not, however, refuse to admit pupils under this subdivision on the basis, except as expressly provided in this subdivision, of race, ethnicity, sex, parental income, scholastic achievement, or any other arbitrary consideration.

(2) The school district in which the residency of either the pupil's parents or guardians is established, or the school district to which the pupil is to be transferred under this subdivision, may prohibit the transfer of the pupil under this subdivision if the governing board of the district determines that the transfer would negatively impact the district's court-ordered or voluntary desegregation plan.

(3) The school district to which the pupil is to be transferred under this subdivision may prohibit the transfer of the pupil if the district determines that the additional cost of educating the pupil would exceed the amount of additional state aid received as a result of the transfer.

(4) Any district governing board prohibiting a transfer pursuant to paragraph (1), (2), or (3) shall identify, and communicate in writing to the pupil's parent or guardian, the specific reasons for that determination and shall ensure that the determination, and the specific reasons therefor, are accurately recorded in the minutes of the board meeting in which the determination was made.

(5) The average daily attendance for pupils admitted pursuant to this subdivision shall be calculated pursuant to Section 46607.

(6) Unless approved by the sending district, this subdivision does not authorize a net transfer of pupils out of any given district, calculated as the difference between the number of pupils exiting the district and the number of pupils entering the district, in any fiscal year in excess of the following amounts:

(A) For any district with an average daily attendance for that fiscal year of less than 501, 5 percent of the average daily attendance of the district.

(B) For any district with an average daily attendance for that fiscal year of 501 or more, but less than 2,501, 3 percent of the average daily attendance of the district or 25 pupils, whichever is greater.

(C) For any district with an average daily attendance of 2,501 or more, 1 percent of the average daily attendance of the district or 75 pupils, whichever is greater.

(7) Once a pupil is deemed to have complied with the residency requirements for school attendance pursuant to this subdivision and is enrolled in a school in a school district whose boundaries include the location where one parent or both parents of a pupil is employed, or where the pupil's legal guardian is employed, the pupil shall not

have to reapply in the next school year to attend a school within that school district and the district governing board shall allow the pupil to attend school through the 12th grade in that district if the parent or guardian so chooses, subject to paragraphs (1) to (6), inclusive.

(g) This section shall remain in effect only until July 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 1998, deletes or extends that date.

SEC. 4. Section 48204 of the Education Code, as amended by Section 3 of Chapter 98 of the Statutes of 1994, is amended to read:

48204. Notwithstanding Section 48200, a pupil shall be deemed to have complied with the residency requirements for school attendance in a school district, provided he or she is:

(a) A pupil placed within the boundaries of that school district in a regularly established licensed children's institution, or a licensed foster home, or a family home pursuant to a commitment or placement under Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code.

An agency placing a pupil in the home or institution shall provide evidence to the school that the placement or commitment is pursuant to law.

(b) A pupil for whom interdistrict attendance has been approved pursuant to the provisions of Chapter 5 (commencing with Section 46600) of Part 26.

(c) A pupil whose residence is located within the boundaries of that school district and whose parent or legal guardian is relieved of responsibility, control, and authority through emancipation.

(d) A pupil who lives in the home of a caregiving adult that is located within the boundaries of that school district. Execution of an affidavit under penalty of perjury pursuant to Part 1.5 (commencing with Section 6550) of Division 11 of the Family Code by the caregiving adult shall be a sufficient basis for a determination that the pupil lives in the caregiver's home, unless the school district determines from actual facts that the pupil is not living in the caregiver's home.

(e) A pupil residing in a state hospital located within the boundaries of that school district.

(f) This section shall become operative on July 1, 1998.

SEC. 5. Section 48209.1 of the Education Code is amended to read:

48209.1. (a) The governing board of any school district may accept interdistrict transfers. No school district that receives an application for attendance under this article is required to admit pupils to its schools. If, however, the governing board elects to accept transfers as authorized under this article, it shall, by resolution, elect to accept transfer pupils, determine and adopt the number of transfers it is willing to accept under this article, and ensure that pupils admitted under the policy are selected through a random, unbiased process that prohibits an evaluation of whether or not the pupil should be enrolled based upon his or her academic or athletic

performance. Any pupil accepted for transfer shall be deemed to have fulfilled the requirements of Section 48204.

(b) Either the pupil's school district of residence, upon notification of the pupil's acceptance to the school district of choice pursuant to subdivision (c) of Section 48209.9, or the school district of choice may prohibit the transfer of a pupil under this article or limit the number of pupils so transferred if the governing board of the district determines that the transfer would negatively impact any of the following:

(1) The court-ordered desegregation plan of the district.

(2) The voluntary desegregation plan of the district that meets the criteria of Section 42249.

(3) The racial and ethnic balance of the district.

(c) The school district of residence shall not adopt policies that in any way block or discourage pupils from applying for transfer to another district.

SEC. 6. Section 48209.3 of the Education Code is amended to read:

48209.3. (a) The school district of choice shall not prohibit a transfer of a pupil under this article based upon a determination by the governing board of that school district that the additional cost of educating the pupil would exceed the amount of additional state aid received as a result of the transfer. However, a school district may reject the transfer of a pupil if the transfer of that pupil would require the district to create a new program or provide a new service to serve that pupil.

(b) This section is intended to ensure that special education, bilingual, or other special needs pupils are not discriminated against by the school district of choice because of the costs associated with educating those pupils. Pupils with special needs may take full advantage of the choice options available under this section.

SEC. 7. Section 48209.9 of the Education Code is amended to read:

48209.9. (a) Commencing January 1, 1994, any application for transfer under this article shall be submitted by the pupil's parent or guardian to the school district of choice that has elected to accept transfer pupils pursuant to Section 48209.1 prior to January 1 of the school year preceding the school year for which the pupil is to be transferred. This application deadline may be waived upon agreement of the pupil's school district of residence and the school district of choice. No applications shall be submitted after January 1, 1999.

(b) The application shall be submitted on a form provided for this purpose by the State Department of Education and may request enrollment of the pupil in a specific school or program of the district.

(c) Not later than 90 days after the receipt by a school district of an application for transfer, the governing board of the district shall notify the parent or guardian in writing whether the application has been provisionally accepted or rejected or of the pupil's position on

any waiting list. Final acceptance or rejection shall be made by May 15 preceding the school year for which the pupil is to be transferred. In the event of an acceptance, that notice shall be provided also to the school district of residence. If the application is rejected, the district governing board shall set forth in the written notification to the parent or guardian the specific reason or reasons for that determination, and shall ensure that the determination, and the specific reason or reasons therefor, are accurately recorded in the minutes of the board meeting in which the determination was made.

(d) The parent or guardian of a pupil who is prohibited from transferring pursuant to either subdivision (b) of Section 48209.1 or Section 48209.7 may appeal the decision to the county board of education.

(e) Final acceptance of the transfer is applicable for one school year and will be renewed automatically each year unless the school district of choice through the adoption of a resolution withdraws from participation in the program and no longer will accept any transfer pupils from other districts. However, if a school district of choice withdraws from participation in the program, high school pupils admitted under this article may continue until they graduate from high school.

SEC. 8. Section 48980 of the Education Code is amended to read: 48980. (a) At the beginning of the first semester or quarter of the regular school term, the governing board of each school district shall notify the parent or guardian of its minor pupils regarding the right or responsibility of the parent or guardian under Sections 35291, 46014, 48205, 48207, 48208, 49403, 49423, 49451, 49472, 51240, and 51550 and Chapter 2.3 (commencing with Section 32255) of Part 19.

(b) The notification also shall advise the parent or guardian of the availability of individualized instruction as prescribed by Section 48206.3, and of the program prescribed by Article 9 (commencing with Section 49510) of Chapter 9.

(c) The notification also may advise the parent or guardian of the importance of investing for future college or university education for their children and of considering appropriate investment options including, but not limited to, United States Savings Bonds.

(d) Each school district that elects to provide a fingerprinting program pursuant to Article 10 (commencing with Section 32390) shall inform parents or guardians of the program as specified in Section 32390.

(e) Until July 1, 1998, the notification shall also advise the parent or guardian of the availability of the employment-based school attendance options pursuant to subdivision (f) of Section 48204.

(f) The notification shall also include a copy of the district's written policy on sexual harassment established pursuant to Section 212.6, as it relates to pupils.

(g) The notification shall advise the parent or guardian of all current statutory attendance options and local attendance options available in the school district. That notification shall include all

options for meeting residency requirements for school attendance, programmatic options offered within the local attendance areas, and any special programmatic options available on both an interdistrict and intradistrict basis. That notification shall also include a description of all options, a description of the procedure for application for alternative attendance areas or programs, an application form from the district for requesting a change of attendance, and a description of the appeals process available, if any, for a parent or guardian denied a change of attendance. The notification shall also include an explanation of the current statutory attendance options including, but not limited to, those available under Section 35160.5, Chapter 5 (commencing with Section 46600) of Part 26, subdivision (f) of Section 48204, and Article 1.5 (commencing with Section 48209) of Chapter 2 of Part 27. The State Department of Education shall produce this portion of the notification and shall distribute it to all school districts.

It is the intent of the Legislature that the governing board of each school district annually review the enrollment options available to the pupils within their districts and that the school districts strive to make available enrollment options that meet the diverse needs, potential, and interests of California's pupils.

SEC. 9. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Governing boards of school districts are required to adopt rules and regulations establishing a policy of open enrollment within the district for residents of the districts on or before July 1, 1994. Because this bill would affect the elements of that policy, it is necessary that this act take effect immediately.

CHAPTER 1263

An act to amend Section 6254 of the Government Code, to amend Section 12101 of the Health and Safety Code, and to amend Sections 273a, 487h, 11105.3, and 12305 of, and to add Section 12022.95 to, the Penal Code, relating to crime.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 6254 of the Government Code is amended to read:

6254. Except as provided in Section 6254.7, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda which are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, which are obtained in confidence from any person.

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and

any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes, except that state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (c) of Section 13960, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files which reflect the analysis or conclusions of the investigating officer.

Other provisions of this subdivision notwithstanding, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name, current address, and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name, age, and current address of the victim, except that the address of the victim of any crime defined by Section 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code shall not be disclosed, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or

weapons involved. The name of a victim of any crime defined by Section 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 261, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code.

(h) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.

(i) Information required from any taxpayer in connection with the collection of local taxes which is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.

(j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.

(k) Records the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(l) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's legal affairs secretary, provided that public records shall not be transferred to the custody of the Governor's legal affairs secretary to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.

(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, where an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and

the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application which are subject to disclosure under this chapter.

(p) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1, Chapter 10.5 (commencing with Section 3525) of Division 4 of Title 1, and Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, which reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or which provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under the above chapters. Nothing in this subdivision shall be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision.

(q) Records of state agencies related to activities governed by Articles 2.6 (commencing with Section 14081), 2.8 (commencing with Section 14087.5), and 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, which reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or which provide instruction, advice, or training to employees.

Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. In the event that a contract for inpatient services which is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments until such time as a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred

places maintained by the Native American Heritage Commission.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals which has been transmitted to the State Department of Health Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Division 3 of Title 4 of this code, which relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u) Information contained in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department which indicates when or where the applicant is vulnerable to attack or which concerns the applicant's medical or psychological history or that of members of his or her family.

(v) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Part 6.3 (commencing with Section 12695), and Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, and which reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Part 6.3 (commencing with Section 12695), or Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, on or after July 1, 1991, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract for health coverage that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion containing the rates of payment shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and

amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (3).

(w) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (2).

(x) Financial data contained in applications for registration, or registration renewal, as a service contractor filed with the Director of the Department of Consumer Affairs pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the Business and Professions Code, for the purpose of establishing the service contractor's net worth, or, financial data regarding the funded accounts held in escrow for service contracts held in force in this state by a service contractor.

Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act.

SEC. 1.5. Section 6254 of the Government Code is amended to read:

6254. Except as provided in Section 6254.7, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda which are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, which are obtained in confidence from any person.

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes, except that state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (c) of Section 13960, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files which reflect the analysis or conclusions of the investigating officer.

Other provisions of this subdivision notwithstanding, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an

investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name, current address, and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name, age, and current address of the victim, except that the address of the victim of any crime defined by Section 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code shall not be disclosed, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 261, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code.

(h) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.

(i) Information required from any taxpayer in connection with the collection of local taxes which is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.

(j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.

(k) Records the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(l) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's legal affairs secretary, provided that public records shall not be transferred to the custody of the Governor's legal affairs secretary to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel, except those records in the public data base maintained by the Legislative Counsel that are described in Section 10248.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.

(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, where an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application which are subject to disclosure under this chapter.

(p) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1, Chapter 10.5 (commencing with Section 3525) of Division 4 of Title 1, and Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, which reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or which provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under the above chapters. Nothing in this subdivision shall be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision.

(q) Records of state agencies related to activities governed by Articles 2.6 (commencing with Section 14081), 2.8 (commencing with Section 14087.5), and 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, which reveal the special negotiator's deliberative processes,

discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or which provide instruction, advice, or training to employees.

Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. In the event that a contract for inpatient services which is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments until such time as a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals which has been transmitted to the State Department of Health Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Division 3 of Title 4 of this code, which relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u) Information contained in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department which indicates when or where the applicant is vulnerable to attack or which concerns the applicant's medical or psychological history or that of members of his or her family.

(v) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Part 6.3 (commencing with Section 12695), and Part 6.5 (commencing with Section 12700), of Division

2 of the Insurance Code, and which reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Part 6.3 (commencing with Section 12695), or Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, on or after July 1, 1991, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract for health coverage that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion containing the rates of payment shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (3).

(w) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (2).

(x) Financial data contained in applications for registration, or registration renewal, as a service contractor filed with the Director of the Department of Consumer Affairs pursuant to Chapter 20

(commencing with Section 9800) of Division 3 of the Business and Professions Code, for the purpose of establishing the service contractor's net worth, or, financial data regarding the funded accounts held in escrow for service contracts held in force in this state by a service contractor.

Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act.

SEC. 2. Section 12101 of the Health and Safety Code is amended to read:

12101. (a) No person shall do any one of the following without first having made application for and received a permit in accordance with this section:

- (1) Manufacture explosives.
- (2) Sell, furnish, or give away explosives.
- (3) Receive, store, or possess explosives.
- (4) Transport explosives.
- (5) Use explosives.
- (6) Operate a terminal for handling explosives.

(7) Park or leave standing any vehicle carrying explosives, except when parked or left standing in or at a safe stopping place designated as such by the Department of the California Highway Patrol under Division 14 (commencing with Section 31600) of the Vehicle Code.

(b) Application for a permit shall be made to the appropriate issuing authority.

(c) (1) A permit shall be obtained from the issuing authority having the responsibility in the area where the activity, as specified in subdivision (a), is to be conducted.

(2) If the person holding a valid permit for the use or storage of explosives desires to purchase or receive explosives in a jurisdiction other than that of intended use or storage, the person shall first present the permit to the issuing authority in the jurisdiction of purchase or receipt for endorsement. The issuing authority may include any reasonable restrictions or conditions which the authority finds necessary for the prevention of fire and explosion, the preservation of life, safety, or the control and security of explosives within the authority's jurisdiction. If, for any reason, the issuing authority refuses to endorse the permit previously issued in the area of intended use or storage, the authority shall immediately notify both the issuing authority who issued the permit and the Department of Justice of the fact of the refusal and the reasons for the refusal.

(3) Every person who sells, gives away, delivers, or otherwise disposes of explosives to another person shall first be satisfied that the person receiving the explosives has a permit valid for that purpose. When the permit to receive explosives indicates that the intended

storage or use of the explosives is other than in that area in which the permittee receives the explosives, the person who sells, gives away, delivers, or otherwise disposes of the explosives shall insure that the permit has been properly endorsed by a local issuing authority and, further, shall immediately send a copy of the record of sale to the issuing authority who originally issued the permit in the area of intended storage or use. The issuing authority in the area in which the explosives are received or sold shall not issue a permit for the possession, use, or storage of explosives in an area not within the authority's jurisdiction.

(d) In the event any person desires to receive explosives for use in an area outside of this state, a permit to receive the explosives shall be obtained from the State Fire Marshal.

(e) A permit may include any restrictions or conditions which the issuing authority finds necessary for the prevention of fire and explosion, the preservation of life, safety, or the control and security of explosives.

(f) A permit shall remain valid only until the time when the act or acts authorized by the permit are performed, but in no event shall the permit remain valid for a period longer than one year from the date of issuance of the permit.

(g) Any valid permit which authorizes the performance of any act shall not constitute authorization for the performance of any act not stipulated in the permit.

(h) An issuing authority shall not issue a permit authorizing the transportation of explosives pursuant to this section if the display of placards for that transportation is required by Section 27903 of the Vehicle Code, unless the driver possesses a license for the transportation of hazardous materials issued pursuant to Division 14.1 (commencing with Section 32000) of the Vehicle Code, or the explosives are a hazardous waste or extremely hazardous waste, as defined in Sections 25117 and 25115 of the Health and Safety Code, and the transporter is currently registered as a hazardous waste hauler pursuant to Section 25163 of the Health and Safety Code.

(i) An issuing authority shall not issue a permit pursuant to this section authorizing the handling or storage of class A or B explosives in a building, unless the building has caution placards which meet the standards established pursuant to subdivision (g) of Section 12081.

(j) A permit shall not be issued to a person who meets any of the following criteria:

(1) He or she has been convicted of a felony.

(2) He or she is addicted to a narcotic drug.

(3) He or she is in a class prohibited by Section 8100 or 8103 of the Welfare and Institutions Code or Section 12021 or 12021.1 of the Penal Code.

(k) An issuing authority shall inquire with the Department of Justice for the purposes of determining whether a person who is applying for a permit meets any of the criteria specified in subdivision (j). The Department of Justice shall determine whether

a person who is applying for a permit meets any of the criteria specified in subdivision (j) and shall either grant or deny clearance for a permit to be issued pursuant to the determination. The Department of Justice shall not disclose the contents of a person's records to any person who is not authorized to receive the information in order to ensure confidentiality.

SEC. 3. Section 273a of the Penal Code is amended to read:

273a. (a) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in such a situation that its person or health is endangered, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison for two, four, or six years.

(b) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in such a situation that its person or health may be endangered, is guilty of a misdemeanor.

SEC. 3.5. Section 273a of the Penal Code is amended to read:

273a. (a) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in such a situation that its person or health is endangered, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison for two, four, or six years.

(b) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in such a situation that its person or health may be endangered, is guilty of a misdemeanor.

(c) Any person who, having the care or custody of a minor child, assaults the child by means of force likely to produce great bodily injury, resulting in the child's death, is punishable in the state prison for a term of 15 years to life. Nothing in this subdivision shall be construed as affecting the applicability of subdivision (a) of Section 187 or Section 189.

SEC. 4. Section 487h of the Penal Code is amended to read:

487h. (a) Every person who feloniously steals or takes any motor vehicle, as defined in Section 415 of the Vehicle Code, any trailer, as defined in Section 630 of the Vehicle Code, any special construction equipment, as defined in Section 565 of the Vehicle Code, or any vessel, as defined in Section 21 of the Harbors and Navigation Code, is guilty of grand theft, and upon conviction thereof, shall be punished by imprisonment in the state prison for 16 months or two or three years or a fine of not more than ten thousand dollars (\$10,000), or both, or by imprisonment in a county jail not to exceed one year or a fine of not more than one thousand dollars (\$1,000), or both.

(b) Any person who, having been convicted of two previous misdemeanor violations of subdivision (a), subdivision (d) of Section 487, involving an automobile, or Section 10851 of the Vehicle Code, or any combination of those offenses as misdemeanors, is subsequently convicted of a violation of subdivision (a) shall be punished for the subsequent conviction by imprisonment in the state prison for two, three, or four years.

(c) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any person who is convicted of a felony violation of subdivision (a) or (b), and who has been previously convicted of two or more felony violations of the offense set forth in subdivision (a), the offense set forth in subdivision (d) of Section 487, subdivision (3) of former Section 487, as repealed by Section 4 of Chapter 1125 of the Statutes of 1993, or former Section 487h, as repealed by Chapter 1566 of the Statutes of 1990, involving a vehicle, or the offense set forth in Section 10851 of the Vehicle Code, or who has been previously convicted of one felony violation of any of those offenses and at least two misdemeanor violations of those offenses.

(d) If the court grants probation under subdivision (c), it shall specify on the court record the reason or reasons for that order.

(e) This section shall remain in effect only until January 1, 1997, and as of that date is repealed.

SEC. 5. Section 11105.3 of the Penal Code is amended to read:

11105.3. (a) Notwithstanding any other law, a human resource agency or an employer may request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in subdivision (g) of a person who applies for a license, employment, or volunteer position, in which he or she would have supervisory or disciplinary power over a minor or any person under his or her care. The department shall furnish the information to the requesting employer and shall also send a copy of the information to the applicant.

(b) Any request for records under subdivision (a) shall include the applicant's fingerprints, which may be taken by the requester, and any other data specified by the department. The request shall be on a form approved by the department, and the department may charge a fee to be paid by the employer, human resource agency, or

applicant for the actual cost of processing the request. However, no fee shall be charged a nonprofit organization. The department shall destroy an application within six months after the requested information is sent to the employer and applicant.

(c) Nothing in this section shall supersede any law requiring criminal record access or dissemination of criminal history information. In any conflict with another statute, dissemination of criminal history information shall be pursuant to the mandatory statute. This subdivision shall apply to, but not be limited to, requirements pursuant to Article 1 (commencing with Section 1500) of Chapter 3 of, and Chapter 3.2 (commencing with Section 1569) and Chapter 3.4 (commencing with Section 1596.70) of, Division 2 of, and Section 1522 of, the Health and Safety Code, and Section 226.55 of the Civil Code.

(d) The department may adopt regulations to implement the provisions of this section as necessary.

(e) As used in this section, "employer" means any nonprofit corporation or other organizations specified by the Attorney General which employs or uses the services of volunteers in positions in which the volunteer or employee has supervisory or disciplinary power over a child or children.

(f) As used in this section, "human resource agency" means a public or private entity, excluding any agency responsible for licensing of facilities pursuant to the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500)), the California Residential Care Facilities for the Elderly Act (Chapter 3.2 (commencing with Section 1569)), Chapter 3.01 (commencing with Section 1568.01), and the California Child Day Care Facilities Act (Chapter 3.4 (commencing with Section 1596.70)) of Division 2 of the Health and Safety Code, responsible for determining the character and fitness of a person who is (1) applying for a license, employment, or as a volunteer within the human services field that involves the care and security of children, the elderly, the handicapped, or the mentally impaired, or (2) applying to adopt a child or to be a foster parent.

(g) Records of the following offenses shall be furnished as provided in subdivision (a):

(1) Violations or attempted violations of Section 220, 261, 261.5, 262, 266, 266j, 267, 272, 273a, 273d, 273.5, Sections 285 to 289, inclusive, Section 311.4, 311.10, 311.11, 314, 647.6, former Section 647a, or subdivision (a) or (d) of Section 647, or commitment as a mentally disordered sex offender under former Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(2) Any crime described in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code), provided that, except as otherwise provided in subdivision (c), no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request

has a total of three or more misdemeanor or felony convictions defined in this section within the immediately preceding 10-year period.

(3) Any felony or misdemeanor conviction within 10 years of the date of the employer's request under subdivision (a), for a violation or attempted violation of Chapter 3 (commencing with Section 207), Section 211 or 215, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that offense, Section 217.1, Chapter 8 (commencing with Section 236), Chapter 9 (commencing with Section 240), and for a violation of any of the offenses specified in subdivision (c) of Section 667.5, provided that no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in this section within the immediately preceding 10-year period.

(4) A conviction for a violation or attempted violation of an offense committed outside the State of California shall be furnished if the offense would have been a crime as defined in this section if committed in California.

(h) Any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

SEC. 5.5. Section 11105.3 of the Penal Code is amended to read:

11105.3. (a) Notwithstanding any other law, a human resource agency or an employer may request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in subdivision (g) of a person who applies for a license, employment, or volunteer position, in which he or she would have supervisory or disciplinary power over a minor or any person under his or her care. The department shall furnish the information to the requesting employer and shall also send a copy of the information to the applicant.

(b) Any request for records under subdivision (a) shall include the applicant's fingerprints, which may be taken by the requester, and any other data specified by the department. The request shall be on a form approved by the department, and the department may charge a fee to be paid by the employer, human resource agency, or applicant for the actual cost of processing the request. However, no fee shall be charged a nonprofit organization. The department shall destroy an application within six months after the requested information is sent to the employer and applicant.

(c) Nothing in this section shall supersede any law requiring criminal record access or dissemination of criminal history information. In any conflict with another statute, dissemination of criminal history information shall be pursuant to the mandatory statute. This subdivision shall apply to, but not be limited to, requirements pursuant to Article 1 (commencing with Section 1500) of Chapter 3 of, and Chapter 3.2 (commencing with Section 1569)

and Chapter 3.4 (commencing with Section 1596.70) of, Division 2 of, and Section 1522 of, the Health and Safety Code, and Section 226.55 of the Civil Code.

(d) The Department may adopt regulations to implement the provisions of this section as necessary.

(e) As used in this section, "employer" means any nonprofit corporation or other organizations specified by the Attorney General which employs or uses the services of volunteers in positions in which the volunteer or employee has supervisory or disciplinary power over a child or children.

(f) As used in this section, "human resource agency" means a public or private entity, excluding any agency responsible for licensing of facilities pursuant to the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500)), the California Residential Care Facilities for the Elderly Act (Chapter 3.2 (commencing with Section 1569)), Chapter 3.01 (commencing with Section 1568.01), and the California Child Day Care Facilities Act (Chapter 3.4 (commencing with Section 1596.70)) of Division 2 of the Health and Safety Code, responsible for determining the character and fitness of a person who is (1) applying for a license, employment, or as a volunteer within the human services field that involves the care and security of children, the elderly, the handicapped, or the mentally impaired, or (2) applying to adopt a child or to be a foster parent.

(g) Records of the following offenses shall be furnished as provided in subdivision (a):

(1) Violations or attempted violations of Section 220, 261, 261.5, 262, 266, 266j, 267, 272, 273a, 273d, 273.5, Sections 285 to 289, inclusive, Section 311.2, 311.3, 311.4, 311.10, 311.11, 314, 647.6, former Section 647a, or subdivision (a) or (d) of Section 647, or commitment as a mentally disordered sex offender under former Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(2) Any crime described in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code), provided that, except as otherwise provided in subdivision (c), no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in this section within the immediately preceding 10-year period.

(3) Any felony or misdemeanor conviction within 10 years of the date of the employer's request under subdivision (a), for a violation or attempted violation of Chapter 3 (commencing with Section 207), Section 211 or 215, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that offense, Section 217.1, Chapter 8 (commencing with Section 236), Chapter 9 (commencing with Section 240), and for a violation

of any of the offenses specified in subdivision (c) of Section 667.5, provided that no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in this section within the immediately preceding 10-year period.

(4) A conviction for a violation or attempted violation of an offense committed outside the State of California shall be furnished if the offense would have been a crime as defined in this section if committed in California.

(h) Any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

SEC. 6. Section 12022.95 is added to the Penal Code, to read:

12022.95. Any person convicted of a violation of Section 273a, who under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or injury that results in death, or having the care or custody of any child, under circumstances likely to produce great bodily harm or death, willfully causes or permits that child to be injured or harmed, and that injury or harm results in death, shall receive a four-year enhancement for each violation, in addition to the sentence provided for that conviction. Nothing in this paragraph shall be construed as affecting the applicability of subdivision (a) of Section 187 or Section 192. This section shall not apply unless the allegation is included within an accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

SEC. 7. Section 12305 of the Penal Code is amended to read:

12305. (a) Every dealer, manufacturer, importer, and exporter of any destructive device, or any motion picture or television studio using destructive devices in the conduct of its business, shall obtain a permit for the conduct of that business from the Department of Justice.

(b) Any person, firm, or corporation not mentioned in subdivision (a) shall obtain a permit from the Department of Justice in order to possess or transport any destructive device. No permit shall be issued to any person who meets any of the following criteria:

- (1) Has been convicted of any felony.
- (2) Is addicted to the use of any narcotic drug.
- (3) Is a person in a class prohibited by Section 8100 or 8103 of the Welfare and Institutions Code or Section 12021 or 12021.1 of this code.

(c) Applications for permits shall be filed in writing, signed by the applicant if an individual, or by a member or officer qualified to sign if the applicant is a firm or corporation, and shall state the name, business in which engaged, business address and a full description of the use to which the destructive devices are to be put.

(d) Applications and permits shall be uniform throughout the state on forms prescribed by the Department of Justice.

(e) Each applicant for a permit shall pay at the time of filing his or her application a fee not to exceed the application processing costs of the Department of Justice. A permit granted pursuant to this article may be renewed one year from the date of issuance, and annually thereafter, upon the filing of a renewal application and the payment of a permit renewal fee not to exceed the application processing costs of the Department of Justice. After the department establishes fees sufficient in amount to cover processing costs, the amount of the fees shall only increase at a rate not to exceed the legislatively approved cost-of-living adjustment for the department.

SEC. 8. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 9. Section 1.5 of this bill incorporates amendments to Section 6254 of the Government Code proposed by both this bill and AB 2547. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 6254 of the Government Code, and (3) this bill is enacted after AB 2547, in which case Section 1 of this bill shall not become operative.

SEC. 10. Section 3.5 of this bill incorporates amendments to Section 273a of the Penal Code proposed by both this bill and AB 27 (1st Ex. Sess.). It shall only become operative if (1) both bills are enacted and become effective, (2) each bill amends Section 273a of the Penal Code, and (3) this bill is enacted after AB 27 (1st Ex. Sess.). In that case, one of the following alternatives shall apply:

(a) If this bill becomes operative before AB 27 (1st Ex. Sess.), Section 3 of this bill shall be operative until the operative date of AB 27 (1st Ex. Sess.), at which time Section 3.5 of this bill shall become operative and Section 3 of this bill shall become inoperative.

(b) If this bill becomes operative after AB 27 (1st Ex. Sess.), Section 273a of the Penal Code, as amended by AB 27 (1st Ex. Sess.), shall remain operative only until the operative date of this bill, at which time Section 3.5 of this bill shall become operative, and Section 3 of this bill shall not become operative.

SEC. 11. Section 5.5 of this bill incorporates amendments to Section 11105.3 of the Penal Code proposed by both this bill and AB 3738. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 11105.3 of the Penal Code, and (3) this bill is enacted after AB 3738,

in which case Section 5 of this bill shall not become operative.

CHAPTER 1264

An act to amend Section 11105.3 of the Penal Code, relating to criminal history information.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 11105.3 of the Penal Code is amended to read:

11105.3. (a) Notwithstanding any other law, a human resource agency or an employer may request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in subdivision (g) of a person who applies for a license, employment, or volunteer position, in which he or she would have supervisory or disciplinary power over a minor or any person under his or her care. The department shall furnish the information to the requesting employer and shall also send a copy of the information to the applicant.

(b) Any request for records under subdivision (a) shall include the applicant's fingerprints, which may be taken by the requester, and any other data specified by the department. The request shall be on a form approved by the department, and the department may charge a fee to be paid by the employer, human resource agency, or applicant for the actual cost of processing the request. However, no fee shall be charged a nonprofit organization. The department shall destroy an application within six months after the requested information is sent to the employer and applicant.

(c) Nothing in this section shall supersede any law requiring criminal record access or dissemination of criminal history information. In any conflict with another statute, dissemination of criminal history information shall be pursuant to the mandatory statute. This subdivision shall apply to, but not be limited to, requirements pursuant to Article 1 (commencing with Section 1500) of Chapter 3 of, and Chapter 3.2 (commencing with Section 1569) and Chapter 3.4 (commencing with Section 1596.70) of, Division 2 of, and Section 1522 of, the Health and Safety Code, and Section 226.55 of the Civil Code.

(d) The department may adopt regulations to implement the provisions of this section as necessary.

(e) As used in this section, "employer" means any nonprofit corporation or other organizations specified by the Attorney General which employs or uses the services of volunteers in positions in which the volunteer or employee has supervisory or disciplinary power

over a child or children.

(f) As used in this section, "human resource agency" means a public or private entity, excluding any agency responsible for licensing of facilities pursuant to the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500)), the California Residential Care Facilities for the Elderly Act (Chapter 3.2 (commencing with Section 1569)), Chapter 3.01 (commencing with Section 1568.01), and the California Child Day Care Facilities Act (Chapter 3.4 (commencing with Section 1596.70)) of Division 2 of the Health and Safety Code, responsible for determining the character and fitness of a person who is (1) applying for a license, employment, or as a volunteer within the human services field that involves the care and security of children, the elderly, the handicapped, or the mentally impaired, or (2) applying to adopt a child or to be a foster parent.

(g) Records of the following offenses shall be furnished as provided in subdivision (a):

(1) Violations or attempted violations of Section 220, 261, 261.5, 262, 266, 266j, 267, 272, 273a, 273d, 273.5, Sections 285 to 289, inclusive, Section 311.2, 311.3, 311.4, 311.10, 311.11, 314, 647.6, former Section 647a, or subdivision (a) or (d) of Section 647, or commitment as a mentally disordered sex offender under former Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(2) Any crime described in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code), provided that, except as otherwise provided in subdivision (c), no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in this section within the immediately preceding 10-year period.

(3) Any felony or misdemeanor conviction within 10 years of the date of the employer's request under subdivision (a), for a violation or attempted violation of Chapter 3 (commencing with Section 207), Section 211 or 215, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that robbery, Section 217.1, Chapter 8 (commencing with Section 236), Chapter 9 (commencing with Section 240), and for a violation of any of the offenses specified in subdivision (c) of Section 667.5, provided that no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in this section within the immediately preceding 10-year period.

(4) A conviction for a violation or attempted violation of an offense committed outside the State of California shall be furnished if the offense would have been a crime as defined in this section if committed in California.

(h) Any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

SEC. 2. Section 11105.3 of the Penal Code is amended to read:

11105.3. (a) Notwithstanding any other law, a human resource agency or an employer may request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in subdivision (g) of a person who applies for a license, employment, or volunteer position, in which he or she would have supervisory or disciplinary power over a minor or any person under his or her care. The department shall furnish the information to the requesting employer and shall also send a copy of the information to the applicant.

(b) Any request for records under subdivision (a) shall include the applicant's fingerprints, which may be taken by the requester, and any other data specified by the department. The request shall be on a form approved by the department, and the department may charge a fee to be paid by the employer, human resource agency, or applicant for the actual cost of processing the request. However, no fee shall be charged a nonprofit organization. The department shall destroy an application within six months after the requested information is sent to the employer and applicant.

(c) Nothing in this section shall supersede any law requiring criminal record access or dissemination of criminal history information. In any conflict with another statute, dissemination of criminal history information shall be pursuant to the mandatory statute. This subdivision shall apply to, but not be limited to, requirements pursuant to Article 1 (commencing with Section 1500) of Chapter 3 of, and Chapter 3.2 (commencing with Section 1569) and Chapter 3.4 (commencing with Section 1596.70) of, Division 2 of, and Section 1522 of, the Health and Safety Code, and Section 226.55 of the Civil Code.

(d) The department may adopt regulations to implement the provisions of this section as necessary.

(e) As used in this section, "employer" means any nonprofit corporation or other organizations specified by the Attorney General which employs or uses the services of volunteers in positions in which the volunteer or employee has supervisory or disciplinary power over a child or children.

(f) As used in this section, "human resource agency" means a public or private entity, excluding any agency responsible for licensing of facilities pursuant to the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500)), the California Residential Care Facilities for the Elderly Act (Chapter 3.2 (commencing with Section 1569)), Chapter 3.01 (commencing with Section 1568.01), and the California Child Day Care Facilities Act (Chapter 3.4 (commencing with Section 1596.70)) of Division 2 of the Health and Safety Code, responsible for determining the character and fitness of a person who is (1) applying for a license,

employment, or as a volunteer within the human services field that involves the care and security of children, the elderly, the handicapped, or the mentally impaired, or (2) applying to adopt a child or to be a foster parent.

(g) Records of the following offenses shall be furnished as provided in subdivision (a):

(1) Violations or attempted violations of Section 220, 261, 261.5, 262, 266, 266j, 267, 272, 273a, 273d, 273.5, Sections 285 to 289, inclusive, Section 311.2, 311.3, 311.4, 311.10, 311.11, 314, 647.6, former Section 647a, or subdivision (a) or (d) of Section 647, or commitment as a mentally disordered sex offender under former Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(2) Any crime described in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code), provided that, except as otherwise provided in subdivision (c), no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in this section within the immediately preceding 10-year period.

(3) Any felony or misdemeanor conviction within 10 years of the date of the employer's request under subdivision (a), for a violation or attempted violation of Chapter 3 (commencing with Section 207), Section 211 or 215, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that offense, Section 217.1, Chapter 8 (commencing with Section 236), Chapter 9 (commencing with Section 240), and for a violation of any of the offenses specified in subdivision (c) of Section 667.5, provided that no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in this section within the immediately preceding 10-year period.

(4) A conviction for a violation or attempted violation of an offense committed outside the State of California shall be furnished if the offense would have been a crime as defined in this section if committed in California.

(h) Any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

SEC. 3. Section 11105.3 of the Penal Code is amended to read:

11105.3. (a) Notwithstanding any other law, a human resource agency or an employer may request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in subdivision (g) of a person who applies for a license, employment, or volunteer position, in which he or she would have supervisory or disciplinary power over a minor or any person under his or her care. The department shall furnish the

information to the requesting employer and shall also send a copy of the information to the applicant.

(b) Any request for records under subdivision (a) shall include the applicant's fingerprints, which may be taken by the requester, and any other data specified by the department. The request shall be on a form approved by the department, and the department may charge a fee to be paid by the employer, human resource agency, or applicant for the actual cost of processing the request. However, no fee shall be charged a nonprofit organization. The department shall destroy an application within six months after the requested information is sent to the employer and applicant.

(c) Nothing in this section supersedes any law requiring criminal record access or dissemination of criminal history information. In any conflict with another statute, dissemination of criminal history information shall be pursuant to the mandatory statute. This subdivision applies to, but is not limited to, requirements pursuant to Article 1 (commencing with Section 1500) of Chapter 3 of, and Chapter 3.2 (commencing with Section 1569) and Chapter 3.4 (commencing with Section 1596.70) of, Division 2 of, and Section 1522 of, the Health and Safety Code, and Sections 8712, 8811, and 8908 of the Family Code.

(d) The department may adopt regulations to implement the provisions of this section as necessary.

(e) As used in this section, "employer" means any nonprofit corporation or other organizations specified by the Attorney General which employs or uses the services of volunteers in positions in which the volunteer or employee has supervisory or disciplinary power over a child or children.

(f) As used in this section, "human resource agency" means a public or private entity, excluding any agency responsible for licensing of facilities pursuant to the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500)), the California Residential Care Facilities for the Elderly Act (Chapter 3.2 (commencing with Section 1569)), Chapter 3.01 (commencing with Section 1568.01), and the California Child Day Care Facilities Act (Chapter 3.4 (commencing with Section 1596.70)) of Division 2 of the Health and Safety Code, responsible for determining the character and fitness of a person who is (1) applying for a license, employment, or as a volunteer within the human services field that involves the care and security of children, the elderly, the handicapped, or the mentally impaired, or (2) applying to adopt a child or to be a foster parent.

(g) Records of the following offenses shall be furnished as provided in subdivision (a):

(1) Violations or attempted violations of Section 220, 261, 261.5, 262, 266, 266j, 267, 272, 273a, 273d, 273.5, Sections 285 to 289, inclusive, Section 311.2, 311.3, 311.4, 311.10, 311.11, 314, 647.6, former Section 647a, or subdivision (a) or (d) of Section 647, or commitment as a mentally disordered sex offender under former Article 1

(commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(2) Any crime described in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code), provided that, except as otherwise provided in subdivision (c), no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in this section within the immediately preceding 10-year period.

(3) Any felony or misdemeanor conviction within 10 years of the date of the employer's request under subdivision (a), for a violation or attempted violation of Chapter 3 (commencing with Section 207), Section 211 or 215, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that robbery, Section 217.1, Chapter 8 (commencing with Section 236), Chapter 9 (commencing with Section 240), and for a violation of any of the offenses specified in subdivision (c) of Section 667.5, provided that no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in this section within the immediately preceding 10-year period.

(4) A conviction for a violation or attempted violation of an offense committed outside the State of California shall be furnished if the offense would have been a crime as defined in this section if committed in California.

(h) Any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

SEC. 4. Section 11105.3 of the Penal Code is amended to read:

11105.3. (a) Notwithstanding any other law, a human resource agency or an employer may request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in subdivision (g) of a person who applies for a license, employment, or volunteer position, in which he or she would have supervisory or disciplinary power over a minor or any person under his or her care. The department shall furnish the information to the requesting employer and shall also send a copy of the information to the applicant.

(b) Any request for records under subdivision (a) shall include the applicant's fingerprints, which may be taken by the requester, and any other data specified by the department. The request shall be on a form approved by the department, and the department may charge a fee to be paid by the employer, human resource agency, or applicant for the actual cost of processing the request. However, no fee shall be charged a nonprofit organization. The department shall destroy an application within six months after the requested information is sent to the employer and applicant.

(c) Nothing in this section supersedes any law requiring criminal record access or dissemination of criminal history information. In any conflict with another statute, dissemination of criminal history information shall be pursuant to the mandatory statute. This subdivision applies to, but is not limited to, requirements pursuant to Article 1 (commencing with Section 1500) of Chapter 3 of, and Chapter 3.2 (commencing with Section 1569) and Chapter 3.4 (commencing with Section 1596.70) of, Division 2 of, and Section 1522 of, the Health and Safety Code, and Sections 8712, 8811, and 8908 of the Family Code.

(d) The department may adopt regulations to implement the provisions of this section as necessary.

(e) As used in this section, "employer" means any nonprofit corporation or other organizations specified by the Attorney General which employs or uses the services of volunteers in positions in which the volunteer or employee has supervisory or disciplinary power over a child or children.

(f) As used in this section, "human resource agency" means a public or private entity, excluding any agency responsible for licensing of facilities pursuant to the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500)), the California Residential Care Facilities for the Elderly Act (Chapter 3.2 (commencing with Section 1569)), Chapter 3.01 (commencing with Section 1568.01), and the California Child Day Care Facilities Act (Chapter 3.4 (commencing with Section 1596.70)) of Division 2 of the Health and Safety Code, responsible for determining the character and fitness of a person who is (1) applying for a license, employment, or as a volunteer within the human services field that involves the care and security of children, the elderly, the handicapped, or the mentally impaired, or (2) applying to adopt a child or to be a foster parent.

(g) Records of the following offenses shall be furnished as provided in subdivision (a):

(1) Violations or attempted violations of Section 220, 261, 261.5, 262, 266, 266j, 267, 272, 273a, 273d, 273.5, Sections 285 to 289, inclusive, Section 311.2, 311.3, 311.4, 311.10, 311.11, 314, 647.6, former Section 647a, or subdivision (a) or (d) of Section 647, or commitment as a mentally disordered sex offender under former Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(2) Any crime described in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code), provided that, except as otherwise provided in subdivision (c), no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in this section within the immediately preceding 10-year period.

(3) Any felony or misdemeanor conviction within 10 years of the

date of the employer's request under subdivision (a), for a violation or attempted violation of Chapter 3 (commencing with Section 207), Section 211 or 215, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that offense, Section 217.1, Chapter 8 (commencing with Section 236), Chapter 9 (commencing with Section 240), and for a violation of any of the offenses specified in subdivision (c) of Section 667.5, provided that no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in this section within the immediately preceding 10-year period.

(4) A conviction for a violation or attempted violation of an offense committed outside the State of California shall be furnished if the offense would have been a crime as defined in this section if committed in California.

(h) Any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

SEC. 5. (a) Section 2 of this bill incorporates amendments to Section 11105.3 of the Penal Code proposed by both this bill and AB 1328. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 11105.3 of the Penal Code, (3) AB 2208 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1328, in which case Sections 1, 3, and 4 of this bill shall not become operative.

(b) Section 3 of this bill incorporates amendments to Section 11105.3 of the Penal Code proposed by both this bill and AB 2208. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 11105.3 of the Penal Code, (3) AB 1328 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2208, in which case Sections 1, 2, and 4 of this bill shall not become operative.

(c) Section 4 of this bill incorporates amendments to Section 11105.3 of the Penal Code proposed by this bill, AB 1328, and AB 2208. It shall only become operative if (1) all three bills are enacted and become effective on January 1, 1995, (2) all three bills amend Section 11105.3 of the Penal Code, and (3) this bill is enacted after AB 1328 and AB 2208, in which case Sections 1, 2, and 3 of this bill shall not become operative.

CHAPTER 1265

An act to amend Sections 1522 and 1569.17 of the Health and Safety Code, relating to care facilities, and making an appropriation therefor.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 1522 of the Health and Safety Code is amended to read:

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

(a) Before issuing a license or special permit to any person or persons to operate or manage a community care facility, the state department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of, or, after having been arrested and released on bail or on his or her own recognizance, is currently awaiting trial for, a crime other than a minor traffic violation. No fee shall be charged by the Department of Justice or the state department for the fingerprinting of an applicant for a license or special permit to operate a facility providing nonmedical board, room, and care for six or less children or for obtaining a criminal record of the applicant pursuant to this section. If it is found that the applicant, or any other person specified in subdivision (b), has been convicted of, or is awaiting trial for, a crime other than a minor traffic violation, the Department of Justice shall notify the State Department of Social Services of the fact and the application shall be denied, unless the director grants an exemption pursuant to subdivision (f). If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(b) In addition to the applicant, this section shall be applicable to

criminal convictions of the following persons:

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

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

(3) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene.

(4) Any staff person or employee who has frequent and routine contact with the clients. In determining who has frequent contact, any volunteer who is in the facility shall be exempt unless the volunteer is used to replace or supplement staff in providing direct care and supervision of clients. In determining who has routine contact, staff and employees under direct onsite supervision and who are not providing direct care and supervision or who have only occasional or intermittent contact with clients shall be exempt.

(5) Except for staff members of social rehabilitation facilities serving minors with alcohol or drug abuse problems, staff members of social rehabilitation facilities, other than those specified in paragraphs (1) and (2), are exempt from fingerprinting requirements.

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

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

(c) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a community care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit these fingerprints to the Department of Justice not later than four calendar days following employment, residence, or initial presence in the community care facility. These fingerprints shall be on a card provided by the State Department of Social Services for the purpose of obtaining a permanent set of fingerprints. Fingerprints not submitted to the Department of Justice, as required in this section, shall result in the citation of a deficiency and the fingerprints shall then be submitted to the State Department of Social Services for processing. Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprints.

Within 30 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in subdivision (a). If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State

Department of Social Services with a statement of that fact within 15 calendar days of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice shall, within 15 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible.

Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of, or is awaiting trial for, a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, 273d, or subdivision (a) or (b) of Section 368 of the Penal Code, or has been convicted of a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (f). If the conviction or arrest was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility; or (2) seek an exemption pursuant to subdivision (f). The State Department of Social Services shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered.

(d) Before issuing a license, special permit, or certificate of approval to any person or persons to operate or manage a foster family home or certified family home as described in Section 1506, the state department or other approving authority shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other adult person residing in the home has ever been convicted of, or arrested for, a crime other than a minor traffic violation. That criminal history information shall include the full criminal record, if any, of those persons. No fee shall be charged by the Department of Justice or the state department for the fingerprinting of an applicant for a license, special permit, or certificate of approval described in this subdivision. The record, if any, shall be taken into consideration when evaluating a prospective applicant. If the applicant or other persons specified in this subdivision have convictions that would make the applicant's home unfit as a foster family home or a certified family home, the license, special permit, or certificate of approval shall be denied. For the purposes of this subdivision, a criminal record clearance provided under Section 8712 of the Family Code may be used by the department or other approving agency.

Any person specified in this subdivision shall, as a part of the

application, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal arrests or convictions and shall submit these fingerprints to the licensing agency or other approving authority. The foster family agency shall obtain fingerprints from certified home applicants and from persons specified in subdivision (b) and shall submit them directly to the Department of Justice. Within five working days of the receipt of the criminal record or information regarding criminal convictions from the Department of Justice, the department shall notify the applicant of any criminal arrests or convictions. If no arrests or convictions are recorded, the Department of Justice shall provide the foster family agency with a statement of that fact concurrent with providing the information to the State Department of Social Services. The application shall be denied if it is determined by the approving authority, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, or has been convicted of an offense specified in Section 220, 243.4, 264.1, paragraph (1) of subdivision (a) of Section 273a, Section 273d, 288, 289, or subdivision (a) or (b) of Section 368 of the Penal Code, or was convicted of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(e) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the state department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction.

(f) After review of the record, the director may grant an exemption from disqualification for a license or special permit pursuant to subdivision (a), or for employment, residence, or presence in a community care facility as specified in subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). Except as otherwise provided in this subdivision, no exemption shall be granted pursuant to this subdivision if the conviction was for an offense specified in Section 220, 243.4, 264.1, paragraph (1) of subdivision (a) of Section

273a, Sections 273d, 288, 289, or subdivision (a) or (b) of Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code. The director may grant an exemption if the employee or prospective employee, who was convicted of a crime against an individual in paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5 of the Penal Code, has been rehabilitated as provided in Section 4852.03 of the Penal Code and has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years and has the recommendation of the district attorney representing the employee's county of residence, or if the employee or prospective employee has received a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(g) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal records clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another state licensing district office.

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

(i) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1558, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(j) (1) In order to expedite the current criminal record clearance and fingerprint process of the Department of Justice pursuant to subdivisions (a) and (c), the Department of Justice shall complete work on all of its current backlog of criminal record clearances for community care facilities licensed by the State Department of Social Services by July 1, 1995.

(2) Effective January 1, 1995, the Department of Justice shall complete all new requests for criminal record clearances for community care facilities within 30 days of receipt.

(3) The Department of Justice shall coordinate with the State Department of Social Services to establish and implement an automated live-scan processing system for fingerprints in two district offices of the Community Care Licensing Division of the State Department of Social Services by July 1, 1995. These live-scan processing units shall be connected to the main system at the Department of Justice by July 1, 1996, and shall become part of that department's pilot project in accordance with its Long Range Plan. The State Department of Social Services may charge a fee not to exceed five dollars (\$5) or the actual cost of processing a set of

live-scan fingerprints.

(4) The Department of Justice shall provide a report to the Assembly Human Services Committee and to the Senate Health and Human Services Committee by July 15, 1995, regarding the completion of backlogged criminal record clearance requests pursuant to paragraph (1) and the progress on implementing the automated live-scan processing system in the two district offices pursuant to paragraph (3). The Department of Justice shall provide a report to the Assembly Human Services Committee and to the Senate Health and Human Services Committee by April 15, 1996, regarding the progress of the implementation of the statewide CAL-CII system; the number of requests for criminal clearances received pursuant to this section during the previous year; the number of criminal record clearances requested and completed pursuant to this section within a 17-day "expedite" period or within the 30-day period required by paragraph (2); and the number of requests and reasons for delays beyond the 30-day period.

SEC. 1.5. Section 1522 of the Health and Safety Code is amended to read:

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

(a) Before issuing a license or special permit to any person or persons to operate or manage a community care facility, the State Department of Social Services shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation, or arrested for any crime specified in Section 290 of the Penal Code or arrested for violating Section 245, 273.5, paragraph (b) of Section 273a, or prior to January 1, 1994 paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated. That criminal history information shall include the full criminal record, of any of those persons. No fee shall be charged by the Department of Justice or the State Department of Social Services for the fingerprinting of an applicant for a license or special permit to operate a facility providing nonmedical board, room, and

care for six or less children or for obtaining a criminal record of the applicant pursuant to this section. If it is found that the applicant, or any other person specified in subdivision (b), has been convicted of, or is awaiting trial for, a crime other than a minor traffic violation, the Department of Justice shall notify the State Department of Social Services of the fact and the application shall be denied, unless the director grants an exemption pursuant to subdivision (f). If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

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

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

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

(3) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene.

(4) Any staff person or employee who has frequent and routine contact with the clients. In determining who has frequent contact, any volunteer who is in the facility shall be exempt unless the volunteer is used to replace or supplement staff in providing direct care and supervision of clients. In determining who has routine contact, staff and employees under direct onsite supervision and who are not providing direct care and supervision or who have only occasional or intermittent contact with clients shall be exempt.

(5) Except for staff members of social rehabilitation facilities serving minors with alcohol or drug abuse problems, staff members of social rehabilitation facilities, other than those specified in paragraphs (1) and (2), are exempt from fingerprinting requirements.

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

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

(c) (1) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a community care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit these fingerprints to the Department of Justice not later than four calendar days following employment, residence, or initial presence in the community care facility. These fingerprints shall be on a card provided by the State Department of Social Services for the purpose of obtaining a permanent set of fingerprints. Fingerprints

not submitted to the Department of Justice, as required in this section, shall result in the citation of a deficiency and the fingerprints shall then be submitted to the State Department of Social Services for processing. Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprints.

(2) Within 30 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in subdivision (a). If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 15 calendar days of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice shall, within 15 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible.

(3) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of, or is awaiting trial for, a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, 273d, or subdivision (a) or (b) of Section 368 of the Penal Code, or has been convicted of a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (f). If the conviction or arrest was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility; or (2) seek an exemption pursuant to subdivision (f). The State Department of Social Services shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered.

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

(5) Concurrently with notifying the licensee pursuant to paragraph (3), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (f). The

individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (3).

(d) Before issuing a license, special permit, or certificate of approval to any person or persons to operate or manage a foster family home or certified family home as described in Section 1506, the State Department of Social Services or other approving authority shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other adult person residing in the home has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code or arrested for violating Section 245, 273.5, subdivision (b) of Section 273a, or prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated. That criminal history information shall include the full criminal record, if any, of those persons. No fee shall be charged by the Department of Justice or the State Department of Social Services for the fingerprinting of an applicant for a license, special permit, or certificate of approval described in this subdivision. The record, if any, shall be taken into consideration when evaluating a prospective applicant. If the applicant or other persons specified in this subdivision have convictions that would make the applicant's home unfit as a foster family home or a certified family home, the license, special permit, or certificate of approval shall be denied. For the purposes of this subdivision, a criminal record clearance provided under Section 8712 of the Family Code may be used by the department or other approving agency.

Any person specified in this subdivision shall, as a part of the application, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions or arrests for any crime against a child, spousal/cohabitant abuse or for any crime for which the department cannot grant an exemption if the person was convicted and shall submit these fingerprints to the licensing agency or other approving authority. The foster family agency shall obtain fingerprints from certified home applicants and from persons specified in subdivision (b) and shall submit them directly to the Department of Justice. Within five working days of the receipt of the criminal record or information regarding criminal convictions from the Department of Justice, the department shall notify the applicant of any criminal arrests or convictions. If no arrests or convictions are recorded, the Department of Justice shall provide the foster family agency with a statement of that fact concurrent with providing the information to the State Department of Social Services. The application shall be denied if it is determined by the approving authority, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, or has been convicted of an offense specified

in Section 220, 243.4, 264.1, subdivision (a) of Section 273a, or prior to January 1, 1994, paragraph (1) of subdivision (a) of Section 273a, Section 273d, 288, 289, or subdivision (a) or (b) of Section 368 of the Penal Code, or was convicted of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

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

(f) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of *nolo contendere*. Any action which the State Department of Social Services is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be *prima facie* evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(g) (1) After review of the record, the director may grant an exemption from disqualification for a license or special permit pursuant to subdivision (a), or for a license, special permit, or certificate of approval pursuant to subdivision (d), or for employment, residence, or presence in a community care facility as specified in subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). Except as otherwise provided in this subdivision, no exemption shall be granted pursuant to this subdivision if the conviction was for an offense specified in Section 220, 243.4, 264.1, subdivision (a) of Section 273a, or prior to January 1, 1994, paragraph (1) of subdivision (a) of Section 273a, Sections 273d, 288, 289, or subdivision (a) or (b)

of Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code. The director may grant an exemption if the employee or prospective employee, who was convicted of a crime against an individual in paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5 of the Penal Code, has been rehabilitated as provided in Section 4852.03 of the Penal Code and has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years and has the recommendation of the district attorney representing the employee's county of residence, or if the employee or prospective employee has received a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

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

(h) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal records clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another state licensing district office.

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

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

(j) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1558, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(k) (1) In order to expedite the current criminal record clearance and fingerprint process of the Department of Justice pursuant to subdivisions (a) and (c), the Department of Justice shall complete work on all of its current backlog of criminal records clearances for community care facilities licensed by the State Department of Social Services by July 1, 1995.

(2) Effective January 1, 1995, the Department of Justice shall complete all new requests for criminal record clearances for community care facilities within 30 days of receipt.

(3) The Department of Justice shall coordinate with the State Department of Social Services to establish and implement an

automated live-scan processing system for fingerprints in two district offices of the Community Care Licensing Division of the State Department of Social Services by July 1, 1995. These live-scan processing units shall be connected to the main system at the Department of Justice by July 1, 1996, and shall become part of that department's pilot project in accordance with its long range plan. The State Department of Social Services may charge a fee not to exceed five dollars (\$5) or the actual cost of processing a set of live-scan fingerprints.

(4) The Department of Justice shall provide a report to the Assembly Human Services Committee and to the Senate Health and Human Services Committee by July 15, 1995, regarding the completion of backlogged criminal record clearance requests pursuant to paragraph (1) and the progress on implementing the automated live-scan processing system in the two district offices pursuant to paragraph (3). The Department of Justice shall provide a report to the Assembly Human Services Committee and to the Senate Health and Human Services Committee by April 15, 1996, regarding the progress of the implementation of the statewide CAL-CII system; the number of requests for criminal clearances received pursuant to this section during the previous year; the number of criminal record clearances requested and completed pursuant to this section within a 17-day "expedite" period or within the 30-day period required by paragraph (2); and the number of requests and reasons for delays beyond the 30-day period.

SEC. 2. Section 1569.17 of the Health and Safety Code is amended to read:

1569.17. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a residential care facility for the elderly. The Legislature supports the use of the fingerprint live-scan technology, as identified in the Long-Range Plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with clients of residential care facilities for the elderly may pose a risk to the clients' health and safety.

(a) Before issuing a license to any person or persons to operate or manage a residential care facility for the elderly, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation. If it is found that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the Department of Justice shall notify the State Department of Social Services of that fact and the application shall be denied, unless the director grants an

exemption pursuant to subdivision (e). If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

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

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

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

(3) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene.

(4) Any staff person or employee who has frequent and routine contact with the clients. In determining who has frequent contact, any volunteer who is in the facility shall be exempt unless the volunteer is used to replace or supplement staff in providing direct care and supervision of clients. In determining who has routine contact, staff and employees under direct onsite supervision and who are not providing direct care and supervision or who have only occasional or intermittent contact with clients shall be exempt.

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

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

(c) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a residential facility for the elderly, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit these fingerprints to the Department of Justice not later than 20 calendar days following employment, residence, or initial presence in the residential care facility for the elderly.

These fingerprints shall be on a card provided by the State Department of Social Services for the purpose of obtaining a permanent set of fingerprints. Fingerprints not submitted to the Department of Justice, as required in this section, shall result in the citation of a deficiency and the fingerprints shall then be submitted to the State Department of Social Services for processing.

Within 30 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 15 calendar days of receipt of the fingerprints. If new fingerprints are

required for processing, the Department of Justice shall, within 15 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible.

Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, 273d, or subdivision (a) or (b) of Section 368 of the Penal Code, or has been convicted of a felony, the State Department of Social Services shall notify the licensee in writing within 15 calendar days of the receipt of the notification from the Department of Justice to act immediately to terminate the person's employment, remove the person from the residential care facility for the elderly, or bar the person from entering the residential care facility for the elderly. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (e). If the conviction was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the residential care facility for the elderly, or bar the person from entering the residential care facility for the elderly; or (2) seek an exemption pursuant to subdivision (e). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered by the department.

(d) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of the sentence, notwithstanding a subsequent order pursuant to the provisions of Sections 1203.4 and 1203.4a of the Penal Code permitting a person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction.

(e) After review of the record, the director may grant an exemption from disqualification for a license pursuant to subdivision (a), or for employment, residence, or presence in a residential care facility for the elderly as specified in subdivision (c) if the director has substantial and convincing evidence to support a reasonable

belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). However, no exemption shall be granted pursuant to this subdivision if the conviction was for an offense specified in Section 220, 243.4, 264.1, or paragraph (1) of subdivision (a) of Section 273a or Section 273d, or Section 288 or 289, or subdivision (a) or (b) of Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code. The director shall notify in writing the licensee or the applicant of his or her decision within 60 days of receipt of all information from the applicant and other sources determined necessary by the director for the rendering of a decision pursuant to this subdivision.

(f) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal records clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another state licensing district office.

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

(h) (1) In order to expedite the current criminal record clearance and fingerprint process of the Department of Justice, the Department of Justice shall complete work on all of its current backlog of criminal record clearances for residential care facilities for the elderly licensed by the State Department of Social Services by July 1, 1995.

(2) Effective January 1, 1995, the Department of Justice shall complete all new requests for criminal record clearances for residential care facilities for the elderly within 30 days of receipt.

(3) The Department of Justice shall coordinate with the State Department of Social Services to establish and implement an automated live-scan processing system for fingerprints in two district offices of the Community Care Licensing Division of the State Department of Social Services by July 1, 1995. These live-scan processing units shall be connected to the main system at the Department of Justice by July 1, 1996, and shall become part of that department's pilot project in accordance with its Long Range Plan. The State Department of Social Services may charge a fee not to exceed five dollars (\$5) or the actual cost of processing a set of live-scan fingerprints.

(4) The Department of Justice shall provide a report to the Assembly Human Services Committee and to the Senate Health and

Human Services Committee by July 15, 1995, regarding the completion of backlogged criminal record clearance requests pursuant to paragraph (1) and the progress on implementing the automated live-scan processing system in the two district offices pursuant to paragraph (3). The Department of Justice shall provide a report to the Assembly Human Services Committee and to the Senate Health and Human Services Committee by April 15, 1996, regarding the progress of the implementation of the statewide CAL-CII system; the number of requests for criminal clearances received pursuant to this section during the previous year; the number of criminal record clearances requested and completed pursuant to this section within a 17-day "expedite" period or within the 30-day period required by paragraph (2); and the number of requests and reasons for delays beyond the 30-day period.

SEC. 2.5. Section 1569.17 of the Health and Safety Code is amended to read:

1569.17. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a residential care facility for the elderly. The Legislature supports the use of the fingerprint live-scan technology, as identified in the long range plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with clients of residential care facilities for the elderly may pose a risk to the clients' health and safety.

(a) Before issuing a license to any person or persons to operate or manage a residential care facility for the elderly, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation, or arrested for any crime specified in Section 290 of the Penal Code, or arrested for violating Section 245, 273.5, subdivision (b) of Section 273a, or prior to January 1, 1994 paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has been exonerated. That criminal history information shall include the full criminal record, if any, of those persons. If it is found that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the Department of Justice shall notify the State Department of Social Services of that fact and the application shall be denied, unless the director grants an exemption pursuant to subdivision (f). If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(b) In addition to the applicant, the provisions of this section shall

be applicable to criminal convictions of the following persons:

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

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

(3) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene.

(4) Any staff person or employee who has frequent and routine contact with the clients. In determining who has frequent contact, any volunteer who is in the facility shall be exempt unless the volunteer is used to replace or supplement staff in providing direct care and supervision of clients. In determining who has routine contact, staff and employees under direct onsite supervision and who are not providing direct care and supervision or who have only occasional or intermittent contact with clients shall be exempt.

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

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

(c) (1) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a residential facility for the elderly, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit these fingerprints to the Department of Justice not later than 20 calendar days following employment, residence, or initial presence in the residential care facility for the elderly.

(2) These fingerprints shall be on a card provided by the State Department of Social Services for the purpose of obtaining a permanent set of fingerprints. Fingerprints not submitted to the Department of Justice, as required in this section, shall result in the citation of a deficiency and the fingerprints shall then be submitted to the State Department of Social Services for processing.

(3) Within 30 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 15 calendar days of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice shall, within 15 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible.

(4) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous

employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, 273d, or subdivision (a) or (b) of Section 368 of the Penal Code, or has been convicted of a felony, the State Department of Social Services shall notify the licensee in writing within 15 calendar days of the receipt of the notification from the Department of Justice to act immediately to terminate the person's employment, remove the person from the residential care facility for the elderly, or bar the person from entering the residential care facility for the elderly. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (f). If the conviction was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the residential care facility for the elderly, or bar the person from entering the residential care facility for the elderly; or (2) seek an exemption pursuant to subdivision (e). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered by the department.

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

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

(d) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of the sentence, notwithstanding a subsequent order pursuant to the provisions of Sections 1203.4 and 1203.4a of the Penal Code permitting a person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof

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

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

(f) (1) After review of the record, the director may grant an exemption from disqualification for a license pursuant to subdivision (a), or for employment, residence, or presence in a residential care facility for the elderly as specified in subdivision (c) if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). However, no exemption shall be granted pursuant to this subdivision if the conviction was for an offense specified in Section 220, 243.4, 264.1, subdivision (a) of Section 273a, or prior to January 1, 1994, paragraph (1) of subdivision (a) of Section 273a or Section 273d, or Section 288 or 289, or subdivision (a) or (b) of Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code. The director shall notify in writing the licensee or the applicant of his or her decision within 60 days of receipt of all information from the applicant and other sources determined necessary by the director for the rendering of a decision pursuant to this subdivision.

(2) The department shall not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1569.58.

(g) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal records clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another state licensing district office.

(2) The State Department of Social Services shall hold criminal records clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for

the criminal records clearances to be transferred under this section.

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

(i) (1) In order to expedite the current criminal record clearance and fingerprint process of the Department of Justice, the Department of Justice shall complete work on all of its current backlog of criminal record clearances for residential care facilities for the elderly licensed by the State Department of Social Services by July 1, 1995.

(2) Effective January 1, 1995, the Department of Justice shall complete all new requests for criminal record clearances for residential care facilities for the elderly within 30 days of receipt.

(3) The Department of Justice shall coordinate with the State Department of Social Services to establish and implement an automated live-scan processing system for fingerprints in two district offices of the Community Care Licensing Division of the State Department of Social Services by July 1, 1995. These live-scan processing units shall be connected to the main system at the Department of Justice by July 1, 1996, and shall become part of that department's pilot project in accordance with its long range plan. The State Department of Social Services may charge a fee not to exceed five dollars (\$5) or the actual cost of processing a set of live-scan fingerprints.

(4) The Department of Justice shall provide a report to the Assembly Human Services Committee and to the Senate Health and Human Services Committee by July 15, 1995, regarding the completion of backlogged criminal record clearance requests pursuant to paragraph (1) and the progress on implementing the automated live-scan processing system in the two district offices pursuant to paragraph (3). The Department of Justice shall provide a report to the Assembly Human Services Committee and to the Senate Health and Human Services Committee by April 15, 1996, regarding the progress of the implementation of the statewide CAL-CII system; the number of requests for criminal clearances received pursuant to this section during the previous year; the number of criminal record clearances requested and completed pursuant to this section within a 17-day "expedite" period or within the 30-day period required by paragraph (2); and the number of requests and reasons for delays beyond the 30-day period.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 1522 of the Health and Safety Code proposed by both this bill and SB 1984. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 1522 of the Health and Safety Code, and (3) this bill

is enacted after SB 1984, in which case Section 1 of this bill shall not become operative.

SEC. 4. Section 2.5 of this bill incorporates amendments to Section 1569.17 of the Health and Safety Code proposed by both this bill and SB 1984. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 1569.17 of the Health and Safety Code, and (3) this bill is enacted after SB 1984, in which case Section 2 of this bill shall not become operative.

SEC. 5. For purposes of the purchase and installation of the live-scan processing system required by Sections 1522 and 1569.17 of the Health and Safety Code as amended by the act adding this section, one hundred five thousand dollars (\$105,000) is hereby appropriated to the State Department of Social Services from the General Fund for expenditure in the 1994-95 fiscal year.

CHAPTER 1266

An act to amend Sections 259 and 640.1 of the Code of Civil Procedure, to amend Sections 4846, 7552, 7575, and 7576 of, to add Sections 7552.5 and 7644 to, and to repeal Section 7573 of, the Family Code, and to amend Section 11350.1 of, and to add Sections 11350.3 and 11350.4 to, the Welfare and Institutions Code, relating to family law.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 259 of the Code of Civil Procedure is amended to read:

259. Subject to the supervision of the court every court commissioner shall have power to do all of the following:

(a) Hear and determine ex parte motions, for orders and alternative writs and writs of habeas corpus in the superior court for which the court commissioner is appointed.

(b) Take proof and make and report findings thereon as to any matter of fact upon which information is required by the court. Any party to any contested proceeding may except to the report and the subsequent order of the court made thereon within five days after written notice of the court's action. A copy of the exceptions shall be filed and served upon opposing party or counsel within the five days. The party may argue any exceptions before the court on giving notice of motion for that purpose within 10 days from entry thereof. After a hearing before the court on the exceptions, the court may sustain, or set aside, or modify its order.

(c) Take and approve any bonds and undertakings in actions or

proceedings, and determine objections to the bonds and undertakings.

(d) Administer oaths and affirmations, and take affidavits and depositions in any action or proceeding in any of the courts of this state, or in any matter or proceeding whatever, and take acknowledgments and proof of deeds, mortgages, and other instruments requiring proof or acknowledgment for any purpose under the laws of this or any other state or country.

(e) Act as temporary judge when otherwise qualified so to act and when appointed for that purpose, or by written consent of an appearing party. While acting as temporary judge the commissioner shall receive no compensation therefor other than compensation as commissioner.

(f) Hear and report findings and conclusions to the court for approval, rejection, or change, all preliminary matters including motions or petitions for the custody and support of children, the allowance of temporary spousal support, costs and attorneys' fees, and issues of fact in contempt proceedings in proceedings for support, dissolution of marriage, nullity of marriage, or legal separation.

(g) Hear actions filed by the district attorney to establish paternity and to establish or enforce child support pursuant to Section 640.1.

(h) Hear, report on, and determine all uncontested actions and proceedings subject to the requirements of subdivision (e).

(i) Charge and collect the same fees for the performance of official acts as are allowed by law to notaries public in this state for like services. This subdivision does not apply to any services of the commissioner, the compensation for which is expressly fixed by law. The fees so collected shall be paid to the treasurer of the county, for deposit in the general fund of the county.

(j) Provide an official seal, upon which must be engraved the words "Court Commissioner" and the name of the county, or city and county, in which the commissioner resides.

(k) Authenticate with the official seal the commissioner's official acts.

SEC. 2. Section 640.1 of the Code of Civil Procedure is amended to read:

640.1. (a) To the extent required by federal law, all applications filed by the district attorney for an order to establish or enforce child support, including actions to establish paternity, shall be referred for hearing to a commissioner or a referee, unless the district attorney of that particular county has applied for, and received, an exemption from this requirement from the State Department of Social Services.

In counties which operate an expedited process, commissioners and referees shall order a temporary support obligation under the expedited process prior to referring those cases to the full judicial system.

All applications to be heard by a commissioner or referee shall be

made returnable on an order to show cause within 30 days after service thereof or heard on a noticed motion within 30 days after service of notice. The matter shall not be heard earlier than 10 days after service of the order to show cause or notice of motion and supporting papers. The hearing shall not be continued to a date more than 10 days after the date originally set for hearing.

Nothing in this section prohibits persons other than the district attorney from bringing an action under this section, if permitted by that particular county. However, actions brought by the district attorney shall have priority over actions brought by other persons.

(b) At the hearing, the commissioner or referee shall, where appropriate, do all of the following:

(1) Take testimony.

(2) Establish a record, evaluate evidence, and make recommendations or decisions.

(3) Accept voluntary acknowledgments of support liability and parentage and stipulated agreements respecting the amount of child support to be paid.

(4) Enter default orders where authorized pursuant to Section 639.5.

(5) In actions in which paternity is at issue, order the mother, child, and alleged father to submit to blood tests pursuant to Section 7551 of the Family Code.

(c) Except where a default or stipulated order has been entered by a commissioner or a referee, a recommended order shall be filed by the commissioner or referee within seven court days after the hearing concludes. The clerk shall mail an endorsed copy first class, postage prepaid, to all parties by the close of the business day on which the order is filed, together with a notice of a review hearing before a judge of the superior court, stating the date any party may appear and object to the recommended order. As an alternative to mailing the copy of the order and the notice to the parties, the clerk may personally serve the copy of the order and the notice at the time of the hearing. The clerk shall also provide a written notice of that hearing to all persons appearing at the hearing before the commissioner or referee. The hearing in superior court shall take place no earlier than 15 days nor later than 20 days following the mailing of the recommended order to all parties. The hearing before the superior court shall not be continued to a date more than 10 days after the date originally set for hearing. Section 1013 does not apply to these time limits.

(d) Except as provided in subdivision (e), on the appointed hearing date, the superior court shall independently review the record of the original hearing, any supplemental papers filed, hear any oral objections and responses thereto, and either adopt the recommended order or modify it on such terms as the interests of justice require.

(e) Notwithstanding subdivision (d), on its own motion, the superior court may rehear the matter. Any rehearing determined

necessary by the court shall be heard within 10 days of the date of the hearing required by subdivision (d). At the conclusion of the hearing, the superior court shall either adopt the recommended order or modify it on such terms as the interests of justice require.

(f) If no objection to the recommended order is presented to the court on the date specified in subdivision (c), the court shall adopt the recommended order, unless it modifies it on its own motion, consistent with the interests of justice, as described in subdivision (e).

SEC. 3. Section 4846 of the Family Code is amended to read:

4846. (a) A previous determination of paternity made by another state, whether established through voluntary acknowledgment procedures in effect in that state or through administrative or judicial processes, shall be given full faith and credit by the courts in this state. It has the same effect as a paternity determination made by this state and may be enforced and satisfied in a like manner.

(b) If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the issue of paternity has not previously been determined in this state or another state, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise, the court may adjourn the hearing until the paternity issue has been adjudicated.

SEC. 3.5. Section 7552 of the Family Code is amended to read:

7552. The tests shall be made by experts qualified as examiners of blood types who shall be appointed by the court. Any party or person at whose suggestion the tests have been ordered may demand that other experts, qualified as examiners of blood types, perform independent tests under order of the court, the results of which may be offered in evidence. The number and qualifications of these experts shall be determined by the court.

SEC. 3.7. Section 7552.5 is added to the Family Code, to read:

7552.5. (a) A copy of the results of all blood tests performed under Section 7552 shall be served upon all parties, by any method of service authorized under Chapter 5 (commencing with Section 1010) of Title 14 of Part 2 of the Code of Civil Procedure except personal service, no later than 20 days prior to any hearing in which the blood test results may be admitted into evidence. The blood test results shall be accompanied by a declaration under penalty of perjury of the custodian of records or other qualified employee of the laboratory that conducted the blood tests, stating in substance each of the following:

(1) The declarant is the duly authorized custodian of the records or other qualified employee of the laboratory, and has authority to certify the records.

(2) A statement which establishes in detail the chain of custody of all blood samples drawn, including the date on which the blood was

drawn, the identity of each person from whom blood was drawn, the identity of the person who performed or witnessed the drawing of the blood samples and packaged them for transmission to the laboratory, the date on which the blood samples were received by the laboratory, the identity of the person who unpacked the samples and forwarded them to the person who performed the laboratory analysis of the blood, and the identification and qualifications of all persons who performed the laboratory analysis and published the results.

(3) A statement which establishes that the procedures used by the laboratory to conduct the tests for which the test results are attached are used in the laboratory's ordinary course of business to ensure accuracy and proper identification of blood samples.

(4) The blood test results were prepared at or near the time of completion of the blood tests by personnel of the business qualified to perform blood tests in the ordinary course of business.

(b) The blood test results shall be admitted into evidence at the hearing or trial to establish paternity, without the need for foundation testimony of authenticity and accuracy, unless a written objection to the blood test results is filed with the court and served on all other parties, by any party no later than five days prior to the hearing or trial where paternity is at issue.

(c) If a written objection is filed by the court and served on all parties within the time specified in subdivision (b), the experts appointed by the court shall be called by the court as witnesses to testify to their findings and are subject to cross-examination by the parties.

SEC. 4. Section 7573 of the Family Code is repealed.

SEC. 5. Section 7575 of the Family Code is amended to read:

7575. (a) (1) The presumption established by this chapter may be rebutted by any person by requesting blood or genetic tests pursuant to Chapter 2 (commencing with Section 7550). The notice of motion for blood or genetic tests pursuant to this section shall be supported by a declaration under oath submitted by the moving party stating the factual basis for placing the issue of paternity before the court. The notice of motion for blood tests shall be made within three years from the date of execution of the declaration by the attesting father, or by the attesting mother, whichever signature is later. The two-year statute of limitations specified in subdivision (b) of Section 7541 is inapplicable for purposes of this section.

(2) The Judicial Council, in consultation with the Family Support Council, the State Department of Social Services, a legal services organization providing representation on child support matters, and representatives of the Senate Judiciary Committee and the Assembly Judiciary Committee, shall develop the forms and procedures necessary to effectuate this subdivision.

(b) A presumption under this chapter shall override all statutory presumptions of paternity except a presumption arising under Section 7540 or 7555.

SEC. 6. Section 7576 of the Family Code is amended to read:

7576. (a) If the declaration is not registered by the person responsible for registering live births at the hospital, clinic, or place of birth, it may be completed by the attesting parents and mailed to the State Office of Vital Records and Statistics at any time after the child's birth.

(b) Declarations shall be made available without charge at all district attorney offices within this state. The State Department of Social Services and district attorneys shall publicize the availability of the declarations. The district attorney shall make the declaration, together with the informational pamphlets described in subdivision (a) of Section 7572, available upon request to any parent. The district attorney shall also provide qualified staff to answer parents' questions regarding the declaration and the process of establishing paternity.

(c) The declaration, whether filed by the person responsible for registering live births, or by the parents at a later date, shall be numerically matched to the birth certificate.

(d) Certified copies of the declaration shall be made available only to the parents, the child, the district attorney, and the State Department of Social Services.

SEC. 7. Section 7644 is added to the Family Code, to read:

7644. (a) Notwithstanding any other law, an action for child custody and support and for other relief as provided in Section 7637 may be filed based upon a voluntary declaration of paternity as provided in Chapter 3 (commencing with Section 7570) of Part 2.

(b) A copy of the voluntary declaration of paternity shall be filed with the complaint seeking the relief specified in subdivision (a). A copy of the voluntary declaration of paternity shall be served with the complaint on the party against whom the child custody or support order is sought.

(c) The court shall enter a judgment determining the existence of a parent and child relationship between the child and the attesting father named in the voluntary declaration of paternity unless one of the parties files a written objection to the voluntary declaration and the objection is filed within the three-year period specified in Section 7575. If an objection is filed in a timely manner pursuant to Section 7575, the court shall order blood tests and determine the issue of paternity pursuant to the procedures set forth in Section 7541.

(d) The court shall issue an order for support for the minor child pursuant to Section 3600 during the pendency of any proceeding under this section.

(e) The Judicial Council, in consultation with the California Family Support Council, the State Department of Social Services, a legal services organization providing representation on child support matters, and representatives of the Senate Judiciary Committee and the Assembly Judiciary Committee, shall develop the forms and procedures necessary to implement this section.

SEC. 8. Section 11350.1 of the Welfare and Institutions Code is amended to read:

11350.1. (a) Notwithstanding any other statute, in any action brought by the district attorney for child support of a minor child or children, the action may be prosecuted in the name of the county on behalf of the child, children, or caretaker parent. The caretaker parent shall not be a necessary party in the action but may be subpoenaed as a witness. In an action under this section there shall be no joinder of actions, or coordination of actions, or cross-complaints, and the issues shall be limited strictly to the question of paternity, if applicable, and child support, including an order for medical support. A final determination of parentage may be made in any action under this section as an incident to obtaining an order for support. An action for support or paternity pursuant to this section shall not be delayed or stayed because of the pendency of any other action between the parties. Judgment in an action brought pursuant to this section, and in an action brought pursuant to Section 11350, if at issue, may be rendered pursuant to a noticed motion, which shall inform the defendant that in order to exercise his or her right to trial, he or she must appear at the hearing on the motion.

If the defendant appears at the hearing on the motion, the court shall inquire of him or her if he or she desires to subpoena evidence and witnesses, if paternity is at issue and blood tests have not already been conducted whether he or she desires blood tests, and if he or she desires a trial. If his or her answer is in the affirmative, a continuance shall be granted to allow him or her to exercise those rights. A continuance shall not postpone the hearing to more than 75 days from the date of service of the summons and complaint. In the event that a continuance is granted, the court may make an order for temporary support without prejudice to the right of the court to make an order for temporary support as otherwise allowed by law.

(b) In any action to enforce a spousal support order the action may be pled in the name of the county in the same manner as an action to establish a child support obligation. The same restrictions on joinder of actions, coordination of actions, and cross-complaints, and delay because of the pendency of any other action as relates to actions to establish a child support obligation shall also apply to actions to enforce a spousal support order. Nothing contained in this section shall be construed to prevent the parties from bringing an independent action under the Family Code or otherwise, and litigating the issue of support. In that event, the court in those proceedings shall make an independent determination on the issue of support which shall supersede the support order made pursuant to this section.

SEC. 9. Section 11350.3 is added to the Welfare and Institutions Code, to read:

11350.3. In any action filed by the district attorney pursuant to Section 11350 or 11350.1, the district attorney shall provide the mother and the alleged father the opportunity to voluntarily acknowledge paternity by signing a paternity declaration as

described in Section 7574 of the Family Code prior to a hearing or trial where the paternity of a minor child is at issue. The opportunity to voluntarily acknowledge paternity may be provided either before or after an action pursuant to Section 11350 or 11350.1 is filed and served upon the alleged father.

SEC. 10. Section 11350.4 is added to the Welfare and Institutions Code, to read:

11350.4. (a) Notwithstanding any other law, an action for child support may be brought by the district attorney on behalf of a minor child or caretaker parent based upon a voluntary declaration of paternity as provided in Section 7571 of the Family Code.

(b) A copy of the voluntary declaration of paternity shall be filed with the complaint for child support filed by the district attorney, and a copy shall be served with the complaint on the party against whom the child support order is sought.

(c) The court shall enter a judgment determining the existence of a parent and child relationship between the child and the attesting father named in the voluntary declaration of paternity unless a written objection to the voluntary declaration of paternity is filed with the court within the three-year period specified in Section 7575 of the Family Code. If an objection is filed in a timely manner, the court shall order blood tests and determine the issue of paternity pursuant to Section 7541 of the Family Code.

(d) The court shall issue an order for support for the minor child pursuant to Section 3600 of the Family Code during the pendency of any proceeding to determine parentage.

(e) The Judicial Council, in consultation with the California Family Support Council, the State Department of Social Services, a legal services organization providing representation on child support matters, and representatives of the Senate Judiciary Committee and the Assembly Judiciary Committee, shall develop the forms and procedures necessary to implement this section.

SEC. 11. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1267

An act to amend Section 8172 of the Education Code, to amend Sections 1522, 1568.09, 1569.17, 1596.871, and 1596.877 of, and to add Sections 1551.1, 1568.0651, 1569.511, and 1596.8871 to, the Health and Safety Code, relating to care facilities.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 8172 of the Education Code is amended to read:

8172. (a) The Department of Justice shall establish a trustline registry pursuant to this chapter. Upon submission of the trustline application, fingerprints pursuant to subdivision (a) of Section 8171, and all other information required to be provided to the State Department of Social Services pursuant to Section 1596.871 of the Health and Safety Code, including, but not limited to, the full criminal record, if any, of those persons, the Department of Justice shall enter into the trustline registry the provider's name, identification card number, and an indicator that the provider has submitted an application and fingerprints. This provider shall be known as a "trustline applicant."

(b) Upon completion of the searches of the California Criminal History System and the California Child Abuse Central Index, if no reported criminal conviction or substantiated child abuse information that would disqualify the provider from being licensed by the State Department of Social Services as a child care provider is found, the Department of Justice shall enter that finding in the provider's record in the trustline registry and shall notify the provider of the action. This provider shall be known as a "registered trustline child care provider."

(c) If, in any of the two searches, or in any report that is received by the Department of Justice subsequent to these searches, reported criminal conviction or substantiated child abuse information for which the provider could not request an exemption from the Director of Social Services for a license as a child care provider is found, the Department of Justice shall notify the provider that he or she is not eligible to be a registered trustline child care provider, or in the case where a provider was previously registered, that he or she is no longer eligible to be a registered trustline child care provider. Also, the provider's record as a trustline applicant or a registered child care provider shall be removed from the registry.

(d) (1) If, in any of the two searches, or in any report that is received by the Department of Justice subsequent to these searches, reported criminal conviction or substantiated child abuse information for which the provider could request an exemption from

the Director of Social Services for a license as a child care provider is found, the Department of Justice shall review the information and either register the person as a registered trustline child care provider or deny the registration. In either case, the Department of Justice shall notify the provider of its action. In the event of a denial, the Department of Justice shall remove the provider's record as a trustline applicant from the registry.

(2) If the Department of Justice denies registration pursuant to paragraph (1), it shall advise the provider of the right to appeal. The provider shall have 15 days to appeal the denial. Upon receipt by the Department of Justice of the appeal, the appeal shall be set for hearing. The hearing shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department has all the powers granted in that chapter.

(e) (1) The Department of Justice shall adopt regulations that are parallel to those used by the State Department of Social Services in determining whether a person applying for a license for a child day care facility may be granted an exemption to work in a day care facility despite a criminal conviction or a determination of substantiated child abuse. If an appeal is requested, the Department of Justice shall make the determination within 30 days, based upon the regulations adopted.

(2) Notwithstanding paragraph (1), the background examination required pursuant to this chapter shall not include review of the Automated Name Index of the Department of Motor Vehicles.

(3) In order to expedite the implementation of this chapter, regulations adopted for the purposes of Chapter 3.65 (commencing with Section 1597.80) shall be used for the purposes of this chapter to the extent that those regulations are consistent with this chapter.

(4) Any determination made by the Department of Justice pursuant to this section to grant or deny registration to a provider shall not be legally binding on the State Department of Social Services.

(5) Any determination made by the State Department of Social Services pursuant to Section 1596.871 of the Health and Safety Code to grant or deny a criminal records exemption to a person shall not be legally binding on the Department of Justice.

(f) The Department of Justice may charge a provider initiating a background examination a fee. Apportionment of the proceeds collected by the Department of Justice from this fee will occur on a percentage basis with a portion of the fee being allocated to the Department of Justice and the remainder to the State Department of Education. The percentages allocated will be reviewed annually by the Department of Justice, the State Department of Education, and the California Child Care Resource Referral Network. The Department of Justice and the State Department of Education shall enter into an interagency agreement for the purpose of transferring funds to offset the costs incurred by the California Child Care

Resource and Referral Network to implement the trustline program pursuant to this chapter. The maximum fee may not exceed the total actual costs of all of the following:

(1) The searches of the California Criminal History System and the California Child Abuse Central Index performed by the Department of Justice.

(2) The information and technical assistance provided by the California Child Care Resource and Referral Network to parents, providers, and employment agencies.

(3) The implementation by the local child care resource and referral programs of the trustline program.

All moneys collected by the Department of Justice to implement this chapter shall be continuously appropriated without regard to fiscal year for expenditure pursuant to this chapter.

(g) The Department of Justice shall maintain and continually update an index of reports of substantiated child abuse by, and pertinent criminal convictions of, providers and shall review the reports received from the child abuse index pursuant to Section 11170 of the Penal Code to determine if the child abuse of the provider is substantiated. The Department of Justice shall continually update the trustline registry pursuant to the actions required in subdivisions (c) and (d) of this section.

(h) The Department of Justice shall provide the California Child Care Resource and Referral Network with a continually updated record of the trustline applicants and the registered trustline child care providers.

(i) Notwithstanding any provision of law to the contrary, including Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code, state officers or employees shall not be liable for any damages caused by their conduct pursuant to this chapter except for intentional acts or gross negligence.

(j) Nothing in this chapter shall preclude the Superintendent of Public Instruction from compiling additional information from any source concerning the employment of any child care provider who is compensated with funds administered by the State Department of Education.

(k) Notwithstanding any other provision of this section, the Department of Justice may consider the licensing records of the State Department of Social Services in granting, denying, or continuing the registration. If the records of the State Department of Social Services disclose that conduct by the applicant demonstrates that registration would be inimical to the health and safety of the children of this state, the Department of Justice shall deny the registration and the applicant shall have the appeal rights of this section. The Department of Justice shall have access to the licensing files of the State Department of Social Services for the purposes of carrying out its functions under this section.

(l) Upon written request by the provider, the Department of Justice may permit the State Department of Social Services to have

access to the Trustline Registrant Information System if the provider seeks to obtain a criminal record clearance from the State Department of Social Services.

SEC. 1.5. Section 8172 of the Education Code is amended to read:

8172. (a) The Department of Justice shall establish a trustline registry pursuant to this chapter. Upon submission of the trustline application, fingerprints pursuant to subdivision (a) of Section 8171, and all other information required to be provided to the State Department of Social Services pursuant to Section 1596.871 of the Health and Safety Code, including, but not limited to, the full criminal record, if any, of those persons, the Department of Justice shall enter into the trustline registry the provider's name, identification card number, and an indicator that the provider has submitted an application and fingerprints. This provider shall be known as a "trustline applicant."

(b) Upon completion of the searches of the California Criminal History System and the California Child Abuse Central Index, and, if applicable, the records of the Federal Bureau of Investigation, if no reported criminal conviction or substantiated child abuse information that would disqualify the provider from being licensed by the State Department of Social Services as a child care provider is found, the Department of Justice shall enter that finding in the provider's record in the trustline registry and shall notify the provider of the action. This provider shall be known as a "registered trustline child care provider."

(c) If, in any of the searches, or in any report that is received by the Department of Justice subsequent to these searches, reported criminal conviction or substantiated child abuse information for which the provider could not request an exemption from the Director of Social Services for a license as a child care provider is found, the Department of Justice shall notify the provider that he or she is not eligible to be a registered trustline child care provider, or in the case where a provider was previously registered, that he or she is no longer eligible to be a registered trustline child care provider. Also the provider's record as a trustline applicant or a registered child care provider shall be removed from the registry.

(d) (1) If, in any of the searches, or in any report that is received by the Department of Justice subsequent to these searches, reported criminal conviction or substantiated child abuse information for which the provider could request an exemption from the Director of Social Services for a license as a child care provider is found, the Department of Justice shall review the information and either register the person as a registered trustline child care provider or deny the registration. In either case, the Department of Justice shall notify the provider of its action. In the event of a denial, the Department of Justice shall remove the provider's record as a trustline applicant from the registry.

(2) If the Department of Justice denies registration pursuant to paragraph (1), it shall advise the provider of the right to appeal. The

provider shall have 15 days to appeal the denial. Upon receipt by the Department of Justice of the appeal, the appeal shall be set for hearing. The hearing shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department has all the powers granted in that chapter.

(e) (1) The Department of Justice shall adopt regulations that are parallel to those used by the State Department of Social Services in determining whether a person applying for a license for a child day care facility may be granted an exemption to work in a day care facility despite a criminal conviction or a determination of substantiated child abuse. If an appeal is requested, the Department of Justice shall make the determination within 30 days, based upon the regulations adopted.

(2) Notwithstanding paragraph (1), the background examination required pursuant to this chapter shall not include review of the Automated Name Index of the Department of Motor Vehicles.

(3) In order to expedite the implementation of this chapter, regulations adopted for the purposes of Chapter 3.65 (commencing with Section 1597.80) shall be used for the purposes of this chapter to the extent that those regulations are consistent with this chapter.

(4) Any determination made by the Department of Justice pursuant to this section to grant or deny registration to a provider shall not be legally binding on the State Department of Social Services.

(5) Any determination made by the State Department of Social Services pursuant to Section 1596.871 of the Health and Safety Code to grant or deny a criminal records exemption to a person shall not be legally binding on the Department of Justice.

(f) The Department of Justice may charge a provider initiating a background examination a fee. Apportionment of the proceeds collected by the Department of Justice from this fee will occur on a percentage basis with a portion of the fee being allocated to the Department of Justice and the remainder to the State Department of Education. The percentages allocated will be reviewed annually by the Department of Justice, the State Department of Education, and the California Child Care Resource Referral Network. The Department of Justice and the State Department of Education shall enter into an interagency agreement for the purpose of transferring funds to offset the costs incurred by the California Child Care Resource and Referral Network to implement the trustline program pursuant to this chapter. The maximum fee may not exceed the total actual costs of all of the following:

(1) The searches of the California Criminal History System and the California Child Abuse Central Index performed by the Department of Justice.

(2) The cost incurred by the Department of Justice for the searches of the records of the Federal Bureau of Investigation.

(3) The information and technical assistance provided by the

California Child Care Resource and Referral Network to parents, providers, and employment agencies.

(4) The implementation by the local child care resource and referral programs of the trustline program.

All moneys collected by the Department of Justice to implement this chapter shall be continuously appropriated without regard to fiscal year for expenditure pursuant to the provisions of this chapter.

(g) The Department of Justice shall maintain and continually update an index of reports of substantiated child abuse by, and pertinent criminal convictions of, providers and shall review the reports received from the child abuse index pursuant to Section 11170 of the Penal Code to determine if the child abuse of the provider is substantiated. The Department of Justice shall continually update the trustline registry pursuant to the actions required in subdivisions (c) and (d) of this section.

(h) The Department of Justice shall provide the California Child Care Resource and Referral Network with a continually updated record of the trustline applicants and the registered trustline child care providers.

(i) Notwithstanding any provision of law to the contrary, including Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code, state officers or employees shall not be liable for any damages caused by their conduct pursuant to this chapter except for intentional acts or gross negligence.

(j) Nothing in this chapter shall preclude the Superintendent of Public Instruction from compiling additional information from any source concerning the employment of any child care provider who is compensated with funds administered by the State Department of Education.

(k) Notwithstanding any other provision of this section, the Department of Justice may consider the licensing records of the State Department of Social Services in granting, denying, or continuing the registration. If the records of the State Department of Social Services disclose that conduct by the applicant demonstrates that registration would be inimical to the health and safety of the children of this state, the Department of Justice shall deny the registration and the applicant shall have the appeal rights of this section. The Department of Justice shall have access to the licensing files of the State Department of Social Services for the purposes of carrying out its functions under this section.

(l) Upon written request by the provider, the Department of Justice may permit the State Department of Social Services to have access to the Trustline Registrant Information System if the provider seeks to obtain a criminal record clearance from the State Department of Social Services.

SEC. 2. Section 1522 of the Health and Safety Code is amended to read:

1522. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with

community care clients may pose a risk to the clients' health and safety.

(a) Before issuing a license or special permit to any person or persons to operate or manage a community care facility, the State Department of Social Services shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation, or arrested for any crime specified in Section 290 of the Penal Code or arrested for violating Section 245, 273.5, subdivision (b) of Section 273a, or prior to January 1, 1994, paragraph (2) of Section 273a, of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated. That criminal history information shall include the full criminal record, if any, of those persons. No fee shall be charged by the Department of Justice or the State Department of Social Services for the fingerprinting of an applicant for a license or special permit to operate a facility providing nonmedical board, room, and care for six or less children or for obtaining a criminal record of the applicant pursuant to this section. If it is found that the applicant, or any other person specified in subdivision (b), has been convicted of, or is awaiting trial for, a crime other than a minor traffic violation, the Department of Justice shall notify the State Department of Social Services of the fact and the application shall be denied, unless the director grants an exemption pursuant to subdivision (f). If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

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

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

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

(3) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene.

(4) Any staff person or employee who has frequent and routine contact with the clients. In determining who has frequent contact, any volunteer who is in the facility shall be exempt unless the volunteer is used to replace or supplement staff in providing direct care and supervision of clients. In determining who has routine contact, staff and employees under direct onsite supervision and who are not providing direct care and supervision or who have only occasional or intermittent contact with clients shall be exempt.

(5) Except for staff members of social rehabilitation facilities serving minors with alcohol or drug abuse problems, staff members of social rehabilitation facilities, other than those specified in paragraphs (1) and (2), are exempt from fingerprinting requirements.

(6) If the applicant is a firm, partnership, association, or

corporation, the chief executive officer or other person serving in like capacity.

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

(c) (1) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a community care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit these fingerprints to the Department of Justice not later than four calendar days following employment, residence, or initial presence in the community care facility. These fingerprints shall be on a card provided by the State Department of Social Services for the purpose of obtaining a permanent set of fingerprints. Fingerprints not submitted to the Department of Justice, as required in this section, shall result in the citation of a deficiency and the fingerprints shall then be submitted to the State Department of Social Services for processing. Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprints.

(2) Within 30 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in subdivision (a). If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 15 calendar days of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice shall, within 15 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible.

(3) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of, or is awaiting trial for, a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, 273d, or subdivision (a) or (b) of Section 368 of the Penal Code, or has been convicted of a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (f). If the conviction or arrest was for another

crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility; or (2) seek an exemption pursuant to subdivision (f). The State Department of Social Services shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered.

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

(5) Concurrently with notifying the licensee pursuant to paragraph (3), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (f). The individual may seek an exemption even if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (3).

(d) Before issuing a license, special permit, or certificate of approval to any person or persons to operate or manage a foster family home or certified family home as described in Section 1506, the State Department of Social Services or other approving authority shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other adult person residing in the home has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code or arrested for violating Section 245, 273.5, subdivision (b) of Section 273a, or prior to January 1, 1994, paragraph (2) of Section 273a, of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated. That criminal history information shall include the full criminal record, if any, of those persons. No fee shall be charged by the Department of Justice or the State Department of Social Services for the fingerprinting of an applicant for a license, special permit, or certificate of approval described in this subdivision. The record, if any, shall be taken into consideration when evaluating a prospective applicant. If the applicant or other persons specified in this subdivision have convictions that would make the applicant's home unfit as a foster family home or a certified family home, the license, special permit, or certificate of approval shall be denied. For the purposes of this subdivision, a criminal record clearance provided under Section 8712 of the Family Code may be used by the department or other approving agency.

Any person specified in this subdivision shall, as a part of the application, be fingerprinted and sign a declaration under penalty of

perjury regarding any prior criminal convictions or arrests for any crime against a child, spousal/cohabitant abuse, or for any crime for which the department can not grant an exemption if the person was convicted, and shall submit these fingerprints to the licensing agency or other approving authority. The foster family agency shall obtain fingerprints from certified home applicants and from persons specified in subdivision (b) and shall submit them directly to the Department of Justice. Within five working days of the receipt of the criminal record or information regarding criminal convictions from the Department of Justice, the department shall notify the applicant of any criminal arrests or convictions. If no arrests or convictions are recorded, the Department of Justice shall provide the foster family agency with a statement of that fact concurrent with providing the information to the State Department of Social Services. The application shall be denied if it is determined by the approving authority, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, or has been convicted of an offense specified in Section 220, 243.4, 264.1, subdivision (a) of Section 273a, or prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, 289, or subdivision (a) or (b) of Section 368 of the Penal Code, or was convicted of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

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

(f) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of *nolo contendere*. Any action which the State Department of Social Services is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be *prima facie*

evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(g) (1) After review of the record, the director may grant an exemption from disqualification for a license or special permit pursuant to subdivision (a), or for a license, special permit, or certificate of approval pursuant to subdivision (d), or for employment, residence, or presence in a community care facility as specified in subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). Except as otherwise provided in this subdivision, no exemption shall be granted pursuant to this subdivision if the conviction was for an offense specified in Section 220, 243.4, 264.1, subdivision (a) of Section 273a, or prior to January 1, 1994, paragraph (1) of Section 273a, Sections 273d, 288, 289, or subdivision (a) or (b) of Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code. The director may grant an exemption if the employee or prospective employee, who was convicted of a crime against an individual in paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5 of the Penal Code, has been rehabilitated as provided in Section 4852.03 of the Penal Code and has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years and has the recommendation of the district attorney representing the employee's county of residence, or if the employee or prospective employee has received a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

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

(h) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal records clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another state licensing district office.

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

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

(j) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1558, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

SEC. 2.5. Section 1522 of the Health and Safety Code is amended to read:

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

(a) Before issuing a license or special permit to any person or persons to operate or manage a community care facility, the State Department of Social Services shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation, or arrested for any crime specified in Section 290 of the Penal Code or arrested for violating Section 245, 273.5, paragraph (b) of Section 273a, or prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated. That criminal history information shall include the full criminal record, of any of those persons. No fee shall be charged by the Department of Justice or the State Department of Social Services for the fingerprinting of an applicant for a license or special permit to operate a facility providing nonmedical board, room, and care for six or less children or for obtaining a criminal record of the applicant pursuant to this section. If it is found that the applicant, or any other person specified in subdivision (b), has been convicted of, or is awaiting trial for, a crime other than a minor traffic violation, the Department of Justice shall notify the State Department of Social Services of the fact and the application shall be denied, unless the director grants an exemption pursuant to subdivision (f). If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

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

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

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

(3) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene.

(4) Any staff person or employee who has frequent and routine contact with the clients. In determining who has frequent contact, any volunteer who is in the facility shall be exempt unless the volunteer is used to replace or supplement staff in providing direct care and supervision of clients. In determining who has routine contact, staff and employees under direct onsite supervision and who are not providing direct care and supervision or who have only occasional or intermittent contact with clients shall be exempt.

(5) Except for staff members of social rehabilitation facilities serving minors with alcohol or drug abuse problems, staff members of social rehabilitation facilities, other than those specified in paragraphs (1) and (2), are exempt from fingerprinting requirements.

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

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

(c) (1) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a community care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit these fingerprints to the Department of Justice not later than four calendar days following employment, residence, or initial presence in the community care facility. These fingerprints shall be on a card provided by the State Department of Social Services for the purpose of obtaining a permanent set of fingerprints. Fingerprints not submitted to the Department of Justice, as required in this section, shall result in the citation of a deficiency and the fingerprints shall then be submitted to the State Department of Social Services for processing. Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprints.

(2) Within 30 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in subdivision (a). If no criminal record information has been recorded,

the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 15 calendar days of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice shall, within 15 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible.

(3) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of, or is awaiting trial for, a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, 273d, or subdivision (a) or (b) of Section 368 of the Penal Code, or has been convicted of a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (f). If the conviction or arrest was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility; or (2) seek an exemption pursuant to subdivision (f). The State Department of Social Services shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered.

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

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

(d) Before issuing a license, special permit, or certificate of approval to any person or persons to operate or manage a foster family home or certified family home as described in Section 1506, the State Department of Social Services or other approving authority shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other adult person residing in the home has ever been convicted of a crime other than

a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code or arrested for violating Section 245, 273.5, subdivision (b) of Section 273a, or prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated. That criminal history information shall include the full criminal record, if any, of those persons. No fee shall be charged by the Department of Justice or the State Department of Social Services for the fingerprinting of an applicant for a license, special permit, or certificate of approval described in this subdivision. The record, if any, shall be taken into consideration when evaluating a prospective applicant. If the applicant or other persons specified in this subdivision have convictions that would make the applicant's home unfit as a foster family home or a certified family home, the license, special permit, or certificate of approval shall be denied. For the purposes of this subdivision, a criminal record clearance provided under Section 8712 of the Family Code may be used by the department or other approving agency.

Any person specified in this subdivision shall, as a part of the application, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions or arrests for any crime against a child, spousal/cohabitant abuse or for any crime for which the department cannot grant an exemption if the person was convicted and shall submit these fingerprints to the licensing agency or other approving authority. The foster family agency shall obtain fingerprints from certified home applicants and from persons specified in subdivision (b) and shall submit them directly to the Department of Justice. Within five working days of the receipt of the criminal record or information regarding criminal convictions from the Department of Justice, the department shall notify the applicant of any criminal arrests or convictions. If no arrests or convictions are recorded, the Department of Justice shall provide the foster family agency with a statement of that fact concurrent with providing the information to the State Department of Social Services. The application shall be denied if it is determined by the approving authority, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, or has been convicted of an offense specified in Section 220, 243.4, 264.1, subdivision (a) of Section 273a, or prior to January 1, 1994, paragraph (1) of subdivision (a) Section 273a, Section 273d, 288, 289, or subdivision (a) or (b) of Section 368 of the Penal Code, or was convicted of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(e) The State Department of Social Services shall not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish

conduct by the person that may pose a risk to the health and safety of any person who is or may become a client.

(f) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of *nolo contendere*. Any action which the State Department of Social Services is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be *prima facie* evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(g) (1) After review of the record, the director may grant an exemption from disqualification for a license or special permit pursuant to subdivision (a), or for a license, special permit, or certificate of approval pursuant to subdivision (d), or for employment, residence, or presence in a community care facility as specified in subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). Except as otherwise provided in this subdivision, no exemption shall be granted pursuant to this subdivision if the conviction was for an offense specified in Section 220, 243.4, 264.1, subdivision (a) of Section 273a, or prior to January 1, 1994, paragraph (1) of subdivision (a) Section 273a, Sections 273d, 288, 289, or subdivision (a) or (b) of Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code. The director may grant an exemption if the employee or prospective employee, who was convicted of a crime against an individual in paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5 of the Penal Code, has been rehabilitated as provided in Section 4852.03 of the Penal Code and has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years and has the recommendation of the district attorney representing the employee's county of residence, or if the employee

or prospective employee has received a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

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

(h) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal records clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another state licensing district office.

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

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

(j) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1558, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(k) (1) In order to expedite the current criminal record clearance and fingerprint process of the Department of Justice pursuant to subdivisions (a) and (c), the Department of Justice shall complete work on all of its current backlog of criminal records clearances for community care facilities licensed by the State Department of Social Services by July 1, 1995.

(2) Effective January 1, 1995, the Department of Justice shall complete all new requests for criminal record clearances for community care facilities within 30 days of receipt.

(3) The Department of Justice shall coordinate with the State Department of Social Services to establish and implement an automated live-scan processing system for fingerprints in two district offices of the Community Care Licensing Division of the State Department of Social Services by July 1, 1995. These live-scan processing units shall be connected to the main system at the Department of Justice by July 1, 1996, and shall become part of that department's pilot project in accordance with its long range plan. The State Department of Social Services may charge a fee not to exceed five dollars (\$5) or the actual cost of processing a set of live-scan fingerprints.

(4) The Department of Justice shall provide a report to the

Assembly Human Services Committee and to the Senate Health and Human Services Committee by July 15, 1995, regarding the completion of backlogged criminal record clearance requests pursuant to paragraph (1) and the progress on implementing the automated live-scan processing system in the two district offices pursuant to paragraph (3). The Department of Justice shall provide a report to the Assembly Human Services Committee and to the Senate Health and Human Services Committee by April 15, 1996, regarding the progress of the implementation of the statewide CAL-CII system; the number of requests for criminal clearances received pursuant to this section during the previous year; the number of criminal record clearances requested and completed pursuant to this section within a 17-day "expedite" period or within the 30-day period required by paragraph (2); and the number of requests and reasons for delays beyond the 30-day period.

SEC. 3. Section 1551.1 is added to the Health and Safety Code, to read:

1551.1. (a) The administrative law judge conducting a hearing under this article may permit the testimony of a child witness, or a similarly vulnerable witness, including a witness who is developmentally disabled, to be taken outside the presence of the respondent or respondents if all of the following conditions exist:

(1) The administrative law judge determines that taking the witness's testimony outside the presence of the respondent or respondents is necessary to ensure truthful testimony.

(2) The witness is likely to be intimidated by the presence of the respondent or respondents.

(3) The witness is afraid to testify in front of the respondent or respondents.

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

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

SEC. 4. Section 1568.0651 is added to the Health and Safety Code, immediately after Section 1568.065, to read:

1568.0651. (a) The administrative law judge conducting a hearing under this article may permit the testimony of a child witness, or a similarly vulnerable witness, including a witness who is developmentally disabled, to be taken outside the presence of the respondent or respondents if all of the following conditions exist:

(1) The administrative law judge determines that taking the witness's testimony outside the presence of the respondent or respondents is necessary to ensure truthful testimony.

(2) The witness is likely to be intimidated by the presence of the

respondent or respondents.

(3) The witness is afraid to testify in front of the respondent or respondents.

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

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

SEC. 5. Section 1568.09 of the Health and Safety Code is amended to read:

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

(a) Before issuing a license to any person or persons to operate or manage a residential care facility, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code or arrested for violating Section 245, 273.5, paragraph (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a, of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated. That criminal history information shall include the full criminal record, if any, of those persons. If it is found that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the Department of Justice shall notify the State Department of Social Services of that fact and the application shall be denied, unless the director grants an exemption pursuant to subdivision (f). If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

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

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

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

(3) Any person who provides resident assistance in dressing, grooming, bathing, or personal hygiene.

(4) Any staff person or employee who has frequent and routine contact with the residents. In determining who has frequent contact, any volunteer who is in the facility shall be exempt unless the

volunteer is used to replace or supplement staff in providing direct care and supervision of residents. A volunteer who provides direct care and supervision shall be exempt if the volunteer is a resident's spouse, significant other, friend or family member and provides direct care and supervision to that resident only at the request of the resident. In determining who has routine contact, staff and employees under direct onsite supervision and who are not providing direct care and supervision or who have only occasional or intermittent contact with residents shall be exempt.

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

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

(c) (1) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a residential care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit these fingerprints to the Department of Justice not later than four calendar days following employment, residence, or initial presence in the residential care facility.

(2) These fingerprints shall be on a card provided by the State Department of Social Services for the purpose of obtaining a permanent set of fingerprints. Fingerprints not submitted to the Department of Justice, as required in this section, shall result in the citation of a deficiency and the fingerprints shall then be submitted to the State Department of Social Services for processing.

(3) Within 30 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 15 calendar days of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice shall, within 15 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible.

(4) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, or has been convicted for an offense

specified in Section 243.4, 273a, 273d, or subdivision (a) or (b) of Section 368 of the Penal Code, or has been convicted of a felony, the department shall notify the licensee to act immediately to terminate the person's employment, remove the person from the residential care facility, or bar the person from entering the residential care facility. The department may subsequently grant an exemption pursuant to subdivision (e). If the conviction was for another crime, except a minor traffic violation, the licensee shall, upon notification by the department, act immediately to either (1) terminate the persons' employment, remove the person from the residential care facility, or bar the person from entering the residential care facility; or (2) seek an exemption pursuant to subdivision (f). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered.

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

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

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

(e) The State Department of Social Services shall not use a record

of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client.

(f) (1) After review of the record, the director may grant an exemption from disqualification for a license pursuant to subdivision (a), or for employment, residence, or presence in a residential care facility as specified in subdivision (c) if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). However, no exemption shall be granted pursuant to this subdivision if the conviction was for an offense specified in Section 220, 243.4, 264.1, paragraph (a) of Section 273a, or prior to January 1, 1994, or paragraph (1) of Section 273a or Section 273d, or Section 288 or 289, or subdivision (a) or (b) of Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

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

(g) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal records clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another state licensing district office.

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

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

SEC. 6. Section 1569.17 of the Health and Safety Code is amended to read:

1569.17. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with clients of residential care facilities for the elderly may pose a risk to

the clients' health and safety.

(a) Before issuing a license to any person or persons to operate or manage a residential care facility for the elderly, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation, or arrested for any crime specified in Section 290 of the Penal Code or arrested for violating Section 245, 273.5, paragraph (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has been exonerated. That criminal history information shall include the full criminal record, if any, of those persons. If it is found that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the Department of Justice shall notify the State Department of Social Services of that fact and the application shall be denied, unless the director grants an exemption pursuant to subdivision (f). If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

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

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

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

(3) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene.

(4) Any staff person or employee who has frequent and routine contact with the clients. In determining who has frequent contact, any volunteer who is in the facility shall be exempt unless the volunteer is used to replace or supplement staff in providing direct care and supervision of clients. In determining who has routine contact, staff and employees under direct onsite supervision and who are not providing direct care and supervision or who have only occasional or intermittent contact with clients shall be exempt.

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

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

(c) (1) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a residential facility for the elderly, be fingerprinted and sign a declaration under

penalty of perjury regarding any prior criminal convictions. The licensee shall submit these fingerprints to the Department of Justice not later than 20 calendar days following employment, residence, or initial presence in the residential care facility for the elderly.

(2) These fingerprints shall be on a card provided by the State Department of Social Services for the purpose of obtaining a permanent set of fingerprints. Fingerprints not submitted to the Department of Justice, as required in this section, shall result in the citation of a deficiency and the fingerprints shall then be submitted to the State Department of Social Services for processing.

(3) Within 30 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 15 calendar days of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice shall, within 15 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible.

(4) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, 273d, or subdivision (a) or (b) of Section 368 of the Penal Code, or has been convicted of a felony, the State Department of Social Services shall notify the licensee in writing within 15 calendar days of the receipt of the notification from the Department of Justice to act immediately to terminate the person's employment, remove the person from the residential care facility for the elderly, or bar the person from entering the residential care facility for the elderly. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (f). If the conviction was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the residential care facility for the elderly, or bar the person from entering the residential care facility for the elderly; or (2) seek an exemption pursuant to subdivision (e). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered by the department.

(5) The department may issue an exemption on its own motion pursuant to subdivision (f) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in

consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

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

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

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

(f) (1) After review of the record, the director may grant an exemption from disqualification for a license pursuant to subdivision (a), or for employment, residence, or presence in a residential care facility for the elderly as specified in subdivision (c) if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). However, no exemption shall be granted pursuant to this subdivision if the conviction was for an offense specified in Section 220, 243.4, 264.1, or paragraph (a) of Section 273a,

or prior to January 1, 1994, paragraph (1) of Section 273a or Section 273d, or Section 288 or 289, or subdivision (a) or (b) of Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code. The director shall notify in writing the licensee or the applicant of his or her decision within 60 days of receipt of all information from the applicant and other sources determined necessary by the director for the rendering of a decision pursuant to this subdivision.

(2) The department shall not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1569.58.

(g) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal records clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another state licensing district office.

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

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

SEC. 6.5. Section 1569.17 of the Health and Safety Code is amended to read:

1569.17. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a residential care facility for the elderly. The Legislature supports the use of the fingerprint live-scan technology, as identified in the long-range plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with clients of residential care facilities for the elderly may pose a risk to the clients' health and safety.

(a) Before issuing a license to any person or persons to operate or manage a residential care facility for the elderly, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person

specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation, or arrested for any crime specified in Section 290 of the Penal Code, or arrested for violating Section 245, 273.5, subdivision (b) of Section 273a, or prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has been exonerated. That criminal history information shall include the full criminal record, if any, of those persons. If it is found that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the Department of Justice shall notify the State Department of Social Services of that fact and the application shall be denied, unless the director grants an exemption pursuant to subdivision (f). If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

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

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

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

(3) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene.

(4) Any staff person or employee who has frequent and routine contact with the clients. In determining who has frequent contact, any volunteer who is in the facility shall be exempt unless the volunteer is used to replace or supplement staff in providing direct care and supervision of clients. In determining who has routine contact, staff and employees under direct onsite supervision and who are not providing direct care and supervision or who have only occasional or intermittent contact with clients shall be exempt.

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

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

(c) (1) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a residential facility for the elderly, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit these fingerprints to the Department of Justice not later than 20 calendar days following employment, residence, or initial presence in the residential care facility for the elderly.

(2) These fingerprints shall be on a card provided by the State

Department of Social Services for the purpose of obtaining a permanent set of fingerprints. Fingerprints not submitted to the Department of Justice, as required in this section, shall result in the citation of a deficiency and the fingerprints shall then be submitted to the State Department of Social Services for processing.

(3) Within 30 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 15 calendar days of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice shall, within 15 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible.

(4) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, 273d, or subdivision (a) or (b) of Section 368 of the Penal Code, or has been convicted of a felony, the State Department of Social Services shall notify the licensee in writing within 15 calendar days of the receipt of the notification from the Department of Justice to act immediately to terminate the person's employment, remove the person from the residential care facility for the elderly, or bar the person from entering the residential care facility for the elderly. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (f). If the conviction was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the residential care facility for the elderly, or bar the person from entering the residential care facility for the elderly; or (2) seek an exemption pursuant to subdivision (e). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered by the department.

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

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

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

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

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

(f) (1) After review of the record, the director may grant an exemption from disqualification for a license pursuant to subdivision (a), or for employment, residence, or presence in a residential care facility for the elderly as specified in subdivision (c) if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). However, no exemption shall be granted pursuant to this subdivision if the conviction was for an offense specified in Section 220, 243.4, 264.1, subdivision (a) of Section 273a, or prior to January 1, 1994, paragraph (1) of subdivision (a) of Section 273a or Section 273d, or Section 288 or 289, or subdivision (a) or (b) of Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code. The director shall notify in writing the licensee or the applicant of his or her decision within 60 days of receipt of all

information from the applicant and other sources determined necessary by the director for the rendering of a decision pursuant to this subdivision.

(2) The department shall not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1569.58.

(g) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal records clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another state licensing district office.

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

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

(i) (1) In order to expedite the current criminal record clearance and fingerprint process of the Department of Justice, the Department of Justice shall complete work on all of its current backlog of criminal record clearances for residential care facilities for the elderly licensed by the State Department of Social Services by July 1, 1995.

(2) Effective January 1, 1995, the Department of Justice shall complete all new requests for criminal record clearances for residential care facilities for the elderly within 30 days of receipt.

(3) The Department of Justice shall coordinate with the State Department of Social Services to establish and implement an automated live-scan processing system for fingerprints in two district offices of the Community Care Licensing Division of the State Department of Social Services by July 1, 1995. These live-scan processing units shall be connected to the main system at the Department of Justice by July 1, 1996, and shall become part of that department's pilot project in accordance with its long-range plan. The State Department of Social Services may charge a fee not to exceed five dollars (\$5) or the actual cost of processing a set of live-scan fingerprints.

(4) The Department of Justice shall provide a report to the Assembly Human Services Committee and to the Senate Health and Human Services Committee by July 15, 1995, regarding the completion of backlogged criminal record clearance requests

pursuant to paragraph (1) and the progress on implementing the automated live-scan processing system in the two district offices pursuant to paragraph (3). The Department of Justice shall provide a report to the Assembly Human Services Committee and to the Senate Health and Human Services Committee by April 15, 1996, regarding the progress of the implementation of the statewide CAL-CII system; the number of requests for criminal clearances received pursuant to this section during the previous year; the number of criminal record clearances requested and completed pursuant to this section within a 17-day "expedite" period or within the 30-day period required by paragraph (2); and the number of requests and reasons for delays beyond the 30-day period.

SEC. 7. Section 1569.511 is added to the Health and Safety Code, immediately following Section 1569.51, to read:

1569.511. (a) The administrative law judge conducting a hearing under this article may permit the testimony of a child witness, or a similarly vulnerable witness, including a witness who is developmentally disabled, to be taken outside the presence of the respondent or respondents if all of the following conditions exist:

(1) The administrative law judge determines that taking the witness's testimony outside the presence of the respondent or respondents is necessary to ensure truthful testimony.

(2) The witness is likely to be intimidated by the presence of the respondent or respondents.

(3) The witness is afraid to testify in front of the respondent or respondents.

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

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

SEC. 8. Section 1596.871 of the Health and Safety Code is amended to read:

1596.871. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with child day care facility clients may pose a risk to the children's health and safety.

(a) Before issuing a license or special permit to any person to operate or manage a day care facility, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation, or arrested for any crime specified in Section 290 of the Penal Code or arrested for violating Section 245, 273.5, subdivision (b) of Section 273a, or prior to January 1, 1994, paragraph

(2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated. That criminal history information shall include the full criminal record, if any, of those persons. No fee shall be charged by the Department of Justice or the department for the fingerprinting of an applicant who will serve six or fewer children or any family day care applicant for a license, or for obtaining a criminal record of an applicant pursuant to this section. If it is found that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the Department of Justice shall notify the State Department of Social Services of that fact and the application shall be denied, unless the director grants an exemption pursuant to subdivision (f). If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

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

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

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

(3) Any person who provides care and supervision to the children.

(4) Any staff person or employee who has frequent and routine contact with the children. In determining who has frequent contact, any volunteer who is in the facility shall be exempt unless the volunteer is used to replace or supplement staff in providing direct care and supervision of children in care. In determining who has routine contact, staff and employees under direct onsite supervision and who are not providing direct care and supervision or who have only occasional or intermittent contact with clients shall be exempt.

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

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

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

(8) This section does not apply to adult volunteers or adult staff employed by the applicant on an intermittent basis for less than 10 days per month, provided that these adults are under constant supervision by adults who meet the requirements of this section.

(9) This section does not apply to employees of child care and development programs under contract with the State Department of Education who have completed a criminal records clearance as part of an application to the Commission on Teacher Credentialing, and who possess a current credential or permit issued by the commission, including employees of child care and development programs that serve both children subsidized under, and children not subsidized under, a State Department of Education contract. The Commission on Teacher Credentialing shall notify the department upon revocation of a current credential or permit issued to an employee of a child care and development program under contract with the State Department of Education.

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

(c) (1) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a child day care facility be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal conviction. The licensee shall submit these fingerprints to the Department of Justice not later than four calendar days following employment, residence, or initial presence in the child day care facility.

(2) These fingerprints shall be on a card provided by the State Department of Social Services for the purpose of obtaining a permanent set of fingerprints. Fingerprints not submitted to the Department of Justice, as required in this section, shall result in the citation of a deficiency and the fingerprints shall then be submitted to the State Department of Social Services for processing. Within 30 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 15 calendar days of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice shall, within 15 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible.

(3) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the department, on the basis

of fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, or has been convicted of an offense specified in Section 243.4, 273a, 273d, or subdivision (a) or (b) of Section 368 of the Penal Code, or has been convicted of a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the child day care facility, or bar the person from entering the child day care facility. The department may subsequently grant an exemption pursuant to subdivision (f). If the conviction was for another crime except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the child day care facility, or bar the person from entering the child day care facility; or (2) seek an exemption pursuant to subdivision (f). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered.

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

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

(d) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of *nolo contendere*. Any action which the department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be *prima facie* evidence of

conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

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

(f) (1) After review of the record, the director may grant an exemption from disqualification for a license or special permit pursuant to subdivision (a), or for employment, residence, or presence in a child day care facility as specified in subdivision (c) if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of good character so as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). However, no exemption shall be granted pursuant to this subdivision if the conviction was for an offense specified in Section 220, 243.4, or 264.1, or subdivision (a) of Section 273a, or prior to January 1, 1994, paragraph (1) of Section 273a or 273d, or Section 288, 289, or subdivision (a) or (b) of Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

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

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

(h) (1) For the purposes of compliance with this section, the department may permit an individual to transfer a current criminal records clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another state licensing district office.

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

SEC. 9. Section 1596.877 of the Health and Safety Code is amended to read:

1596.877. (a) Prior to granting a license to, or otherwise approving, any family day care home, the department shall check the child abuse and neglect complaint records of the child protective services agency of the county in which the applicant has resided for

the two years preceding the application.

(b) Prior to granting a license to or otherwise approving any individual to care for children in either a family day care home or a day care center, the department shall check the Child Abuse Registry pursuant to paragraph (3) of subdivision (b) of Section 11170 of the Penal Code.

(c) The department shall investigate any reports received from the Child Abuse Registry and investigate any information received from the county child protective services agency. However, child protective services agency information arising from a report designated as "unfounded," as defined pursuant to subdivision (a) of Section 11165.12 of the Penal Code, shall not be included in the investigation. The investigation shall include, but not be limited to, the review of the investigation report and file prepared by the child protective services agency that investigated the child abuse report. The department shall not deny a license based upon a report from the Child Abuse Registry or based on child abuse and neglect complaint records of the county child protective services agency unless child abuse is substantiated.

(d) On and after January 1, 1993, the department shall implement this section for records maintained by counties that have automated their child abuse and neglect complaint records on or before January 1, 1993. On and after July 1, 1993, the department shall implement this section for records maintained by all counties.

SEC. 10. Section 1596.8871 is added to the Health and Safety Code, immediately following Section 1596.887, to read:

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

(1) The administrative law judge determines that taking the witness's testimony outside the presence of the respondent or respondents is necessary to ensure truthful testimony.

(2) The witness is likely to be intimidated by the presence of the respondent or respondents.

(3) The witness is afraid to testify in front of the respondent or respondents.

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

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

SEC. 11. Section 1.5 of this bill incorporates amendments to Section 8172 of the Education Code proposed by this bill and AB

2560. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1995, (2) each bill amends Section 8172 of the Education Code, and (3) this bill is enacted after AB 2560, in which case Section 8172 of the Education Code, as amended by AB 2560, shall remain operative only until the operative date of this bill, at which time Section 1.5 of this bill shall become operative, and Section 1 of this bill shall not become operative.

SEC. 12. Section 2.5 of this bill incorporates amendments to Section 1522 of the Health and Safety Code proposed by both this bill and AB 3628. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 1522 of the Health and Safety Code, and (3) this bill is enacted after AB 3628, in which case Section 2 of this bill shall not become operative.

SEC. 13. Section 6.5 of this bill incorporates amendments to Section 1569.17 of the Health and Safety Code proposed by both this bill and AB 3628. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 1569.17 of the Health and Safety Code, and (3) this bill is enacted after AB 3628, in which case Section 6 of this bill shall not become operative.

CHAPTER 1268

An act to amend Sections 8171, 8172, 8176, and 8181 of, to add Section 8172.5 to, and to repeal Section 8177 of, the Education Code, relating to child care, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 8171 of the Education Code is amended to read:

8171. (a) Each provider initiating a background examination process pursuant to this chapter shall obtain one set of fingerprints from a law enforcement agency or other local agency on a fingerprint card authorized by the Department of Justice and shall submit the fingerprints and a completed trustline application to the Department of Justice. The agency taking the fingerprints shall inscribe the serial number from the identification card described in Section 8170 on the fingerprint cards.

(b) A law enforcement agency or other local agency authorized to take fingerprints may charge a reasonable fee to offset the costs of fingerprinting for the purposes of this chapter.

(c) The Department of Justice shall use the fingerprints to search

the California Criminal History System and the California Child Abuse Central Index.

(d) A provider may request the Department of Justice to use a second set of fingerprints to search the records of the Federal Bureau of Investigation, in addition to the searches mandated in subdivision (c).

SEC. 2. Section 8172 of the Education Code is amended to read:

8172. (a) The Department of Justice shall establish a trustline registry pursuant to this chapter. Upon submission of the trustline application and fingerprints pursuant to subdivision (a) of Section 8171, the Department of Justice shall enter into the trustline registry the provider's name, identification card number, and an indicator that the provider has submitted an application and fingerprints. This provider shall be known as a "trustline applicant."

(b) Upon completion of the searches of the California Criminal History System and the California Child Abuse Central Index, and, if applicable, the records of the Federal Bureau of Investigation, if no reported criminal conviction or substantiated child abuse information that would disqualify the provider from being licensed by the State Department of Social Services as a child care provider is found, the Department of Justice shall enter that finding in the provider's record in the trustline registry and shall notify the provider of the action. This provider shall be known as a "registered trustline child care provider."

(c) If, in any of the searches, or in any report that is received by the Department of Justice subsequent to these searches, reported criminal conviction or substantiated child abuse information for which the provider could not request an exemption from the Director of Social Services for a license as a child care provider is found, the Department of Justice shall notify the provider that he or she is not eligible to be a registered trustline child care provider, or in the case where a provider was previously registered, that he or she is no longer eligible to be a registered trustline child care provider. Also the provider's record as a trustline applicant or a registered child care provider shall be removed from the registry.

(d) (1) If, in any of the searches, or in any report that is received by the Department of Justice subsequent to these searches, reported criminal conviction or substantiated child abuse information for which the provider could request an exemption from the Director of Social Services for a license as a child care provider is found, the Department of Justice shall review the information and either register the person as a registered trustline child care provider or deny the registration. In either case, the Department of Justice shall notify the provider of its action. In the event of a denial, the Department of Justice shall remove the provider's record as a trustline applicant from the registry.

(2) If the Department of Justice denies registration pursuant to paragraph (1), it shall advise the provider of the right to appeal. The provider shall have 15 days to appeal the denial. Upon receipt by the

Department of Justice of the appeal, the appeal shall be set for hearing. The hearing shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department has all the powers granted in that chapter.

(e) (1) The Department of Justice shall adopt regulations that are parallel to those used by the State Department of Social Services in determining whether a person applying for a license for a child day care facility may be granted an exemption to work in a day care facility despite a criminal conviction or a determination of substantiated child abuse. If an appeal is requested, the Department of Justice shall make the determination within 30 days, based upon the regulations adopted.

(2) Notwithstanding paragraph (1), the background examination required pursuant to this chapter shall not include review of the Automated Name Index of the Department of Motor Vehicles.

(3) In order to expedite the implementation of this chapter, regulations adopted for the purposes of Chapter 3.65 (commencing with Section 1597.80) shall be used for the purposes of this chapter to the extent that those regulations are consistent with this chapter.

(f) The Department of Justice may charge a provider initiating a background examination a fee. Apportionment of the proceeds collected by the Department of Justice from this fee will occur on a percentage basis with a portion of the fee being allocated to the Department of Justice and the remainder to the State Department of Education. The percentages allocated will be reviewed annually by the Department of Justice, the State Department of Education, and the California Child Care Resource Referral Network. The Department of Justice and the State Department of Education shall enter into an interagency agreement for the purpose of transferring funds to offset the costs incurred by the California Child Care Resource and Referral Network to implement the trustline program pursuant to this chapter. The maximum fee may not exceed the total actual costs of all of the following:

(1) The searches of the California Criminal History System and the California Child Abuse Central Index performed by the Department of Justice.

(2) The cost incurred by the Department of Justice for the searches of the records of the Federal Bureau of Investigation.

(3) The information and technical assistance provided by the California Child Care Resource and Referral Network to parents, providers, and employment agencies.

(4) The implementation by the local child care resource and referral programs of the trustline program.

All moneys collected by the Department of Justice to implement this chapter shall be continuously appropriated without regard to fiscal year for expenditure pursuant to the provisions of this chapter.

(g) The Department of Justice shall maintain and continually update an index of reports of substantiated child abuse by, and

pertinent criminal convictions of, providers and shall review the reports received from the child abuse index pursuant to Section 11170 of the Penal Code to determine if the child abuse of the provider is substantiated. The Department of Justice shall continually update the trustline registry pursuant to the actions required in subdivisions (c) and (d) of this section.

(h) The Department of Justice shall provide the California Child Care Resource and Referral Network with a continually updated record of the trustline applicants and the registered trustline child care providers.

(i) Notwithstanding any provision of law to the contrary, including Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code, state officers or employees shall not be liable for any damages caused by their conduct pursuant to this chapter except for intentional acts or gross negligence.

(j) Nothing in this chapter shall preclude the Superintendent of Public Instruction from compiling additional information from any source concerning the employment of any child care provider who is compensated with funds administered by the State Department of Education.

SEC. 2.5. Section 8172 of the Education Code is amended to read:

8172. (a) The Department of Justice shall establish a trustline registry pursuant to this chapter. Upon submission of the trustline application, fingerprints pursuant to subdivision (a) of Section 8171, and all other information required to be provided to the State Department of Social Services pursuant to Section 1596.871 of the Health and Safety Code, including, but not limited to, the full criminal record, if any, of those persons, the Department of Justice shall enter into the trustline registry the provider's name, identification card number, and an indicator that the provider has submitted an application and fingerprints. This provider shall be known as a "trustline applicant."

(b) Upon completion of the searches of the California Criminal History System and the California Child Abuse Central Index, and, if applicable, the records of the Federal Bureau of Investigation, if no reported criminal conviction or substantiated child abuse information that would disqualify the provider from being licensed by the State Department of Social Services as a child care provider is found, the Department of Justice shall enter that finding in the provider's record in the trustline registry and shall notify the provider of the action. This provider shall be known as a "registered trustline child care provider."

(c) If, in any of the searches, or in any report that is received by the Department of Justice subsequent to these searches, reported criminal conviction or substantiated child abuse information for which the provider could not request an exemption from the Director of Social Services for a license as a child care provider is found, the Department of Justice shall notify the provider that he or she is not eligible to be a registered trustline child care provider, or

in the case where a provider was previously registered, that he or she is no longer eligible to be a registered trustline child care provider. Also the provider's record as a trustline applicant or a registered child care provider shall be removed from the registry.

(d) (1) If, in any of the searches, or in any report that is received by the Department of Justice subsequent to these searches, reported criminal conviction or substantiated child abuse information for which the provider could request an exemption from the Director of Social Services for a license as a child care provider is found, the Department of Justice shall review the information and either register the person as a registered trustline child care provider or deny the registration. In either case, the Department of Justice shall notify the provider of its action. In the event of a denial, the Department of Justice shall remove the provider's record as a trustline applicant from the registry.

(2) If the Department of Justice denies registration pursuant to paragraph (1), it shall advise the provider of the right to appeal. The provider shall have 15 days to appeal the denial. Upon receipt by the Department of Justice of the appeal, the appeal shall be set for hearing. The hearing shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department has all the powers granted in that chapter.

(e) (1) The Department of Justice shall adopt regulations that are parallel to those used by the State Department of Social Services in determining whether a person applying for a license for a child day care facility may be granted an exemption to work in a day care facility despite a criminal conviction or a determination of substantiated child abuse. If an appeal is requested, the Department of Justice shall make the determination within 30 days, based upon the regulations adopted.

(2) Notwithstanding paragraph (1), the background examination required pursuant to this chapter shall not include review of the Automated Name Index of the Department of Motor Vehicles.

(3) In order to expedite the implementation of this chapter, regulations adopted for the purposes of Chapter 3.65 (commencing with Section 1597.80) shall be used for the purposes of this chapter to the extent that those regulations are consistent with this chapter.

(4) Any determination made by the Department of Justice pursuant to this section to grant or deny registration to a provider shall not be legally binding on the State Department of Social Services.

(5) Any determination made by the State Department of Social Services pursuant to Section 1596.871 of the Health and Safety Code to grant or deny a criminal records exemption to a person shall not be legally binding on the Department of Justice.

(f) The Department of Justice may charge a provider initiating a background examination a fee. Apportionment of the proceeds collected by the Department of Justice from this fee will occur on a

percentage basis with a portion of the fee being allocated to the Department of Justice and the remainder to the State Department of Education. The percentages allocated will be reviewed annually by the Department of Justice, the State Department of Education, and the California Child Care Resource Referral Network. The Department of Justice and the State Department of Education shall enter into an interagency agreement for the purpose of transferring funds to offset the costs incurred by the California Child Care Resource and Referral Network to implement the trustline program pursuant to this chapter. The maximum fee may not exceed the total actual costs of all of the following:

(1) The searches of the California Criminal History System and the California Child Abuse Central Index performed by the Department of Justice.

(2) The cost incurred by the Department of Justice for the searches of the records of the Federal Bureau of Investigation.

(3) The information and technical assistance provided by the California Child Care Resource and Referral Network to parents, providers, and employment agencies.

(4) The implementation by the local child care resource and referral programs of the trustline program.

All moneys collected by the Department of Justice to implement this chapter shall be continuously appropriated without regard to fiscal year for expenditure pursuant to the provisions of this chapter.

(g) The Department of Justice shall maintain and continually update an index of reports of substantiated child abuse by, and pertinent criminal convictions of, providers and shall review the reports received from the child abuse index pursuant to Section 11170 of the Penal Code to determine if the child abuse of the provider is substantiated. The Department of Justice shall continually update the trustline registry pursuant to the actions required in subdivisions (c) and (d) of this section.

(h) The Department of Justice shall provide the California Child Care Resource and Referral Network with a continually updated record of the trustline applicants and the registered trustline child care providers.

(i) Notwithstanding any provision of law to the contrary, including Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code, state officers or employees shall not be liable for any damages caused by their conduct pursuant to this chapter except for intentional acts or gross negligence.

(j) Nothing in this chapter shall preclude the Superintendent of Public Instruction from compiling additional information from any source concerning the employment of any child care provider who is compensated with funds administered by the State Department of Education.

(k) Notwithstanding any other provision of this section, the Department of Justice may consider the licensing records of the State Department of Social Services in granting, denying, or

continuing the registration. If the records of the State Department of Social Services disclose that conduct by the applicant demonstrates that registration would be inimical to the health and safety of the children of this state, the Department of Justice shall deny the registration and the applicant shall have the appeal rights of this section. The Department of Justice shall have access to the licensing files of the State Department of Social Services for the purposes of carrying out its functions under this section.

(l) Upon written request by the provider, the Department of Justice may permit the State Department of Social Services to have access to the Trustline Registrant Information System if the provider seeks to obtain a criminal record clearance from the State Department of Social Services.

SEC. 3. Section 8172.5 is added to the Education Code, to read:

8172.5. It is a misdemeanor for a person to falsely represent or present oneself as a trustline applicant or a registered trustline child care provider.

SEC. 4. Section 8176 of the Education Code is amended to read:

8176. An employment agency, as defined in Section 1812.501 of the Civil Code, that refers a child care provider to parents or guardians who are not required to be a licensed child day care facility shall not make a placement of a provider who is not a trustline applicant or a registered trustline child care provider.

SEC. 5. Section 8177 of the Education Code is repealed.

SEC. 6. Section 8181 of the Education Code is amended to read:

8181. (a) To the extent permitted by federal law, each child care provider, as defined by Section 8170, who is compensated, in whole or in part, with funds provided pursuant to subchapter IV (commencing with Section 601) of Chapter 7 of Title 42 of the United States Code, except a provider who is, by marriage, blood, or court decree, the grandparent, aunt, or uncle of the child in care, shall be registered pursuant to Sections 8171 and 8172 in order to be eligible to receive this compensation. Registration is required for providers who receive compensation pursuant to Subchapter IV (commencing with Section 601) of Chapter 7 of Title 42 of the United States Code only to the extent permitted by that law and the regulations adopted pursuant thereto. This section applies only to child care providers, as defined by Section 8170, who register for payment under subchapter IV (commencing with Section 601) of Chapter 7 of Title 42 of the United States Code after the implementation of the trustline registration system in those programs. A provider as defined by Section 8170, who is initially exempted from trustline registration because the provider registered for compensation before implementation of the trustline shall be registered, at no cost to the provider, pursuant to Sections 8171 and 8172 when either of the following occur:

(1) The provider begins to provide child care to an eligible family for which he or she has not provided care.

(2) The provider begins to provide child care to an eligible family

subsequent to a lapse in providing care that is compensated pursuant to Subchapter IV (commencing with Section 601) of Chapter 7 of Title 42 of the United States Code.

(b) Subdivision (a) shall not be implemented unless funding for trustline registration is appropriated to the Department of Justice for this purpose in the annual Budget Act or in other legislation. To the extent permitted by federal law, the State Department of Social Services shall enter into an interagency agreement with the Department of Justice to provide federal matching funds for the trustline registration system. The Department of Justice shall enter into a contract with the California Child Care Resource and Referral Network to administer the trustline as it relates to providers who are compensated pursuant to Subchapter IV (commencing with Section 601) of Chapter 7 of Title 42 of the United States Code.

SEC. 7. Section 2.5 of this bill incorporates amendments to Section 8172 of the Education Code proposed by both this bill and SB 1984. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1995, but this bill becomes operative first, (2) each bill amends Section 8172 of the Education Code, and (3) this bill is enacted after SB 1984, in which case Section 8172 of the Education Code, as amended by Section 2 of this bill, shall remain operative only until the operative date of SB 1984, at which time Section 2.5 of this bill shall become operative.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to prevent a person who has a reported criminal conviction or substantiated child abuse record that would disqualify a person from being licensed by the State Department of Social Services as a child care provider from caring for children in an in-home or license exempt setting, it is necessary that this act take effect immediately.

CHAPTER 1269

An act to repeal Section 4722.5 of the Civil Code, to amend Sections 372, 394, 395, 397.5, 464, 583.161, and 1218 of, and to add Section 1218.5 to, the Code of Civil Procedure, to amend Sections 22454, 22655, 22662, and 41053 of the Education Code, to amend Sections 703.5, 1014.5, and 1152.5 of the Evidence Code, to amend Sections 80, 511, 755, 2010, 2040, 2062, 2063, 2064, 2065, 2070, 2071, 2072, 2073, 2074, 2337, 2610, 3190, 3192, 3557, 3651, 3652, 3751, 3761, 3762, 3763, 3764, 3765, 3766, 3768, 3769, 3770, 3772, 4057.5, 4847, 4853, 5100, 5101, 5103, 5235, 5260, 6552, 7571, 7572, 7574, 7575, 7611, 7612, 7635, 7640, 7808, and 8700 of, to add Sections 273, 2330.1, 4005, 4506.1, 4506.2, 4506.3, and 4852.1 to, to repeal and add Section 3753 of, and to repeal Sections 3686 and 7577 of, the Family Code, to amend Section 21365.6 of the Government Code, to amend Sections 1522, 10008, and 10125 of, and to add Section 10125.8 to, the Health and Safety Code, to amend Section 1308.5 of the Labor Code, to amend Sections 836, 11105.3, and 13823.11 of the Penal Code, to amend Section 13504 of the Probate Code, to amend Section 23143 of the Vehicle Code, to amend Sections 903, 11350, 11475.1, 11478.5, 11479, 12300, and 16501.1 of, and to add Sections 903.41, 11351, and 11352 to, the Welfare and Institutions Code, relating to family law.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 4722.5 of the Civil Code is repealed.

SEC. 2. Section 372 of the Code of Civil Procedure is amended to read:

372. When a minor, an incompetent person, or a person for whom a conservator has been appointed is a party, such person shall appear either by a guardian or conservator of the estate or by a guardian ad litem appointed by the court in which the action or proceeding is pending, or by a judge thereof, in each case. A guardian ad litem may be appointed in any case when it is deemed by the court in which the action or proceeding is prosecuted, or by a judge thereof, expedient to appoint a guardian ad litem to represent the minor, incompetent person, or person for whom a conservator has been appointed, notwithstanding that such person may have a guardian or conservator of the estate and may have appeared by the guardian or conservator of the estate. The guardian or conservator of the estate or guardian ad litem so appearing for any minor, incompetent person, or person for whom a conservator has been appointed shall have power, with the approval of the court in which the action or proceeding is pending, to compromise the same, to agree to the order or judgment to be entered therein for or against the ward or conservatee, and to satisfy any judgment or order in favor of the

ward or conservatee or release or discharge any claim of the ward or conservatee pursuant to such compromise. Any money or other property to be paid or delivered pursuant to the order or judgment for the benefit of a minor, incompetent person, or person for whom a conservator has been appointed shall be paid and delivered as provided in Chapter 4 (commencing with Section 3600) of Part 7 of Division 4 of the Probate Code.

Where reference is made in this section to "incompetent person," such reference shall be deemed to include "a person for whom a conservator may be appointed."

Nothing in this section or in any other provision of this code, the Civil Code, the Family Code, or the Probate Code is intended by the Legislature to prohibit a minor from exercising an intelligent and knowing waiver of his constitutional rights in any proceedings under the Juvenile Court Law, Chapter 2 (commencing with Section 500) of Part 1 of Division 2 of the Welfare and Institutions Code.

SEC. 2.2. Section 394 of the Code of Civil Procedure is amended to read:

394. (a) An action or proceeding against a county, or city and county, a city, or local agency, may be tried in such county, or city and county, or the county in which such city or local agency is situated, unless the action or proceeding is brought by a county, or city and county, a city, or local agency, in which case it may be tried in any county, or city and county, not a party thereto and in which the city or local agency is not situated. Except for actions initiated by the district attorney pursuant to Section 11350, 11350.1, 11475.1, or 11476.1 of the Welfare and Institutions Code, any action or proceeding brought by a county, city and county, city, or local agency within a certain county, or city and county, against a resident of another county, city and county, or city, or a corporation doing business in the latter, shall be, on motion of either party, transferred for trial to a county, or city and county, other than the plaintiff, if the plaintiff is a county, or city and county, and other than that in which the plaintiff is situated, if the plaintiff is a city, or a local agency, and other than that in which the defendant resides, or is doing business, or is situated. Whenever an action or proceeding is brought against a county, city and county, city, or local agency, in any county, or city and county, other than the defendant, if the defendant is a county, or city and county, or, if the defendant is a city, or local agency, other than that in which the defendant is situated, the action or proceeding must be, on motion of the said defendant, transferred for trial to a county, or city and county, other than that in which the plaintiff, or any of the plaintiffs, resides, or is doing business, or is situated, and other than the plaintiff county, or city and county, or county in which such plaintiff city or local agency is situated, and other than the defendant county, or city and county, or county in which such defendant city or local agency is situated; provided, however, that any action or proceeding against the city, county, city and county, or local agency for injury occurring within the city, county, or city and

county, or within the county in which such local agency is situated, to person or property or person and property caused by the negligence or alleged negligence of such city, county, city and county, local agency, or its agents or employees, shall be tried in such county, or city and county, or if a city is a defendant, in such city or in the county in which such city is situated, or if a local agency is a defendant, in such county in which such local agency is situated. In any such action or proceeding, the parties thereto may, by stipulation in writing, or made in open court, and entered in the minutes, agree upon any county, or city and county, for the place of trial thereof. When the action or proceeding is one in which a jury is not of right, or in case a jury be waived, then in lieu of transferring the cause the court in the original county may request the chairman of the Judicial Council to assign a disinterested judge from a neutral county to hear said cause and all proceedings in connection therewith. When such action or proceeding is transferred to another county for trial, a witness required to respond to a subpoena for a hearing within the original county shall be compelled to attend hearings in the county to which the cause is transferred. If the demand for transfer be made by one party and the opposing party does not consent thereto the additional costs of the nonconsenting party occasioned by the transfer of the cause, including living and traveling expenses of said nonconsenting party and material witnesses, found by the court to be material, and called by such nonconsenting party, not to exceed five dollars (\$5) per day each in excess of witness fees and mileage otherwise allowed by law, shall be assessed by the court hearing the cause against the party requesting the transfer. To the extent of such excess, such costs shall be awarded to the nonconsenting party regardless of the outcome of the trial. This section shall apply to actions or proceedings now pending or hereafter brought.

(b) Any court in a county hereinabove designated as a proper county, which has jurisdiction of the subject matter of the action or proceeding, is a proper court for the trial thereof.

(c) For the purposes of this section, "local agency" shall mean any governmental district, board, or agency, or any other local governmental body or corporation, but shall not include the State of California or any of its agencies, departments, commissions, or boards.

SEC. 2.4. Section 395 of the Code of Civil Procedure is amended to read:

395. (a) Except as otherwise provided by law and subject to the power of the court to transfer actions or proceedings as provided in this title, the county in which the defendants or some of them reside at the commencement of the action is the proper county for the trial of the action. If the action is for injury to person or personal property or for death from wrongful act or negligence, either the county where the injury occurs or the injury causing death occurs or the county in which the defendants, or some of them reside at the commencement of the action, shall be a proper county for the trial

of the action. In a proceeding for dissolution of marriage, the county in which either the petitioner or respondent has been a resident for three months next preceding the commencement of the proceeding is the proper county for the trial of the proceeding. In a proceeding for nullity of marriage or legal separation of the parties, the county in which either the petitioner or the respondent resides at the commencement of the proceeding is the proper county for the trial of the proceeding. In a proceeding to enforce an obligation of support under Section 3900 of the Family Code, the county in which the child resides is the proper county for the trial of the action. In a proceeding to establish and enforce a foreign judgment or court order for the support of a minor child, the county in which the child resides is the proper county for the trial of the action. Subject to subdivision (b), when a defendant has contracted to perform an obligation in a particular county, either the county where the obligation is to be performed or in which the contract in fact was entered into or the county in which the defendant or any such defendant resides at the commencement of the action shall be a proper county for the trial of an action founded on that obligation, and the county in which the obligation is incurred shall be deemed to be the county in which it is to be performed unless there is a special contract in writing to the contrary. If none of the defendants reside in the state or if residing in the state and the county in which they reside is unknown to the plaintiff, the action may be tried in any county which the plaintiff may designate in his or her complaint, and, if the defendant is about to depart from the state, the action may be tried in any county where either of the parties reside or service is made. If any person is improperly joined as a defendant or has been made a defendant solely for the purpose of having the action tried in the county or judicial district where he or she resides, his or her residence shall not be considered in determining the proper place for the trial of the action.

(b) Subject to the power of the court to transfer actions or proceedings as provided in this title, in an action arising from an offer or provision of goods, services, loans or extensions of credit intended primarily for personal, family or household use, other than an obligation described in Section 1812.10 or Section 2984.4 of the Civil Code, or an action arising from a transaction consummated as a proximate result of an unsolicited telephone call made by a seller engaged in the business of consummating transactions of that kind, the county in which the buyer or lessee in fact signed the contract, the county in which the buyer or lessee resided at the time the contract was entered into, or the county in which the buyer or lessee resides at the commencement of the action is the proper county for the trial thereof.

(c) If within the county there is a municipal or justice court having jurisdiction of the subject matter established, in the cases mentioned in subdivision (a), in the judicial district in which the defendant or any defendant resides, in which the injury to person or

personal property or the injury causing death occurs, or, in which the obligation was contracted to be performed or, in cases mentioned in subdivision (b), in the judicial district which the buyer or lessee resides, in which the buyer or lessee in fact signed the contract, in which the buyer or lessee resided at the time the contract was entered into, or in which the buyer or lessee resides at the commencement of the action, then that court is the proper court for the trial of the action. Otherwise, any municipal or justice court in the county having jurisdiction of the subject matter is a proper court for the trial thereof.

(d) Any provision of an obligation described in subdivision (b) or (c) waiving those subdivisions is void and unenforceable.

SEC. 2.6. Section 397.5 of the Code of Civil Procedure is amended to read:

397.5. In any proceeding for dissolution or nullity of marriage or legal separation of the parties under the Family Code, where it appears that both petitioner and respondent have moved from the county rendering the order, the court may, when the ends of justice and the convenience of the parties would be promoted by the change, order that the proceedings be transferred to the county of residence of either party.

SEC. 2.8. Section 464 of the Code of Civil Procedure is amended to read:

464. (a) The plaintiff and defendant, respectively, may be allowed, on motion, to make a supplemental complaint or answer, alleging facts material to the case occurring after the former complaint or answer.

(b) The plaintiff and defendant, or petitioner and respondent, may, in any action in which the support of children is an issue, file a supplemental complaint seeking a judgment or order of paternity or support for a child of the mother and father of the child whose paternity and support are already in issue before the court. A supplemental complaint for paternity or child support may be filed without leave of court either before or after final judgment in the underlying action.

(c) Upon the filing of a supplemental complaint, the court clerk shall issue an amended or supplemental summons pursuant to Section 412.10. Service of the supplemental summons and complaint shall be made in the manner provided for the initial service of a summons by this code.

SEC. 3. Section 583.161 of the Code of Civil Procedure is amended to read:

583.161. No petition filed pursuant to Section 2330 of the Family Code shall be dismissed pursuant to this chapter if any of the following conditions exist:

(a) An order for child support has been issued in connection with the proceeding and the order has not been (1) terminated by the court or (2) terminated by operation of law pursuant to Sections 3900, 3901, 4007, and 4013 of the Family Code.

(b) An order for spousal support has been issued in connection with the proceeding and the order has not been terminated by the court.

(c) The petition is for dissolution of the marriage and a separate trial on the issue of the status of the marriage has been conducted pursuant to Section 2337 of the Family Code.

SEC. 3.3. Section 1218 of the Code of Civil Procedure is amended to read:

1218. (a) Upon the answer and evidence taken, the court or judge must determine whether the person proceeded against is guilty of the contempt charged, and if it be adjudged that he or she is guilty of the contempt, a fine may be imposed on him or her not exceeding one thousand dollars (\$1,000), or he or she may be imprisoned not exceeding five days, or both.

(b) No party, who is in contempt of a court order or judgment in a dissolution of marriage or legal separation action, shall be permitted to enforce such an order or judgment, by way of execution or otherwise, either in the same action or by way of a separate action, against the other party. This restriction shall not affect nor apply to the enforcement of child or spousal support orders.

(c) In any court action in which a party is found in contempt of court for failure to comply with a court order pursuant to the Family Code, or Sections 11350 to 11476.1, inclusive, of the Welfare and Institutions Code, the court shall order the following:

(1) Upon a first finding of contempt, the court shall order the contemner to perform community service of up to 120 hours, or to be imprisoned up to 120 hours, for each count of contempt.

(2) Upon the second finding of contempt, the court shall order the contemner to perform community service of up to 120 hours, in addition to ordering imprisonment of the contemner up to 120 hours, for each count of contempt.

(3) Upon the third or any subsequent finding of contempt, the court shall order both of the following:

(A) The court shall order the contemner to serve a term of imprisonment of up to 240 hours, and to perform community service of up to 240 hours, for each count of contempt.

(B) The court shall order the contemner to pay an administrative fee, not to exceed the actual cost of the contemner's administration and supervision, while assigned to a community service program pursuant to this paragraph.

(4) The court shall take parties' employment schedules into consideration when ordering either community service or imprisonment, or both.

SEC. 3.5. Section 1218.5 is added to the Code of Civil Procedure, to read:

1218.5. (a) If the contempt alleged is for failure to pay child, family, or spousal support, each month for which payment has not been made in full may be alleged as a separate count of contempt and punishment imposed for each count proven.

(b) If the contempt alleged is the failure to pay child, family, or spousal support, the period of limitations for commencing a contempt action is three years from the date that the payment was due. If the action before the court is enforcement of another order under the Family Code, the period of limitations for commencing a contempt action is two years from the time that the alleged contempt occurred.

SEC. 4. Section 22454 of the Education Code is amended to read:

22454. If a spouse refuses to sign an application, as set forth in Section 22453, the member or retirant may bring an action in court to enforce the spousal signature requirement or to waive the spousal signature requirement. Either party may bring an action pursuant to Section 1101 of the Family Code to determine the rights of the party.

SEC. 5. Section 22655 of the Education Code is amended to read:

22655. Upon the legal separation or dissolution of marriage of a retirant, the court may include in the judgment or court order a determination of the community property rights of the parties in the retirement allowance of the retirant consistent with this section. Upon election under paragraph (4) of subdivision (a) of Section 2610 of the Family Code, the court order awarding the nonmember spouse a community property share in the benefits of a retirant shall be consistent with this section.

(a) If the court does not award the entire retirement allowance to the retirant and the retirant is receiving a retirement allowance under any section other than Section 24300, the court shall require only that the system pay the nonmember spouse, by separate warrant, his or her community property share of the retirement allowance of the retirant.

(b) If the court does not award the entire retirement allowance to the retirant and the retirant is receiving an allowance which has been actuarially modified pursuant to Section 24300, the court shall order only one of the following:

(1) The retirant shall maintain the retirement allowance without change.

(2) The retirant shall cancel the retirement allowance pursuant to Section 24305 and select a new joint and survivor option or a new beneficiary or both, and the system shall pay the nonmember spouse, by separate warrant, his or her community property share of the retirement allowance of the retirant, the option beneficiary, or both.

(3) The retirant shall cancel the retirement allowance pursuant to Section 24305 and select an unmodified retirement benefit and the system shall pay the nonmember spouse, by separate warrant, his or her community property share of the retirement allowance of the retirant.

(c) If the option beneficiary, other than the nonmember spouse, dies before the retirant, the court shall order the retirant to select a new option beneficiary pursuant to Section 24306 and shall order the system to pay the nonmember spouse, by separate warrant, his or her share of the community property interest in the retirement

allowance of the retirant or the new option beneficiary, or both.

(d) The right of the nonmember spouse to receive his or her community property share under this section shall terminate upon the death of the nonmember spouse. However, the nonmember spouse may designate a beneficiary to receive his or her community property share of accumulated retirement contributions in the event that accumulated retirement contributions become payable.

SEC. 6. Section 22662 of the Education Code is amended to read:

22662. Upon the legal separation or dissolution of marriage of a retirant, the court may include in the judgment or court order a determination of the community property rights of the parties in the retirement allowance of the retirant consistent with this section. Upon election under paragraph (4) of subdivision (a) of Section 2610 of the Family Code, the court order awarding the nonmember spouse a community property share in the benefits of a retirant shall be consistent with this section.

(a) If the court does not award the entire retirement allowance to the retirant and the retirant is receiving a retirement allowance under any section other than Section 24200, the court shall require only that the system pay the nonmember spouse, by separate warrant, his or her community property share of the retirement allowance of the retirant.

(b) If the court does not award the entire retirement allowance to the retirant and the retirant is receiving an allowance which has been actuarially modified pursuant to Section 24200, the court shall order only one of the following:

(1) The retirant shall maintain the retirement allowance without change.

(2) The retirant shall cancel the retirement allowance pursuant to Section 24200.1 and select a new joint and survivor option or a new beneficiary or both, and the system shall pay the nonmember spouse, by separate warrant, his or her community property share of the retirement allowance of the retirant, the option beneficiary, or both.

(3) The retirant shall cancel the retirement allowance pursuant to Section 24200.1 and select an unmodified retirement benefit and the system shall pay the nonmember spouse, by separate warrant, his or her community property share of the retirement allowance of the retirant.

(c) If the option beneficiary, other than the nonmember spouse, dies before the retirant, the court shall order the retirant to select a new option beneficiary pursuant to Section 24200.2 and shall order the system to pay the nonmember spouse, by separate warrant, his or her share of the community property interest in the retirement allowance of the retirant or the new option beneficiary, or both.

(d) The right of the nonmember spouse to receive his or her community property share under this section shall terminate upon the death of the nonmember spouse. However, the nonmember spouse may designate a beneficiary to receive his or her community property share of accumulated retirement contributions in the event

that accumulated retirement contributions become payable.

SEC. 6.5. Section 41053 of the Education Code is amended to read:

41053. Where a reference is made to “adults” in this division in the context of apportionments to school districts or county superintendents of schools, the reference shall be deemed to refer to persons 21 years of age or over notwithstanding any other provision of law.

Where a reference is made to “minors” in this division in the context of apportionments to school districts or county superintendents of schools, the reference shall be deemed to refer to persons under 21 years of age, notwithstanding Section 6500 of the Family Code or any other provision of law.

SEC. 7. Section 703.5 of the Evidence Code is amended to read:

703.5. No person presiding at any judicial or quasi-judicial proceeding, and no arbitrator or mediator, shall be competent to testify, in any subsequent civil proceeding, as to any statement, conduct, decision, or ruling, occurring at or in conjunction with the prior proceeding, except as to a statement or conduct that could (a) give rise to civil or criminal contempt, (b) constitute a crime, (c) be the subject of investigation by the State Bar or Commission on Judicial Performance, or (d) give rise to disqualification proceedings under paragraph (1) or (6) of subdivision (a) of Section 170.1 of the Code of Civil Procedure. However, this section does not apply to a mediator with regard to any mediation under Chapter 11 (commencing with Section 3160) of Part 2 of Division 8 of the Family Code.

SEC. 7.5. Section 1014.5 of the Evidence Code is amended to read:

1014.5. Notwithstanding any other provision of law, with respect to situations in which a minor has requested and been given mental health treatment or counseling pursuant to Section 6924 of the Family Code, the professional person rendering such mental health treatment or counseling has the psychotherapist-patient privilege.

SEC. 8. Section 1152.5 of the Evidence Code is amended to read:

1152.5. (a) When persons agree to conduct and participate in a mediation for the purpose of compromising, settling, or resolving a dispute in whole or in part:

(1) Except as otherwise provided in this section, evidence of anything said or of any admission made in the course of the mediation is not admissible in evidence or subject to discovery, and disclosure of this evidence shall not be compelled, in any civil action or proceeding in which, pursuant to law, testimony can be compelled to be given.

(2) Except as otherwise provided in this section, unless the document otherwise provides, no document prepared for the purpose of, or in the course of, or pursuant to, the mediation, or copy thereof, is admissible in evidence or subject to discovery, and disclosure of such a document shall not be compelled, in any civil

action or proceeding in which, pursuant to law, testimony can be compelled to be given.

(3) When persons agree to conduct or participate in mediation for the sole purpose of compromising, settling, or resolving a dispute, in whole or in part, all communications, negotiations, or settlement discussions by and between participants or mediators in the mediation shall remain confidential.

(4) All or part of a communication or document which may be otherwise privileged or confidential may be disclosed if all parties who conduct or otherwise participate in a mediation so consent.

(5) A written settlement agreement, or part thereof, is admissible to show fraud, duress, or illegality if relevant to an issue in dispute.

(6) Evidence otherwise admissible or subject to discovery outside of mediation shall not be or become inadmissible or protected from disclosure solely by reason of its introduction or use in a mediation.

(b) This section does not apply where the admissibility of the evidence is governed by Section 1818 or 3177 of the Family Code.

(c) Nothing in this section makes admissible evidence that is inadmissible under Section 1152 or any other statutory provision, including, but not limited to, the sections listed in subdivision (d). Nothing in this section limits the confidentiality provided pursuant to Section 65 of the Labor Code.

(d) If the testimony of a mediator is sought to be compelled in any action or proceeding as to anything said or any admission made in the course of the mediation that is inadmissible and not subject to disclosure under this section, the court shall award reasonable attorney's fees and costs to the mediator against the person or persons seeking that testimony.

(e) Paragraph (2) of subdivision (a) does not limit the effect of an agreement not to take a default in a pending civil action.

SEC. 9. Section 80 of the Family Code is amended to read:

80. "Employee benefit plan" includes public and private retirement, pension, annuity, savings, profit sharing, stock bonus, stock option, thrift, vacation pay, and similar plans of deferred or fringe benefit compensation, whether of the defined contribution or defined benefit type whether or not such plan is qualified under the Employee Retirement Income Security Act of 1974 (P.L. 93-406) (ERISA), as amended. The term also includes "employee benefit plan" as defined in Section 3 of ERISA (29 U.S.C.A. Sec. 1002(3)).

SEC. 10. Section 273 is added to the Family Code, to read:

273. Notwithstanding any other provision of this code, the court shall not award attorney's fees against any governmental agency involved in a family law matter or child support proceeding except when sanctions are appropriate pursuant to Section 128.5 of the Code of Civil Procedure or Section 271 of this code.

SEC. 11. Section 511 of the Family Code is amended to read:

511. (a) Except as provided in subdivision (b), the county clerk shall maintain confidential marriage certificates filed pursuant to Section 506 as permanent records which shall not be open to public

inspection except upon order of the court issued upon a showing of good cause.

(b) The county clerk shall keep all original certificates of confidential marriages for one year from the date of filing. After one year, the clerk may microfilm the certificates and dispose of the original certificates or microfilm the certificates and send the original certificates to the Office of the State Registrar. The county clerk shall promptly seal and store at least one original negative of each microphotographic film made in a manner and place as reasonable to ensure its preservation indefinitely against loss, theft, defacement, or destruction. The microphotograph shall be made in a manner that complies with the minimum standards or guidelines, or both, recommended by the American National Standards Institute or the Association for Information and Image Management. Every reproduction shall be deemed and considered an original. A certified copy of any reproduction shall be deemed and considered a certified copy of the original.

(c) The county clerk may conduct a search for a confidential marriage certificate for the purpose of confirming the existence of a marriage, but the date of the marriage and any other information contained in the certificate shall not be disclosed except upon order of the court.

(d) The county clerk shall, not less than quarterly, transmit copies of all original confidential marriage certificates retained, or originals of microfilmed confidential marriage certificates filed after January 1, 1982, to the State Registrar of Vital Statistics. The registrar may destroy the copies so transmitted after they have been indexed. The registrar may respond to an inquiry as to the existence of a marriage performed pursuant to this chapter, but shall not disclose the date of the marriage.

SEC. 12. Section 755 of the Family Code is amended to read:

755. (a) The terms "participant," "beneficiary," "employer," "employee organization," "named fiduciary," "fiduciary," and "administrator," as used in subdivision (b), have the same meaning as provided in Section 3 of the Employee Retirement Income Security Act of 1974 (P.L. 93-406) (ERISA), as amended (29 U.S.C.A. Sec. 1002). The term "employee benefit plan" has the same meaning as provided in Section 80 of this code. The term "trustee" shall include a "named fiduciary" as that term is employed in ERISA. The term "plan sponsor" shall include an "employer" or "employee organization," as those terms are used in ERISA (29 U.S.C.A. Sec. 1002).

(b) Notwithstanding Sections 751 and 1100, if payment or refund is made to a participant or the participant's, employee's, or former employee's beneficiary or estate pursuant to an employee benefit plan including a plan governed by the Employee Retirement Income Security Act of 1974 (P.L. 93-406), as amended, the payment or refund fully discharges the plan sponsor and the administrator, trustee, or insurance company making the payment or refund from

all adverse claims thereto unless, before the payment or refund is made, the plan sponsor or the administrator of the plan has received written notice by or on behalf of some other person that the other person claims to be entitled to the payment or refund or some part thereof. Nothing in this section affects or releases the participant from claims which may exist against the participant by a person other than the plan sponsor, trustee, administrator, or other person making the benefit payment.

SEC. 12.5. Section 2010 of the Family Code is amended to read:

2010. In a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties, the court has jurisdiction to inquire into and render any judgment and make orders that are appropriate concerning the following:

- (a) The status of the marriage.
- (b) The custody of minor children of the marriage.
- (c) The support of children for whom support may be ordered, including children born after the filing of the initial petition or the final decree of dissolution.
- (d) The support of either party.
- (e) The settlement of the property rights of the parties.
- (f) The award of attorney's fees and costs.

SEC. 13. Section 2040 of the Family Code is amended to read:

2040. (a) In addition to the contents required by Section 412.20 of the Code of Civil Procedure, the summons shall contain a temporary restraining order:

(1) Restraining both parties from removing the minor child or children of the parties, if any, from the state without the prior written consent of the other party or an order of the court.

(2) Restraining both parties from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, without the written consent of the other party or an order of the court, except in the usual course of business or for the necessities of life and requiring each party to notify the other party of any proposed extraordinary expenditures at least five business days before incurring those expenditures and to account to the court for all extraordinary expenditures made after service of the summons on that party. However, nothing in the restraining order shall preclude the parties from using community property to pay reasonable attorney's fees in order to retain legal counsel in the proceeding.

(3) Restraining both parties from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability held for the benefit of the parties and their child or children for whom support may be ordered.

(b) In all actions filed on and after January 1, 1995, the summons shall contain the following notice:

“WARNING: California law provides that, for purposes of division of property upon dissolution of marriage or legal separation,

property acquired by the parties during marriage in joint form is presumed to be community property. If either party to this action should die before the jointly held community property is divided, the language of how title is held in the deed (i.e., joint tenancy, tenants in common, or community property) will be controlling and not the community property presumption. You should consult your attorney if you want the community property presumption to be written into the recorded title to the property.”

SEC. 15. Section 2062 of the Family Code is amended to read:

2062. (a) The party requesting joinder shall serve all of the following upon the employee benefit plan:

- (1) A copy of the pleading on joinder.
- (2) A copy of the request for joinder and order of joinder.
- (3) A copy of the summons (joinder).
- (4) A blank copy of a notice of appearance in form and content approved by the Judicial Council.

(b) Service shall be made in the same manner as service of papers generally. Service of the summons upon a trustee or administrator of the plan in its capacity as trustee or administrator, or upon an agent designated by the plan for service of process in its capacity as agent, constitutes service upon the plan.

(c) To facilitate identification and service, the employee spouse shall furnish to the nonemployee spouse within 30 days after written request, as to each employee benefit plan covering the employee, the name of the plan, the name, title, address, and telephone number of the plan's trustee, administrator, or agent for service of process. If necessary, the employee shall obtain the information from the plan or plan sponsor.

SEC. 16. Section 2063 of the Family Code is amended to read:

2063. (a) The employee benefit plan shall file and serve a copy of a notice of appearance upon the party requesting joinder within 30 days of the date of the service upon the plan of a copy of the joinder request and summons.

(b) The employee benefit plan may, but need not, file an appropriate responsive pleading with its notice of appearance. If the plan does not file a responsive pleading, all statements of fact and requests for relief contained in any pleading served on the plan are deemed to be controverted by the plan's notice of appearance.

SEC. 17. Section 2064 of the Family Code is amended to read:

2064. Notwithstanding any contrary provision of law, the employee benefit plan is not required to pay any fee to the clerk of the court as a condition to filing the notice of appearance or any subsequent paper in the proceeding.

SEC. 18. Section 2065 of the Family Code is amended to read:

2065. If the employee benefit plan has been served and no notice of appearance, notice of motion to quash service of summons pursuant to Section 418.10 of the Code of Civil Procedure, or notice of the filing of a petition for writ of mandate as provided in that section, has been filed with the clerk of the court within the time

specified in the summons or such further time as may be allowed, the clerk, upon written application of the party requesting joinder, shall enter the default of the employee benefit plan in accordance with Chapter 2 (commencing with Section 585) of Title 8 of Part 2 of the Code of Civil Procedure.

SEC. 19. Section 2070 of the Family Code is amended to read:

2070. (a) This article governs a proceeding in which an employee benefit plan has been joined as a party.

(b) To the extent not in conflict with this article and except as otherwise provided by rules adopted by the Judicial Council pursuant to Section 211, all provisions of law applicable to civil actions generally apply, regardless of nomenclature, to the portion of the proceeding as to which an employee benefit plan has been joined as a party if those provisions would otherwise apply to the proceeding without reference to this article.

SEC. 20. Section 2071 of the Family Code is amended to read:

2071. Either party or their representatives may notify the employee benefit plan of any proposed property settlement as it concerns the plan before any hearing at which the proposed property settlement will be a matter before the court. If so notified, the plan may stipulate to the proposed settlement or advise the representative that it will contest the proposed settlement.

SEC. 21. Section 2072 of the Family Code is amended to read:

2072. The employee benefit plan is not required to, but may, appear at any hearing in the proceeding. For purposes of the Code of Civil Procedure, the plan shall be considered a party appearing at the trial with respect to any hearing at which the interest of the parties in the plan is an issue before the court.

SEC. 22. Section 2073 of the Family Code is amended to read:

2073. (a) Subject to subdivisions (b) and (c), the provisions of an order entered by stipulation of the parties or entered at or as a result of a hearing not attended by the employee benefit plan (whether or not the plan received notice of the hearing) which affect the plan or which affect any interest either the petitioner or respondent may have or claim under the plan, shall be stayed until 30 days after the order has been served upon the plan.

(b) The plan may waive all or any portion of the 30-day period under subdivision (a).

(c) If within the 30-day period, the plan files in the proceeding a motion to set aside or modify those provisions of the order affecting it, those provisions shall be stayed until the court has resolved the motion.

(d) The duration of the stay described in subdivision (a), and the time period for filing the motion to set aside or modify provisions of the order, shall be extended to 60 days if the plan files with the court and serves on all affected parties a request for extension within the 30-day period.

(e) Either spousal party may seek an order staying any other provisions of the order and associated orders or judgments related to

or affected by the provisions to which the plan has objected, until the court has resolved the motion, in order to protect the right of the party to seek relief under subdivision (c) of Section 2074.

SEC. 23. Section 2074 of the Family Code is amended to read:

2074. (a) At any hearing on a motion to set aside or modify an order pursuant to Section 2073, any party may present further evidence on any issue relating to the rights of the parties under the employee benefit plan or the extent of the parties' community or quasi-community property interest in the plan, except where the parties have agreed in writing to the contrary.

(b) Any statement of decision issued by the court with respect to the order which is the subject of the motion shall take account of the evidence referred to in subdivision (a).

(c) If the provisions of the order affecting the employee benefit plan are modified or set aside, the court, on motion by either party, may set aside or modify other provisions of the order and associated orders or judgments related to or affected by the provisions affecting the plan.

SEC. 23.5. Section 2330.1 is added to the Family Code, to read:

2330.1. In any proceeding for dissolution of marriage, for legal separation of the parties, or for the support of children, a supplemental complaint may be filed, pursuant to Section 464 of the Code of Civil Procedure either before or after a final judgment, seeking a judgment or order of paternity or support for a child of the mother and father of the child whose paternity and support are already in issue before the court. A supplemental complaint for paternity or support of children may be filed without leave of court either before or after final judgment in the underlying action. Service of the supplemental summons and complaint shall be made in the manner provided for the initial service of a summons by this code.

SEC. 24. Section 2337 of the Family Code is amended to read:

2337. (a) In a proceeding for dissolution of marriage, the court, upon noticed motion, may sever and grant an early and separate trial on the issue of the dissolution of the status of the marriage apart from other issues.

(b) The court may impose upon a party any of the following conditions on granting a severance of the issue of the dissolution of the status of the marriage, and in case of that party's death, an order of any of the following conditions continues to be binding upon that party's estate:

(1) The party shall indemnify and hold the other party harmless from any taxes, reassessments, interest, and penalties payable by the other party if the dissolution of the marriage before the division of the parties' community estate results in a taxable event to either of the parties by reason of the ultimate division of their community estate, which taxes would not have been payable if the parties were still married at the time the division was made.

(2) Until judgment has been entered on all remaining issues and

has become final, the party shall maintain all existing health and medical insurance coverage for the other party and the minor children as named dependents, so long as the party is legally able to do so. At the time the party is no longer legally eligible to maintain the other party as a named dependent under the existing health and medical policies, the party or the party's estate shall, at the party's sole expense, purchase and maintain health and medical insurance coverage that is comparable to the existing health and medical insurance coverage. If comparable insurance coverage is not obtained, the party or the party's estate is responsible for the health and medical expenses incurred by the other party which would have been covered by the insurance coverage, and shall indemnify and hold the other party harmless from any adverse consequences resulting from the lack of insurance.

(3) Until judgment has been entered on all remaining issues and has become final, the party shall indemnify and hold the other party harmless from any adverse consequences resulting to the other party if the bifurcation results in a termination of the other party's right to a probate homestead in the residence in which the other party resides at the time the severance is granted.

(4) Until judgment has been entered on all remaining issues and has become final, the party shall indemnify and hold the other party harmless from any adverse consequences resulting to the other party if the bifurcation results in the loss of the rights of the other party to a probate family allowance as the surviving spouse of the party.

(5) Until judgment has been entered on all remaining issues and has become final, the party shall indemnify and hold the other party harmless from any adverse consequences resulting to the other party if the bifurcation results in the loss of the other party's rights to pension benefits, elections, or survivors' benefits under the party's pension or retirement plan to the extent that the other party would have been entitled to those benefits or elections as the surviving spouse of the party.

(6) Prior to entry of judgment terminating status, both of the following shall occur:

(A) The party's retirement or pension plan shall be joined as a party to the proceeding for dissolution.

(B) If applicable, an order pursuant to Section 2611 shall be entered with reference to the defined benefit or similar plan pending the ultimate resolution of the distribution of benefits under the employee benefit plan.

(7) The party shall indemnify and hold the other party harmless from any adverse consequences if the bifurcation results in the loss of rights to social security benefits or elections to the extent the other party would have been entitled to those benefits or elections as the surviving spouse of the party.

(8) Any other condition the court determines is just and equitable.

(c) A judgment granting a dissolution of the status of the marriage

shall expressly reserve jurisdiction for later determination of all other pending issues.

SEC. 25. Section 2610 of the Family Code is amended to read:

2610. (a) Except as provided in subdivision (b), the court shall make whatever orders are necessary or appropriate to ensure that each party receives the party's full community property share in any retirement plan, whether public or private, including all survivor and death benefits, including, but not limited to, any of the following:

(1) Order the disposition of any retirement benefits payable upon or after the death of either party in a manner consistent with Section 2550.

(2) Order a party to elect a survivor benefit annuity or other similar election for the benefit of the other party, as specified by the court, in any case in which a retirement plan provides for such an election, provided that no court shall order a retirement plan to provide increased benefits determined on the basis of actuarial value.

(3) Upon the agreement of the nonemployee spouse, order the division of accumulated community property contributions and service credit as provided in the following or similar enactments:

(A) Article 1.2 (commencing with Section 21215) of Chapter 9 of Part 3 of Division 5 of Title 2 of the Government Code.

(B) Chapter 12 (commencing with Section 22650) of Part 13 of the Education Code.

(C) Article 2.5 (commencing with Section 75050) of Chapter 11 of Title 8 of the Government Code.

(4) Order a retirement plan to make payments directly to a nonmember party of his or her community property interest in retirement benefits.

(b) A court shall not make any order that requires a retirement plan to do either of the following:

(1) Make payments in any manner that will result in an increase in the amount of benefits provided by the plan.

(2) Make the payment of benefits to any party at any time before the member retires, except as provided in paragraph (3) of subdivision (a), unless the plan so provides.

(c) This section shall not be applied retroactively to payments made by a retirement plan to any person who retired or died prior to January 1, 1987, or to payments made to any person who retired or died prior to June 1, 1988, for plans subject to paragraph (3) of subdivision (a).

SEC. 25.5. Section 2610 of the Family Code is amended to read:

2610. (a) Except as provided in subdivision (b), the court shall make whatever orders are necessary or appropriate to ensure that each party receives the party's full community property share in any retirement plan, whether public or private, including all survivor and death benefits, including, but not limited to, any of the following:

(1) Order the disposition of any retirement benefits payable upon or after the death of either party in a manner consistent with Section

2550.

(2) Order a party to elect a survivor benefit annuity or other similar election for the benefit of the other party, as specified by the court, in any case in which a retirement plan provides for such an election, provided that no court shall order a retirement plan to provide increased benefits determined on the basis of actuarial value.

(3) Upon the agreement of the nonemployee spouse, order the division of accumulated community property contributions and service credit as provided in the following or similar enactments:

(A) Article 1.2 (commencing with Section 21215) of Chapter 9 of Part 3 of Division 5 of Title 2 of the Government Code.

(B) Chapter 12 (commencing with Section 22650) of Part 13 of the Education Code.

(C) Article 8.4 (commencing with Section 31685) of Chapter 3 of Part 3 of Division 4 of Title 3 of the Government Code.

(D) Article 2.5 (commencing with Section 75050) of Chapter 11 of Title 8 of the Government Code.

(4) Order a retirement plan to make payments directly to a nonmember party of his or her community property interest in retirement benefits.

(b) A court shall not make any order that requires a retirement plan to do either of the following:

(1) Make payments in any manner that will result in an increase in the amount of benefits provided by the plan.

(2) Make the payment of benefits to any party at any time before the member retires, except as provided in paragraph (3) of subdivision (a), unless the plan so provides.

(c) This section shall not be applied retroactively to payments made by a retirement plan to any person who retired or died prior to January 1, 1987, or to payments made to any person who retired or died prior to June 1, 1988, for plans subject to paragraph (3) of subdivision (a).

SEC. 30. Section 3190 of the Family Code is amended to read:

3190. (a) The court may require parents involved in a custody or visitation dispute, and the minor child, to participate in outpatient counseling with a licensed mental health professional, or through other community programs and services that provide appropriate counseling, including, but not limited to, mental health or substance abuse services, for not more than one year, provided that the program selected has counseling available for the designated period of time, if the court finds both of the following:

(1) The dispute between the parents or between a parent and the child poses a substantial danger to the best interest of the child.

(2) The counseling is in the best interest of the child.

(b) Subject to Section 3192, if the court finds that the financial burden created by the order for counseling does not otherwise jeopardize a party's other financial obligations, the court shall fix the cost and shall order the entire cost of the services to be borne by the

parties in the proportions the court deems reasonable.

(c) The court, in its finding, shall set forth reasons why it has found both of the following:

(1) The dispute poses a substantial danger to the best interest of the child and the counseling is in the best interest of the child.

(2) The financial burden created by the court order for counseling does not otherwise jeopardize a party's other financial obligations.

(d) The court shall not order the parties to return to court upon the completion of counseling. Either party may file a new order to show cause or motion after counseling has been completed, and the court may again order counseling consistent with this chapter.

SEC. 31. Section 3192 of the Family Code is amended to read:

3192. In a proceeding in which counseling is ordered pursuant to this chapter, where there has been a history of abuse by either parent against the child or by one parent against the other parent and a protective order as defined in Section 6218 is in effect, the court may order the parties to participate in counseling separately and at separate times. Each party shall bear the cost of his or her own counseling separately, unless good cause is shown for a different apportionment. The costs associated with a minor child participating in counseling shall be apportioned in accordance with Section 4062.

SEC. 31.2. Section 3557 of the Family Code is amended to read:

3557. (a) Notwithstanding any other provision of law, absent good cause to the contrary, the court, upon (1) determining an ability to pay and (2) consideration of the respective incomes and needs of the parties in order to ensure that each party has access to legal representation to preserve all of the party's rights, shall award reasonable attorney's fees to any of the following persons:

(1) A custodial parent or other person to whom payments should be made in any action to enforce any of the following:

(A) An existing order for child support.

(B) A penalty incurred pursuant to Chapter 5 (commencing with Section 4720) of Part 5 of Division 9.

(2) A supported spouse in an action to enforce an existing order for spousal support.

(b) This section shall not be construed to allow an award of attorney's fees to or against a governmental entity.

SEC. 31.4. Section 3651 of the Family Code is amended to read:

3651. (a) Except as provided in subdivisions (c) and (d) and subject to Article 3 (commencing with Section 3680) and Sections 3552, 3587, and 4004, a support order may be modified or terminated at any time as the court determines to be necessary.

(b) Upon the filing of a supplemental complaint pursuant to Section 2330.1, a child support order may be modified to include an order for the support of children of the same parents who were not named in the initial pleadings, to consolidate arrearages and wage assignments for children of the parties, and to consolidate orders for support.

(c) A support order may not be modified or terminated as to an amount that accrued before the date of the filing of the notice of motion or order to show cause to modify or terminate.

(d) An order for spousal support may not be modified or terminated to the extent that a written agreement, or, if there is no written agreement, an oral agreement entered into in open court between the parties, specifically provides that the spousal support is not subject to modification or termination.

(e) This section applies whether or not the support order is based upon an agreement between the parties.

(f) This section is effective only with respect to a property settlement agreement entered into on or after January 1, 1970, and does not affect an agreement entered into before January 1, 1970, as to which Chapter 1308 of the Statutes of 1967 shall apply.

SEC. 31.6. Section 3652 of the Family Code is amended to read:

3652. Except as against a governmental agency, an order modifying or terminating a child support order may include an award of attorney's fees and court costs to the prevailing party.

SEC. 32. Section 3686 of the Family Code is repealed.

SEC. 33. Section 3751 of the Family Code is amended to read:

3751. (a) (1) Support orders issued or modified pursuant to this chapter shall include a provision requiring the child support obligor to keep the agency designated under Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.) informed of whether the obligor has health insurance coverage at reasonable cost and, if so, the health insurance policy information.

(2) In any case in which an amount is set for current support, the court shall require that health insurance coverage for a supported child shall be maintained by either or both parents if that insurance is available at no cost or at reasonable cost to the parent. Health insurance coverage shall be rebuttably presumed to be reasonable in cost if it is employment-related group health insurance or other group health insurance, regardless of the service delivery mechanism. The actual cost of the health insurance to the obligor shall be considered in determining whether the cost of insurance is reasonable. If the court determines that the cost of health insurance coverage is not reasonable, the court shall state its reasons on the record.

(b) If the court determines that health insurance coverage is not available at no or reasonable cost, the court's order for support shall contain a provision that specifies that health insurance coverage shall be obtained if it becomes available at no or reasonable cost. Upon health insurance coverage at no or reasonable cost becoming available to a parent, the parent shall apply for that coverage.

SEC. 35. Section 3753 of the Family Code is repealed.

SEC. 36. Section 3753 is added to the Family Code, to read:

3753. The cost of the health insurance shall be in addition to the child support amount ordered under Article 2 (commencing with Section 4050), with allowance for the costs of health insurance

actually obtained given due consideration under subdivision (d) of Section 4059.

SEC. 37. Section 3761 of the Family Code is amended to read:

3761. (a) Upon application by a party or district attorney in any proceeding where the court has ordered either or both parents to maintain health insurance coverage under Article 1 (commencing with Section 3750), the court shall order the employer of the obligor parent or other person providing health insurance to the obligor to enroll the supported child in the health insurance plan available to the obligor through the employer or other person and to deduct the appropriate premium or costs, if any, from the earnings of the obligor unless the court makes a finding of good cause for not making the order.

(b) (1) The application shall state that the party or district attorney seeking the assignment order has given the obligor a written notice of the intent to seek a health insurance coverage assignment order in the event of a default in instituting coverage required by court order on behalf of the parties' child and that the notice was transmitted by first-class mail, postage prepaid, or personally served at least 15 days before the date of the filing of the application for the order. The written notice of the intent to seek an assignment order required by this subdivision may be given at the time of filing a petition or complaint for support or at any later time, but shall be given at least 15 days before the date of filing the application under this section. The obligor may at any time waive the written notice required by this subdivision.

(2) The party or district attorney seeking the assignment order shall file a certificate of service showing the method and date of service of the order and the statements required under Section 3772 upon the employer or provider of health insurance.

(c) The total amount that may be withheld from earnings for all obligations, including health insurance assignments, is limited by subdivision (a) of Section 706.052 of the Code of Civil Procedure or Section 1673 of Title 15 of the United States Code, whichever is less.

SEC. 38. Section 3762 of the Family Code is amended to read:

3762. Good cause for not making a health insurance coverage assignment order shall be limited to either of the following:

(a) The court finds that one of the conditions listed in subdivision (a) of Section 3765 or in Section 3770 exists.

(b) The court finds that the health insurance coverage assignment order would cause extraordinary hardship to the obligor. The court shall specify the nature of the extraordinary hardship and, whenever possible, a date by which the obligor shall obtain health insurance coverage or be subject to a health insurance coverage assignment.

SEC. 39. Section 3763 of the Family Code is amended to read:

3763. (a) The health insurance coverage assignment order may be ordered at the time of trial or entry of a judgment ordering health insurance coverage. The order operates as an assignment and is binding on any existing or future employer of the obligor parent, or

other person providing health insurance to the obligor, upon whom a copy of the order has been served.

(b) The order of assignment may be modified at any time by the court.

SEC. 40. Section 3764 of the Family Code is amended to read:

3764. (a) A health insurance coverage assignment order does not become effective until 20 days after service by the applicant of the assignment order on the employer.

(b) Within 10 days after service of the order, the employer or other person providing health insurance to the obligor shall deliver a copy of the order to the obligor, together with a written statement of the obligor's rights and the relevant procedures under the law to move to quash the order.

(c) Service of a health insurance coverage assignment order on any employer or other person providing health insurance may be made by first class mail in the manner prescribed in Section 1013 of the Code of Civil Procedure.

SEC. 41. Section 3765 of the Family Code is amended to read:

3765. (a) The obligor may move to quash a health insurance coverage assignment order as provided in this section if the obligor declares under penalty of perjury that there is error on any of the following grounds:

(1) No order to maintain health insurance has been issued under Article 1 (commencing with Section 3750).

(2) The amount to be withheld for premiums is greater than that permissible under Article 1 (commencing with Section 3750) or greater than the amount otherwise ordered by the court.

(3) The amount of the increased premium is unreasonable.

(4) The alleged obligor is not the obligor from whom health insurance coverage is due.

(5) The child is or will be otherwise provided health care coverage.

(6) The employer's choice of coverage is inappropriate.

(b) The motion and notice of motion to quash the assignment order, including the declaration required by subdivision (a), shall be filed with the court issuing the assignment order within 15 days after delivery of a copy of the order to the obligor pursuant to subdivision (b) of Section 3764. The court clerk shall set the motion for hearing not less than 15 days, nor more than 30 days, after receipt of the notice of motion. The clerk shall, within five days after receipt of the notice of motion, deliver a copy of the notice of motion to (1) the district attorney personally or by first-class mail, and (2) the applicant and the employer or other person providing health insurance, at the appropriate addresses contained in the application, by first-class mail.

(c) Upon a finding of error described in subdivision (a), the court shall quash the assignment.

SEC. 42. Section 3766 of the Family Code is amended to read:

3766. (a) The employer, or other person providing health

insurance, shall take steps to commence coverage, consistent with the order for the health insurance coverage assignment, 30 days after service of the assignment order upon the obligor under Section 3764 if the employer or other person has not received a notice of motion seeking to quash the order. If the employer or other person providing health insurance receives a notice of motion to quash, the employer or other person shall commence coverage consistent with the assignment order on receipt of the order resolving the motion to quash in favor of the applicant. The employer, or the person providing health insurance, shall commence coverage at the earliest possible time and, if applicable, consistent with the group plan enrollment rules.

(b) If the obligor has made a selection of health coverage prior to the issuance of the court order, the selection shall not be superseded unless the child to be enrolled in the plan will not be provided benefits or coverage where the child resides or the court order specifically directs other health coverage.

(c) If the obligor has not enrolled in an available health plan, there is a choice of coverage, and the court has not ordered coverage by a specific plan, the employer or other person providing health insurance shall enroll the child in the plan that will provide reasonable benefits or coverage where the child resides. If that coverage is not available, the employer or other person providing health insurance shall, within 20 days, return the assignment order to the attorney or person initiating the assignment.

(d) If an assignment order is served on an employer or other person providing health insurance and no coverage is available for the supported child, the employer or other person shall, within 20 days, return the assignment to the attorney or person initiating the assignment.

SEC. 43. Section 3768 of the Family Code is amended to read:

3768. (a) An employer or other person providing health insurance who willfully fails to comply with a valid health insurance coverage assignment order entered and served on the employer or other person pursuant to this article is liable to the applicant for the amount incurred in health care services that would otherwise have been covered under the insurance policy but for the conduct of the employer or other person that was contrary to the assignment order.

(b) Willful failure of an employer or other person providing health insurance to comply with a health insurance coverage assignment order is punishable as contempt of court under Section 1218 of the Code of Civil Procedure.

SEC. 44. Section 3769 of the Family Code is amended to read:

3769. No employer shall use a health insurance coverage assignment order as grounds for refusing to hire a person or for discharging or taking disciplinary action against an employee. An employer who violates this section may be assessed a civil penalty of a maximum of five hundred dollars (\$500).

SEC. 45. Section 3770 of the Family Code is amended to read:

3770. Upon notice of motion by the obligor, the court shall terminate a health insurance coverage assignment order if any of the following conditions exist:

(a) A new order has been issued under Article 1 (commencing with Section 3750) that is inconsistent with the existing assignment.

(b) The employer or other person providing health insurance has discontinued that coverage to the obligor.

(c) The court determines that there is good cause, consistent with Section 3762, to terminate the assignment.

(d) The death or emancipation of the child for whom the health insurance has been obtained.

SEC. 46. Section 3772 of the Family Code is amended to read:

3772. The Judicial Council shall adopt forms for the health insurance coverage assignment required or authorized by this article, including, but not limited to, the application, the order, the statement of the obligor's rights, and an employer's return form which shall include information on the limitations on the total amount that may be withheld from earnings for obligations, including health insurance assignments, under subdivision (a) of Section 706.052 of the Code of Civil Procedure and Section 1673 of Title 15 of the United States Code, and the information required by Section 3771. The parties and child shall be sufficiently identified on the forms by the inclusion of birth dates, social security numbers, and any other information the Judicial Council determines is necessary.

SEC. 47. Section 4005 is added to the Family Code, to read:

4005. At the request of either party, the court shall make appropriate findings with respect to the circumstances on which the order for support of a child is based.

SEC. 47.5. Section 4057.5 of the Family Code is amended to read:

4057.5. (a) (1) The income of the obligor parent's subsequent spouse or nonmarital partner shall not be considered when determining or modifying child support, except in an extraordinary case where excluding that income would lead to extreme and severe hardship to any child subject to the child support award, in which case the court shall also consider whether including that income would lead to extreme and severe hardship to any child supported by the obligor or by the obligor's subsequent spouse or nonmarital partner.

(2) The income of the obligee parent's subsequent spouse or nonmarital partner shall not be considered when determining or modifying child support, except in an extraordinary case where excluding that income would lead to extreme and severe hardship to any child subject to the child support award, in which case the court shall also consider whether including that income would lead to extreme and severe hardship to any child supported by the obligee or by the obligee's subsequent spouse or nonmarital partner.

(b) For purposes of this section, an extraordinary case may include a parent who voluntarily or intentionally quits work or reduces income, or who intentionally remains unemployed or

underemployed and relies on a subsequent spouse's income.

(c) If any portion of the income of either parent's subsequent spouse or nonmarital partner is allowed to be considered pursuant to this section, discovery for the purposes of determining income shall be based on W2 and 1099 income tax forms, except where the court determines that application would be unjust or inappropriate.

(d) If any portion of the income of either parent's subsequent spouse or nonmarital partner is allowed to be considered pursuant to this section, the court shall allow a hardship deduction based on the minimum living expenses for one or more stepchildren of the party subject to the order.

(e) The enactment of this section constitutes cause to bring an action for modification of a child support order entered prior to the operative date of this section.

SEC. 48. Section 4506.1 is added to the Family Code, to read:

4506.1. Notwithstanding any other provision of law, when a support obligation is being enforced pursuant to Title IV-D of the Social Security Act, the agency enforcing the obligation may file and record an abstract of support judgment as authorized by Section 4506 and substitute the office address of the agency designated to receive support payments for the address of the party to whom support was ordered to be paid.

SEC. 48.2. Section 4506.2 is added to the Family Code, to read:

4506.2. (a) Notwithstanding any other provision of law, when a support obligation is being enforced pursuant to Title IV-D of the Social Security Act, the agency enforcing the obligation may file and record a substitution of payee, if a judgment or abstract of judgment has previously been recorded pursuant to Section 697.320 of the Code of Civil Procedure by the support obligee or by a different governmental agency.

(b) Notwithstanding any other provision of law, when the Title IV-D agency ceases enforcement of a support obligation at the request of the support obligee, the agency may file and record a substitution of payee, if a judgment or abstract of judgment has been previously recorded pursuant to Section 697.320 of the Code of Civil Procedure.

(c) The substitution of payee shall contain all of the following:

(1) The name and address of the governmental agency or substituted payee filing the substitution and a notice that the substituted payee is to be contacted when notice to a lienholder may or must be given.

(2) The title of the court, the cause, and number of the proceeding where the substituted payee has registered the judgment.

(3) The name and last known address of the party ordered to pay support.

(4) The recorder identification number or book and page of the recorded document to which the substitution of payee applies.

(5) Any other information deemed reasonable and appropriate by

the Judicial Council.

(d) The recorded substitution of payee shall not affect the priorities created by earlier recordations of support judgments or abstracts of support judgments.

SEC. 48.4. Section 4506.3 is added to the Family Code, to read:

4506.3. The Judicial Council, in consultation with the California Family Support Council, the State Department of Social Services, and title insurance industry representatives, shall develop a single form, which conforms with the requirements of Section 27361.6 of the Government Code, for the abstract of support judgment, for the substitution of payee, for notice directing payment of support to the district attorney pursuant to Sections 4200 and 4201, and for notice that support has been assigned pursuant to Section 11477 of the Welfare and Institutions Code.

SEC. 48.6. Section 4847 of the Family Code is amended to read:

4847. (a) If the Attorney General is of the opinion that a support order or a support-related order is erroneous and presents a question of law warranting an appeal in the public interest, the Attorney General may:

(1) If the order was issued by a court of this state, perfect an appeal to the proper appellate court.

(2) If the order was issued in another state, cause the appeal to be taken in the other state.

(b) In either case, expenses of appeal may be paid on order of the Attorney General from funds appropriated for the Office of the Attorney General.

SEC. 48.8. Section 4852.1 is added to the Family Code, to read:

4852.1. (a) When the district attorney is responsible for the enforcement of a support obligation pursuant to Section 11475.1 of the Welfare and Institutions Code, he or she may register a support order made or registered in another county utilizing the procedures set forth in Section 4852, or by filing in the superior court of his or her county the following:

(1) An endorsed file copy of the most recent support order or a copy thereof.

(2) A statement of arrearages, including an accounting of amounts ordered and paid each month, together with any added costs, fees, and interest.

(3) A statement prepared by the district attorney showing the post office address of the district attorney; the last known place of residence or post office address of the obligor; the last business or residence address given by the obligor on any document filed in the previous county and served on the obligee or district attorney of that county; and a list of other states and counties in California that are known to the district attorney in which the original order of support and any modifications are registered.

(b) The filing of the documents described in subdivision (a) constitutes registration under this chapter.

(c) Promptly upon registration, the district attorney shall, in

compliance with the requirements of Section 1013 of the Code of Civil Procedure, or in any other manner as provided by law, serve the obligor with copies of the documents described in subdivision (a).

(d) If a motion to vacate registration is filed under Section 4853, any party may introduce into evidence copies of any pleadings, documents, or orders which have been filed in the original court or other courts where the support order has been registered or modified. Certified copies of the documents shall not be required unless a party objects to the authenticity or accuracy of the document, in which case it shall be the responsibility of the party who is asserting the authenticity of the document to obtain a certified copy of the questioned document.

(e) Upon registration, the clerk of the court shall forward a copy of the registration to the courts in other counties and states in which the original order for support and any modifications were issued or registered.

(f) If the court modifies a support order that has been registered pursuant to this chapter, the clerk of the court shall mail a copy of the modified order to the courts in other counties and states in which the original order for support and any modifications were issued or registered.

(g) The Judicial Council, in consultation with the State Department of Social Services, and representatives of the California Family Support Council, shall develop the forms necessary to effectuate this section.

SEC. 49. Section 4853 of the Family Code is amended to read:

4853. (a) Except as specified in this section, upon registration, the registered foreign support order shall be treated in the same manner as a support order issued by a court of this state. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this state and may be enforced and satisfied in like manner.

(b) The obligor has 20 days after the mailing or other service of notice of the registration of a foreign order of support in which to file a noticed motion requesting the court to vacate the registration or for other relief. In an action under this section, there shall be no joinder of actions, coordination of actions, or cross-complaints, and the claims or defenses shall be limited strictly to the identity of the obligor, the validity of the underlying foreign support order, or the accuracy of the obligee's statement of the amount of support remaining unpaid unless the amount has been previously established by a judgment or order. The obligor shall serve a copy of the motion, personally or by first-class mail, on the office of the district attorney, private attorney representing the obligee, or obligee representing himself or herself who filed the request for registration of the order, not less than 15 days prior to the date on which the motion is to be heard. If service is by mail, Section 1013 of the Code of Civil Procedure applies. If the obligor does not file the motion within 20

days, the registered foreign support order and all other documents filed pursuant to subdivision (a) of Section 4852 are confirmed.

(c) At the hearing on the motion to vacate the registration of the order, the obligor may present only matters that would be available to the obligor as defenses in an action to enforce a support judgment. If the obligor shows and the court finds that an appeal from the order is pending or that a stay of execution has been granted, the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering state. If the obligor shows and the court finds any ground upon which enforcement of a support order of this state may be stayed, the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this state.

(d) Registration of an out-of-state order for the sole purpose of interstate wage withholding does not confer jurisdiction on the court for any purpose other than income withholding.

(e) After registration, a foreign order for the assignment of wages or other earnings for support shall be treated for all purposes in the same manner as an order for assignment of earnings entered pursuant to this article. The registered foreign order for assignment of wages shall be served upon the obligor's employer and the obligor shall be sent, by first-class mail, a copy of the foreign assignment order at the same time that the employer is served with the notice. The obligor may move to quash the assignment in accordance with Section 5270.

SEC. 49.2. Section 5100 of the Family Code is amended to read:

5100. Notwithstanding Section 291, a child or family support order may be enforced by a writ of execution without prior court approval as long as the support order remains enforceable.

SEC. 49.4. Section 5101 of the Family Code is amended to read:

5101. Notwithstanding Section 291, a spousal support order may be enforced by a writ of execution without prior court approval as long as the support order remains enforceable.

SEC. 50. Section 5103 of the Family Code is amended to read:

5103. (a) Notwithstanding Section 2060, an order for the payment of child, family, or spousal support may be enforced against an employee benefit plan regardless of whether the plan has been joined as a party to the proceeding in which the support order was obtained.

(b) Notwithstanding Section 697.710 of the Code of Civil Procedure, an execution lien created by a levy on the judgment debtor's right to payment of benefits from an employee benefit plan to enforce an order for the payment of child, family, or spousal support continues until the date the plan has withheld and paid over to the levying officer, as provided in Section 701.010 of the Code of Civil Procedure, the full amount specified in the notice of levy,

unless the plan is directed to stop withholding and paying over before that time by court order or by the levying officer.

(c) A writ of execution pursuant to which a levy is made on the judgment debtor's right to payment of benefits from an employee benefit plan under an order for the payment of child, family, or spousal support shall be returned not later than one year after the date the execution lien expires under subdivision (b).

SEC. 50.2. Section 5235 of the Family Code is amended to read:

5235. (a) The employer shall continue to withhold and forward support as required by the assignment order until served with notice terminating the assignment order.

(b) Within 10 days of service of a substitution of payee on the employer, the employer shall forward all subsequent support to the governmental entity or other payee that sent the substitution.

(c) The employer shall send the amounts withheld to the obligee within 10 days of the date the obligor is paid and shall report to the obligee the date on which the amount was withheld from the obligor's wages.

(d) The employer may deduct from the earnings of the employee the sum of one dollar (\$1) for each payment made pursuant to the order.

SEC. 50.4. Section 5260 of the Family Code is amended to read:

5260. (a) The court may order that service of the assignment order be stayed only if the court makes a finding of good cause or if an alternative arrangement exists for payment in accordance with paragraph (2) of subdivision (b). Notwithstanding any other provision of law, service of wage assignments issued for foreign orders for support, and service of foreign orders for the assignment of wages registered pursuant to Article 3 (commencing with Section 4820) of Chapter 6 shall not be stayed pursuant to this subdivision.

(b) For purposes of this section, good cause or an alternative arrangement for staying an assignment order is as follows:

(1) Good cause for staying a wage assignment exists only when all of the following conditions exist:

(A) The court provides a written explanation of why the stay of the wage assignment would be in the best interests of the child.

(B) The obligor has a history of uninterrupted, full, and timely payment, other than through a wage assignment or other mandatory process of previously ordered support, during the previous 12 months.

(C) The obligor does not owe an arrearage for prior support.

(D) The obligor proves, and the court finds, by clear and convincing evidence that service of the wage assignment would cause extraordinary hardship upon the obligor. Whenever possible, the court shall specify a date that any stay ordered under this section will automatically terminate.

(2) An alternative arrangement for staying a wage assignment order shall require a written agreement between the parties that provides for payment of the support obligation as ordered other than

through the immediate service of a wage assignment. Any agreement between the parties which includes the staying of a service of a wage assignment shall include the concurrence of the district attorney in any case in which support is ordered to be paid through a county officer designated for that purpose. The execution of an agreement pursuant to this paragraph shall not preclude a party from thereafter seeking a wage assignment in accordance with the procedures specified in Section 5261 upon violation of the agreement.

SEC. 50.6. Section 6552 of the Family Code is amended to read: 6552. The caregiver’s authorization affidavit shall be in substantially the following form:

Caregiver’s Authorization Affidavit

Use of this affidavit is authorized by Part 1.5 (commencing with Section 6550) of Division 11 of the California Family Code.

Instructions: Completion of items 1-4 and the signing of the affidavit is sufficient to authorize enrollment of a minor in school and authorize school-related medical care. Completion of items 5-8 is additionally required to authorize any other medical care. Print clearly.

The minor named below lives in my home and I am 18 years of age or older.

- 1. Name of minor: _____ .
- 2. Minor’s birth date: _____ .
- 3. My name (adult giving authorization): _____ .
- 4. My home address: _____
_____ .

5. I am a grandparent, aunt, uncle, or other qualified relative of the minor (see back of this form for a definition of “qualified relative”).

6. Check one or both (for example, if one parent was advised and the other cannot be located):

I have advised the parent(s) or other person(s) having legal custody of the minor of my intent to authorize medical care, and

have received no objection.

[] I am unable to contact the parent(s) or other person(s) having legal custody of the minor at this time, to notify them of my intended authorization.

7. My date of birth: _____ .

8. My California's driver's license or identification card number:
_____ .

Warning: Do not sign this form if any of the statements above are incorrect, or you will be committing a crime punishable by a fine, imprisonment, or both.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: _____ Signed: _____

Notices:

1. This declaration does not affect the rights of the minor's parents or legal guardian regarding the care, custody, and control of the minor, and does not mean that the caregiver has legal custody of the minor.
2. A person who relies on this affidavit has no obligation to make any further inquiry or investigation.
3. This affidavit is not valid for more than one year after the date on which it is executed.

Additional Information:

TO CAREGIVERS:

1. "Qualified relative," for purposes of item 5, means a spouse, parent, stepparent, brother, sister, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin, or any person denoted by the prefix "grand" or "great," or the spouse of any of the persons specified in this definition, even after the marriage has been terminated by death or dissolution.
2. The law may require you, if you are not a relative or a currently licensed foster parent, to obtain a foster home license in order to care

for a minor. If you have any questions, please contact your local department of social services.

3. If the minor stops living with you, you are required to notify any school, health care provider, or health care service plan to which you have given this affidavit.

4. If you do not have the information requested in item 8 (California driver's license or I.D.), provide another form of identification such as your social security number or Medi-Cal number.

TO SCHOOL OFFICIALS:

1. Section 48204 of the Education Code provides that this affidavit constitutes a sufficient basis for a determination of residency of the minor, without the requirement of a guardianship or other custody order, unless the school district determines from actual facts that the minor is not living with the caregiver.

2. The school district may require additional reasonable evidence that the caregiver lives at the address provided in item 4.

TO HEALTH CARE PROVIDERS AND HEALTH CARE SERVICE PLANS:

1. No person who acts in good faith reliance upon a caregiver's authorization affidavit to provide medical or dental care, without actual knowledge of facts contrary to those stated on the affidavit, is subject to criminal liability or to civil liability to any person, or is subject to professional disciplinary action, for such reliance if the applicable portions of the form are completed.

2. This affidavit does not confer dependency for health care coverage purposes.

SEC. 51. Section 7571 of the Family Code is amended to read:
7571. (a) On and after January 1, 1995, upon the event of a live birth, prior to an unmarried mother leaving any hospital, clinic, or birthing center that is licensed to provide obstetric services, the person responsible for registering live births under Sections 10101 and 10102 of the Health and Safety Code shall provide to the natural mother and shall attempt to provide, at the place of birth, to the man identified by the natural mother as the natural father, a declaration for completion that meets the requirements of Section 7574. The person responsible for registering the birth shall file the declaration, if completed, with the birth certificate, and, if requested, shall transmit a copy of the declaration to the district attorney of the county where the birth occurred. A copy of the declaration shall be

made available to each of the attesting parents.

(b) No health care provider shall be subject to any civil, criminal, or administrative liability for any negligent act or omission relative to the accuracy of the information provided, or for filing the declaration with the appropriate state or local agencies.

(c) The district attorney shall pay to the hospital, clinic, or other place of birth that files the completed declaration with the birth certificate, as set forth in this subdivision, the sum of ten dollars (\$10) for each declaration filed by it.

(d) Except as provided in Section 7575, the child of a woman and a man executing a declaration of paternity under this chapter, which meets the requirements of Section 7574, is conclusively presumed to be the man's child. The presumption under this section has the same force and effect as the presumption under Section 7540.

(e) A voluntary declaration of paternity that meets the requirements of Section 7574 shall be recognized as the basis for the establishment of an order for child custody or support.

(f) In any action to rebut the presumption created by this subdivision, a voluntary declaration of paternity that meets the requirements of Section 7574 shall be admissible as evidence to determine paternity of the child named in the voluntary declaration of paternity.

SEC. 51.5. Section 7572 of the Family Code is amended to read:

7572. (a) The State Department of Social Services, in consultation with the State Department of Health Services, the California Association of Hospitals and Health Systems, and other affected health provider organizations, shall work cooperatively to develop informational pamphlets and related materials to assist providers and parents in complying with this chapter.

(b) The State Department of Social Services shall, free of charge, make available to hospitals, clinics, and other places of birth any and all informational and training materials for the program under this chapter, as well as the paternity declaration form. The State Department of Social Services shall make training available to every hospital, clinic, and other place of birth no later than October 31, 1994.

(c) The State Department of Social Services may adopt regulations, including emergency regulations, necessary to implement this chapter.

SEC. 52. Section 7574 of the Family Code is amended to read:

7574. In order for a conclusive presumption of paternity to be established pursuant to this chapter, the following must appear on the declaration:

(a) The full name, place, and date of birth of the child.

(b) The full name and current address of the attesting father of the child.

(c) The full name and current address of the attesting mother of the child.

(d) The social security numbers of the attesting mother and father

of the child, on a voluntary basis.

(e) A notice captioned "READ THIS BEFORE SIGNING" conspicuously placed on the declaration stating:

"(1) FATHER AND MOTHER: You do not have to sign this form. The choice is up to you. If any part of this form does not make sense, talk to the county Family Support Division or a lawyer before you sign it.

(2) FATHER AND MOTHER: Paternity means legal fatherhood. ONLY the natural father may sign this form. If the man signs this form, the law of California will give him certain rights. He will have the same rights as if the were married to the mother. These rights include custody, the right to agree to adoption, and the right to visit your child. You may want to pursue an order for custody. Your child will have rights too (such as the right to inherit from the father).

(3) FATHER: Once you sign this form and say you are the child's father, the law says you also have duties like helping to support your child. If you and the mother separate, the court may order you to pay child support.

(4) FATHER: You have the right to go to trial to decide paternity. At the trial you have the right to tell your side of the story, to ask questions, and make witnesses attend. By signing the form you understand you are, by choice, giving up your right to a trial on the issue of paternity unless you challenge this paternity form.

(5) FATHER AND MOTHER: This form can be challenged in court only by using blood or genetic test results which show the man is not the natural father. This may be done if no more than three years have passed since the form was signed. This means three years from the date of the last signature.

(6) FATHER AND MOTHER: If there is no court challenge to paternity during the three-year period, the man signing this form is the legal father of the child. This is true even if blood or genetic tests show he is not the father after the three years have passed.

(7) FATHER AND MOTHER: You do not have to write down your social security number. The number helps find parents so child support and other benefits your child may need may be collected. If you write down your social security number, it will be on any copies that are made of this form."

(f) The signature of the father attesting under penalty of perjury under the laws of the State of California that the information provided is true and correct, that he has read and fully understands the rights he is waiving, that he is waiving those rights willingly, knowingly, and intelligently, that he understands the duties imposed on him as described in subdivision (e), and that he is executing this declaration to establish that he is the natural father of the child and understands that by acknowledging paternity of the child he accepts an obligation to provide child support under the laws of the State of California.

(g) The signature of the natural mother attesting under penalty of perjury under the laws of the State of California that the

information provided is true and correct, that the man named is the natural father of her child, that she is executing this declaration to name the natural father of her child and that she fully understands that by executing this declaration she is establishing the paternal rights of the named father under the laws of the State of California, which include the right to physical and legal custody of the child, the right to consent to adoption of the child, and visitation rights.

(h) The full name and signature of the person witnessing the signing of the paternity declaration by both the natural mother and the father.

(i) A statement that execution of this declaration authorizes the state to add the signator's name as the natural father of the child to the child's birth certificate.

SEC. 52.2. Section 7575 of the Family Code is amended to read:

7575. (a) (1) The presumption established by this chapter may be rebutted by any person, by a motion for blood tests as provided in subdivision (a) of Section 7541, within three years from the date of execution of the declaration by the attesting father, or by the attesting mother, whichever signature is later. The two-year statute of limitations specified in subdivision (b) of Section 7541 is inapplicable for purposes of this section.

(2) The Judicial Council, in consultation with the Family Support Counsel and representatives of the Senate Judiciary Committee and the Assembly Judiciary Committee, shall develop the forms and procedures necessary to effectuate this subdivision.

(b) A presumption under this chapter shall not override a presumption arising under Section 7540. A presumption under this chapter shall override all presumptions except a presumption arising under Section 7540, including presumptions under Section 7611.

SEC. 52.3. Section 7575 of the Family Code is amended to read:

7575. (a) (1) The presumption established by this chapter may be rebutted by any person by requesting blood or genetic tests pursuant to Chapter 2 (commencing with Section 7550). The notice of motion for blood or genetic tests pursuant to this section shall be supported by a declaration under oath submitted by the moving party stating the factual basis for placing the issue of paternity before the court. The notice of motion for blood tests shall be made within three years from the date of execution of the declaration by the attesting father, or by the attesting mother, whichever signature is later. The two-year statute of limitations specified in subdivision (b) of Section 7541 is inapplicable for purposes of this section.

(2) The Judicial Council, in consultation with the Family Support Council, the State Department of Social Services, a legal services organization providing representation on child support matters, and representatives of the Senate Judiciary Committee and the Assembly Judiciary Committee, shall develop the forms and procedures necessary to effectuate this subdivision.

(b) A presumption under this chapter shall override all statutory presumptions of paternity except a presumption arising under

Section 7540 or 7555.

SEC. 52.4. Section 7577 of the Family Code is repealed.

SEC. 53. Section 7611 of the Family Code is amended to read:

7611. A man is presumed to be the natural father of a child if he meets the conditions provided in Chapter 1 (commencing with Section 7540) or Chapter 3 (commencing with Section 7570) of Part 2 or in any of the following subdivisions:

(a) He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a judgment of separation is entered by a court.

(b) Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and either of the following is true:

(1) If the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce.

(2) If the attempted marriage is invalid without a court order, the child is born within 300 days after the termination of cohabitation.

(c) After the child's birth, he and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and either of the following is true:

(1) With his consent, he is named as the child's father on the child's birth certificate.

(2) He is obligated to support the child under a written voluntary promise or by court order.

(d) He receives the child into his home and openly holds out the child as his natural child.

(e) If the child was born and resides in a nation with which the United States engages in an Orderly Departure Program or successor program, he acknowledges that he is the child's father in a declaration under penalty of perjury, as specified in Section 2015.5 of the Code of Civil Procedure. This subdivision shall remain in effect only until January 1, 1997, and on that date shall become inoperative.

SEC. 53.5. Section 7611 of the Family Code is amended to read:

7611. A man is presumed to be the natural father of a child if he meets the conditions provided in Chapter 1 (commencing with Section 7540) or Chapter 3 (commencing with Section 7570) of Part 2 or in any of the following subdivisions:

(a) He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a judgment of separation is entered by a court.

(b) Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and either of the following is true:

(1) If the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce.

(2) If the attempted marriage is invalid without a court order, the child is born within 300 days after the termination of cohabitation.

(c) After the child's birth, he and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and either of the following is true:

(1) With his consent, he is named as the child's father on the child's birth certificate.

(2) He is obligated to support the child under a written voluntary promise or by court order.

(d) He receives the child into his home and openly holds out the child as his natural child.

(e) He responds within 30 court days of the date of service in the manner prescribed in either paragraph 1 or 2 of the notice prescribed in subdivision (d) of Section 7666.1 to a notice alleging that he is or could be the natural father of a child to be adopted or placed or relinquished for adoption.

(f) If the child was born and resides in a nation with which the United States engages in an Orderly Departure Program or successor program, he acknowledges that he is the child's father in a declaration under penalty of perjury, as specified in Section 2015.5 of the Code of Civil Procedure. This subdivision shall remain in effect only until January 1, 1997, and on that date shall become inoperative.

SEC. 54. Section 7612 of the Family Code is amended to read:

7612. (a) Except as provided in Chapter 1 (commencing with Section 7540) and Chapter 3 (commencing with Section 7570) of Part 2 or in Section 20102, a presumption under Section 7611 is a rebuttable presumption affecting the burden of proof and may be rebutted in an appropriate action only by clear and convincing evidence.

(b) If two or more presumptions arise under Section 7611 which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls.

(c) The presumption under Section 7611 is rebutted by a judgment establishing paternity of the child by another man.

SEC. 54.5. Section 7612 of the Family Code is amended to read:

7612. (a) Except as provided in Chapter 1 (commencing with Section 7540) and Chapter 3 (commencing with Section 7570) of Part 2 or in Section 20102, a presumption under Section 7611 is a rebuttable presumption affecting the burden of proof and may be

rebutted in an appropriate action only by clear and convincing evidence.

(b) If two or more presumptions arise under Section 7611 which conflict with each other, and one of the presumed fathers is the biological father, the biological father shall be declared the presumed father; otherwise the presumption which on the facts is founded on the weightier considerations of policy and logic controls.

(c) The presumption under Section 7611 is rebutted by a judgment establishing paternity of the child by another man except where a man is presumed to be the natural father under subdivision (e) of Section 7611.

SEC. 55. Section 7635 of the Family Code is amended to read:

7635. (a) The child may, if under the age of 12 years, and shall, if 12 years of age or older, be made a party to the action. If the child is a minor and a party to the action, the child shall be represented by a guardian ad litem appointed by the court. The guardian ad litem need not be represented by counsel if the guardian ad litem is a relative of the child.

(b) The natural mother, each man presumed to be the father under Section 7611, and each man alleged to be the natural father, may be made parties and shall be given notice of the action in the manner prescribed in Section 7666 and an opportunity to be heard.

(c) The court may align the parties.

(d) In any initial or subsequent proceeding under this chapter where custody of, or visitation with, a minor child is in issue, the court may, if it determines it would be in the best interest of the minor child, appoint private counsel to represent the interests of the minor child pursuant to Chapter 10 (commencing with Section 3150) of Part 2 of Division 8.

SEC. 55.2. Section 7640 of the Family Code is amended to read:

7640. The court may order reasonable fees of counsel, experts, and the child's guardian ad litem, and other costs of the action and pretrial proceedings, including blood tests, to be paid by the parties, excluding any governmental entity, in proportions and at times determined by the court.

SEC. 55.4. Section 7808 of the Family Code is amended to read:

7808. This part does not apply to a minor adjudged a dependent child of the juvenile court pursuant to subdivision (c) of Section 360 of the Welfare and Institutions Code on and after January 1, 1989, during the period in which the minor is a dependent child of the court. For those minors, the exclusive means for the termination of parental rights are provided in the following statutes:

(a) Section 366.26 of the Welfare and Institutions Code.

(b) Sections 8604 to 8606, inclusive, and 8700 of this code.

(c) Chapter 5 (commencing with Section 7660) of Part 3 of this division of this code.

SEC. 56. Section 8700 of the Family Code is amended to read:

8700. (a) Either birth parent may relinquish a child to the department or a licensed adoption agency for adoption by a written

statement signed before two subscribing witnesses and acknowledged before an authorized official of the department or agency. The relinquishment, when reciting that the person making it is entitled to the sole custody of the child and acknowledged before the officer, is prima facie evidence of the right of the person making it to the sole custody of the child and the person's sole right to relinquish.

(b) A birth parent who is a minor has the right to relinquish the birth parent's child for adoption to the department or a licensed adoption agency, and the relinquishment is not subject to revocation by reason of the minority.

(c) If a birth parent resides outside this state and the child is being or will be cared for and is or will be placed for adoption by the department or a licensed adoption agency, the birth parent may relinquish the child to the department or agency by a written statement signed by the birth parent before a notary on a form prescribed by the department, and previously signed by an authorized official of the department or agency, which signifies the willingness of the department or agency to accept the relinquishment.

(d) The relinquishment authorized by this section has no effect until a certified copy is filed with the department. Upon filing with the department, the relinquishment is final and may be rescinded only by the mutual consent of the department or licensed adoption agency to which the child was relinquished and the birth parent or parents relinquishing the child.

(e) The birth parent may name in the relinquishment the person or persons with whom the birth parent intends that placement of the child for adoption be made by the department or licensed adoption agency.

(f) Notwithstanding subdivision (d), if the relinquishment names the person or persons with whom placement by the department or licensed adoption agency is intended and the child is not placed in the home of the named person or persons or the child is removed from the home prior to the granting of the adoption, the department or agency shall mail a notice by certified mail, return receipt requested, to the birth parent signing the relinquishment within 72 hours of the decision not to place the child for adoption or the decision to remove the child from the home.

(g) The birth parent has 30 days from the date on which the notice described in subdivision (f) was mailed to rescind the relinquishment.

(1) If the birth parent requests rescission during the 30-day period, the department or licensed adoption agency shall rescind the relinquishment.

(2) If the birth parent does not request rescission during the 30-day period, the department or licensed adoption agency shall select adoptive parents for the child.

(3) If the birth parent and the department or licensed adoption

agency wish to identify a different person or persons during the 30-day period with whom the child is intended to be placed, the initial relinquishment shall be rescinded and a new relinquishment identifying the person or persons completed.

(h) The filing of the relinquishment with the department terminates all parental rights and responsibilities with regard to the child, except as provided in subdivisions (f) and (g).

SEC. 56.5. Section 21365.6 of the Government Code is amended to read:

21365.6. The surviving spouse of a member who has attained the minimum age for voluntary service retirement applicable to him or her in his or her last employment preceding death, and who is eligible to receive an allowance pursuant to Section 21365.5, shall instead receive an allowance which is equal to the amount that the member would have received if the member had been retired from service on the date of death and had elected optional settlement 2 and Section 21336. The surviving spouse of a member who has attained the minimum age for voluntary service retirement applicable to him or her in his or her last employment preceding death, and who is eligible to receive a special death benefit in lieu of an allowance under Section 21365.5, may elect to instead receive an allowance which is equal to the amount that the member would have received if the member had been retired from service on the date of death and had elected optional settlement 2 and Section 21336.

The allowance shall be payable as long as the surviving spouse lives or until remarriage. Upon the death or remarriage of the surviving spouse, the benefit shall be continued to minor children, as defined in Section 6500 of the Family Code, or a lump sum shall be paid as provided under circumstances specified in Section 21365.5 or in Sections 21364 and 21366, as the case may be.

The allowance provided by this section shall be paid in lieu of the basic death benefit, but the surviving spouse qualifying for the allowance may elect before the first payment on account of it to receive such basic death benefit in lieu of the allowance.

This section shall apply with respect to state members whose death occurs on and after July 1, 1976.

All references in this code to Section 21365.5 shall be deemed to include this section in the alternative.

This section shall not apply to any contracting agency nor to the employees of any contracting agency unless and until the agency elects to be subject to this section by amendment to its contract made in the manner prescribed for approval of contracts, except that an election among the employees is not required, or, in the case of contracts made after January 1, 1985, by express provision in the contract making the contracting agency subject to this section.

SEC. 56.6. Section 1522 of the Health and Safety Code is amended to read:

1522. It is the intent of the Legislature in enacting this section to

require the fingerprints of those individuals whose contact with community care clients may pose a risk to the clients' health and safety.

(a) Before issuing a license or special permit to any person or persons to operate or manage a community care facility, the state department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of, or, after having been arrested and released on bail or on his or her own recognizance, is currently awaiting trial for, a crime other than a minor traffic violation. No fee shall be charged by the Department of Justice or the state department for the fingerprinting of an applicant for a license or special permit to operate a facility providing nonmedical board, room, and care for six or less children or for obtaining a criminal record of the applicant pursuant to this section. If it is found that the applicant, or any other person specified in subdivision (b), has been convicted of, or is awaiting trial for, a crime other than a minor traffic violation, the Department of Justice shall notify the State Department of Social Services of the fact and the application shall be denied, unless the director grants an exemption pursuant to subdivision (f). If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

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

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

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

(3) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene.

(4) Any staff person or employee who has frequent and routine contact with the clients. In determining who has frequent contact, any volunteer who is in the facility shall be exempt unless the volunteer is used to replace or supplement staff in providing direct care and supervision of clients. In determining who has routine contact, staff and employees under direct onsite supervision and who are not providing direct care and supervision or who have only occasional or intermittent contact with clients shall be exempt.

(5) Except for staff members of social rehabilitation facilities serving minors with alcohol or drug abuse problems, staff members of social rehabilitation facilities, other than those specified in paragraphs (1) and (2), are exempt from fingerprinting requirements.

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

(7) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as

determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(c) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a community care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit these fingerprints to the Department of Justice not later than four calendar days following employment, residence, or initial presence in the community care facility. These fingerprints shall be on a card provided by the State Department of Social Services for the purpose of obtaining a permanent set of fingerprints. Fingerprints not submitted to the Department of Justice, as required in this section, shall result in the citation of a deficiency and the fingerprints shall then be submitted to the State Department of Social Services for processing. Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprints.

Within 30 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in subdivision (a). If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 15 calendar days of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice shall, within 15 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible.

Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of, or is awaiting trial for, a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, 273d, or subdivision (a) or (b) of Section 368 of the Penal Code, or has been convicted of a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (f). If the conviction or arrest was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the community care facility, or bar the

person from entering the community care facility; or (2) seek an exemption pursuant to subdivision (f). The State Department of Social Services shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered.

(d) Before issuing a license, special permit, or certificate of approval to any person or persons to operate or manage a foster family home or certified family home as described in Section 1506, the state department or other approving authority shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other adult person residing in the home has ever been convicted of, or arrested for, a crime other than a minor traffic violation. That criminal history information shall include the full criminal record, if any, of those persons. No fee shall be charged by the Department of Justice or the state department for the fingerprinting of an applicant for a license, special permit, or certificate of approval described in this subdivision. The record, if any, shall be taken into consideration when evaluating a prospective applicant. If the applicant or other persons specified in this subdivision have convictions that would make the applicant's home unfit as a foster family home or a certified family home, the license, special permit, or certificate of approval shall be denied. For the purposes of this subdivision, a criminal record clearance provided under Section 8712 of the Family Code may be used by the department or other approving agency.

Any person specified in this subdivision shall, as a part of the application, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal arrests or convictions and shall submit these fingerprints to the licensing agency or other approving authority. The foster family agency shall obtain fingerprints from certified home applicants and from persons specified in subdivision (b) and shall submit them directly to the Department of Justice. Within five working days of the receipt of the criminal record or information regarding criminal convictions from the Department of Justice, the department shall notify the applicant of any criminal arrests or convictions. If no arrests or convictions are recorded, the Department of Justice shall provide the foster family agency with a statement of that fact concurrent with providing the information to the State Department of Social Services. The application shall be denied if it is determined by the approving authority, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, or has been convicted of an offense specified in Section 220, 243.4, 264.1, paragraph (1) of Section 273a, Section 273d, 288, 289, or subdivision (a) or (b) of Section 368 of the Penal Code, or was convicted of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(e) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which the state

department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction.

(f) After review of the record, the director may grant an exemption from disqualification for a license or special permit pursuant to subdivision (a), or for employment, residence, or presence in a community care facility as specified in subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). Except as otherwise provided in this subdivision, no exemption shall be granted pursuant to this subdivision if the conviction was for an offense specified in Section 220, 243.4, 264.1, paragraph (1) of Section 273a, Sections 273d, 288, 289, or subdivision (a) or (b) of Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code. The director may grant an exemption if the employee or prospective employee, who was convicted of a crime against an individual in paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5 of the Penal Code, has been rehabilitated as provided in Section 4852.03 of the Penal Code and has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years and has the recommendation of the district attorney representing the employee's county of residence, or if the employee or prospective employee has received a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(g) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal records clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another state licensing district office.

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

(i) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written

notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1558, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

SEC. 56.7. Section 1522 of the Health and Safety Code is amended to read:

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

(a) Before issuing a license or special permit to any person or persons to operate or manage a community care facility, the state department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of, or, after having been arrested and released on bail or on his or her own recognizance, is currently awaiting trial for, a crime other than a minor traffic violation. No fee shall be charged by the Department of Justice or the state department for the fingerprinting of an applicant for a license or special permit to operate a facility providing nonmedical board, room, and care for six or less children or for obtaining a criminal record of the applicant pursuant to this section. If it is found that the applicant, or any other person specified in subdivision (b), has been convicted of, or is awaiting trial for, a crime other than a minor traffic violation, the Department of Justice shall notify the State Department of Social Services of the fact and the application shall be denied, unless the director grants an exemption pursuant to subdivision (f). If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

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

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

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

(3) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene.

(4) Any staff person or employee who has frequent and routine contact with the clients. In determining who has frequent contact, any volunteer who is in the facility shall be exempt unless the volunteer is used to replace or supplement staff in providing direct care and supervision of clients. In determining who has routine contact, staff and employees under direct onsite supervision and who are not providing direct care and supervision or who have only occasional or intermittent contact with clients shall be exempt.

(5) Except for staff members of social rehabilitation facilities serving minors with alcohol or drug abuse problems, staff members of social rehabilitation facilities, other than those specified in paragraphs (1) and (2), are exempt from fingerprinting requirements.

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

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

(c) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a community care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit these fingerprints to the Department of Justice not later than four calendar days following employment, residence, or initial presence in the community care facility. These fingerprints shall be on a card provided by the State Department of Social Services for the purpose of obtaining a permanent set of fingerprints. Fingerprints not submitted to the Department of Justice, as required in this section, shall result in the citation of a deficiency and the fingerprints shall then be submitted to the State Department of Social Services for processing. Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprints.

Within 30 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in subdivision (a). If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 15 calendar days of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice shall, within 15 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible.

Except for persons specified in paragraph (2) of subdivision (b),

the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of, or is awaiting trial for, a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, 273d, or subdivision (a) or (b) of Section 368 of the Penal Code, or has been convicted of a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (f). If the conviction or arrest was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility; or (2) seek an exemption pursuant to subdivision (f). The State Department of Social Services shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered.

(d) Before issuing a license, special permit, or certificate of approval to any person or persons to operate or manage a foster family home or certified family home as described in Section 1506, the state department or other approving authority shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other adult person residing in the home has ever been convicted of, or arrested for, a crime other than a minor traffic violation. That criminal history information shall include the full criminal record, if any, of those persons. No fee shall be charged by the Department of Justice or the state department for the fingerprinting of an applicant for a license, special permit, or certificate of approval described in this subdivision. The record, if any, shall be taken into consideration when evaluating a prospective applicant. If the applicant or other persons specified in this subdivision have convictions that would make the applicant's home unfit as a foster family home or a certified family home, the license, special permit, or certificate of approval shall be denied. For the purposes of this subdivision, a criminal record clearance provided under Section 8712 of the Family Code may be used by the department or other approving agency.

Any person specified in this subdivision shall, as a part of the application, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal arrests or convictions and shall submit these fingerprints to the licensing agency or other approving authority. The foster family agency shall obtain fingerprints from certified home applicants and from persons specified in subdivision (b) and shall submit them directly to the Department of Justice.

Within five working days of the receipt of the criminal record or information regarding criminal convictions from the Department of Justice, the department shall notify the applicant of any criminal arrests or convictions. If no arrests or convictions are recorded, the Department of Justice shall provide the foster family agency with a statement of that fact concurrent with providing the information to the State Department of Social Services. The application shall be denied if it is determined by the approving authority, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, or has been convicted of an offense specified in Section 220, 243.4, 264.1, paragraph (1) of subdivision (a) of Section 273a, Section 273d, 288, 289, or subdivision (a) or (b) of Section 368 of the Penal Code, or was convicted of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(e) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the state department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction.

(f) After review of the record, the director may grant an exemption from disqualification for a license or special permit pursuant to subdivision (a), or for employment, residence, or presence in a community care facility as specified in subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). Except as otherwise provided in this subdivision, no exemption shall be granted pursuant to this subdivision if the conviction was for an offense specified in Section 220, 243.4, 264.1, paragraph (1) of subdivision (a) of Section 273a, Sections 273d, 288, 289, or subdivision (a) or (b) of Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code. The director may grant an exemption if the employee or prospective employee, who was convicted of a crime against an individual in paragraph (1), (2), (7), or (8) of subdivision (c) of

Section 667.5 of the Penal Code, has been rehabilitated as provided in Section 4852.03 of the Penal Code and has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years and has the recommendation of the district attorney representing the employee's county of residence, or if the employee or prospective employee has received a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(g) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal records clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another state licensing district office.

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

(i) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1558, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(j) (1) In order to expedite the current criminal record clearance and fingerprint process of the Department of Justice pursuant to subdivisions (a) and (c), the Department of Justice shall complete work on all of its current backlog of criminal record clearances for community care facilities licensed by the State Department of Social Services by July 1, 1995.

(2) Effective January 1, 1995, the Department of Justice shall complete all new requests for criminal record clearances for community care facilities within 30 days of receipt.

(3) The Department of Justice shall coordinate with the State Department of Social Services to establish and implement an automated live-scan processing system for fingerprints in two district offices of the Community Care Licensing Division of the State Department of Social Services by July 1, 1995. These live-scan processing units shall be connected to the main system at the Department of Justice by July 1, 1996, and shall become part of that department's pilot project in accordance with its Long-Range Plan. The State Department of Social Services may charge a fee not to exceed five dollars (\$5) or the actual cost of processing a set of live-scan fingerprints.

(4) The Department of Justice shall provide a report to the Assembly Human Services Committee and to the Senate Health and Human Services Committee by July 15, 1995, regarding the completion of backlogged criminal record clearance requests pursuant to paragraph (1) and the progress on implementing the

automated live-scan processing system in the two district offices pursuant to paragraph (3). The Department of Justice shall provide a report to the Assembly Human Services Committee and to the Senate Health and Human Services Committee by April 15, 1996, regarding the progress of the implementation of the statewide CAL-CII system; the number of requests for criminal clearances received pursuant to this section during the previous year; the number of criminal record clearances requested and completed pursuant to this section within a 17-day "expedite" period or within the 30-day period required by paragraph (2); and the number of requests and reasons for delays beyond the 30-day period.

SEC. 56.8. Section 1522 of the Health and Safety Code is amended to read:

1522. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with community care clients may pose a risk to the clients' health and safety.

(a) Before issuing a license or special permit to any person or persons to operate or manage a community care facility, the State Department of Social Services shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation, or arrested for any crime specified in Section 290 of the Penal Code or arrested for violating Section 245, 273.5, subdivision (b) of Section 273a, or prior to January 1, 1994, paragraph (2) of Section 273a, of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated. That criminal history information shall include the full criminal record, if any, of those persons. No fee shall be charged by the Department of Justice or the State Department of Social Services for the fingerprinting of an applicant for a license or special permit to operate a facility providing nonmedical board, room, and care for six or less children or for obtaining a criminal record of the applicant pursuant to this section. If it is found that the applicant, or any other person specified in subdivision (b), has been convicted of, or is awaiting trial for, a crime other than a minor traffic violation, the Department of Justice shall notify the State Department of Social Services of the fact and the application shall be denied, unless the director grants an exemption pursuant to subdivision (f). If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

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

- (1) Adults responsible for administration or direct supervision of staff.
- (2) Any person, other than a client, residing in the facility.
- (3) Any person who provides client assistance in dressing,

grooming, bathing, or personal hygiene.

(4) Any staff person or employee who has frequent and routine contact with the clients. In determining who has frequent contact, any volunteer who is in the facility shall be exempt unless the volunteer is used to replace or supplement staff in providing direct care and supervision of clients. In determining who has routine contact, staff and employees under direct onsite supervision and who are not providing direct care and supervision or who have only occasional or intermittent contact with clients shall be exempt.

(5) Except for staff members of social rehabilitation facilities serving minors with alcohol or drug abuse problems, staff members of social rehabilitation facilities, other than those specified in paragraphs (1) and (2), are exempt from fingerprinting requirements.

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

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

(c) (1) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a community care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit these fingerprints to the Department of Justice not later than four calendar days following employment, residence, or initial presence in the community care facility. These fingerprints shall be on a card provided by the State Department of Social Services for the purpose of obtaining a permanent set of fingerprints. Fingerprints not submitted to the Department of Justice, as required in this section, shall result in the citation of a deficiency and the fingerprints shall then be submitted to the State Department of Social Services for processing. Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprints.

(2) Within 30 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in subdivision (a). If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 15 calendar days of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice shall, within 15 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible.

(3) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of, or is awaiting trial for, a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, 273d, or subdivision (a) or (b) of Section 368 of the Penal Code, or has been convicted of a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (f). If the conviction or arrest was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility; or (2) seek an exemption pursuant to subdivision (f). The State Department of Social Services shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered.

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

(5) Concurrently with notifying the licensee pursuant to paragraph (3), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (f). The individual may seek an exemption even if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (3).

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

information shall include the full criminal record, if any, of those persons. No fee shall be charged by the Department of Justice or the State Department of Social Services for the fingerprinting of an applicant for a license, special permit, or certificate of approval described in this subdivision. The record, if any, shall be taken into consideration when evaluating a prospective applicant. If the applicant or other persons specified in this subdivision have convictions that would make the applicant's home unfit as a foster family home or a certified family home, the license, special permit, or certificate of approval shall be denied. For the purposes of this subdivision, a criminal record clearance provided under Section 8712 of the Family Code may be used by the department or other approving agency.

Any person specified in this subdivision shall, as a part of the application, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions or arrests for any crime against a child, spousal/cohabitant abuse, or for any crime for which the department cannot grant an exemption if the person was convicted, and shall submit these fingerprints to the licensing agency or other approving authority. The foster family agency shall obtain fingerprints from certified home applicants and from persons specified in subdivision (b) and shall submit them directly to the Department of Justice. Within five working days of the receipt of the criminal record or information regarding criminal convictions from the Department of Justice, the department shall notify the applicant of any criminal arrests or convictions. If no arrests or convictions are recorded, the Department of Justice shall provide the foster family agency with a statement of that fact concurrent with providing the information to the State Department of Social Services. The application shall be denied if it is determined by the approving authority, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, or has been convicted of an offense specified in Section 220, 243.4, 264.1, subdivision (a) of Section 273a, or prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, 289, or subdivision (a) or (b) of Section 368 of the Penal Code, or was convicted of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

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

(f) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which the State Department of Social Services is permitted to take following the

establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(g) (1) After review of the record, the director may grant an exemption from disqualification for a license or special permit pursuant to subdivision (a), or for a license, special permit, or certificate of approval pursuant to subdivision (d), or for employment, residence, or presence in a community care facility as specified in subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). Except as otherwise provided in this subdivision, no exemption shall be granted pursuant to this subdivision if the conviction was for an offense specified in Section 220, 243.4, 264.1, subdivision (a) of Section 273a, or prior to January 1, 1994, paragraph (1) of Section 273a, Sections 273d, 288, 289, or subdivision (a) or (b) of Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code. The director may grant an exemption if the employee or prospective employee, who was convicted of a crime against an individual in paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5 of the Penal Code, has been rehabilitated as provided in Section 4852.03 of the Penal Code and has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years and has the recommendation of the district attorney representing the employee's county of residence, or if the employee or prospective employee has received a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(2) The department shall not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information

unless the department complies with the requirements of Section 1558.

(h) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal records clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another state licensing district office.

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

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

(j) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1558, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

SEC. 56.9. Section 1522 of the Health and Safety Code is amended to read:

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

(a) Before issuing a license or special permit to any person or persons to operate or manage a community care facility, the State Department of Social Services shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation, or arrested for any crime specified in Section 290 of the Penal Code or arrested for violating Section 245, 273.5, paragraph (b) of Section 273a, or prior to January 1, 1994 paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not

been exonerated. That criminal history information shall include the full criminal record, of any of those persons. No fee shall be charged by the Department of Justice or the State Department of Social Services for the fingerprinting of an applicant for a license or special permit to operate a facility providing nonmedical board, room, and care for six or less children or for obtaining a criminal record of the applicant pursuant to this section. If it is found that the applicant, or any other person specified in subdivision (b), has been convicted of, or is awaiting trial for, a crime other than a minor traffic violation, the Department of Justice shall notify the State Department of Social Services of the fact and the application shall be denied, unless the director grants an exemption pursuant to subdivision (f). If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

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

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

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

(3) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene.

(4) Any staff person or employee who has frequent and routine contact with the clients. In determining who has frequent contact, any volunteer who is in the facility shall be exempt unless the volunteer is used to replace or supplement staff in providing direct care and supervision of clients. In determining who has routine contact, staff and employees under direct onsite supervision and who are not providing direct care and supervision or who have only occasional or intermittent contact with clients shall be exempt.

(5) Except for staff members of social rehabilitation facilities serving minors with alcohol or drug abuse problems, staff members of social rehabilitation facilities, other than those specified in paragraphs (1) and (2), are exempt from fingerprinting requirements.

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

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

(c) (1) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a community care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee

shall submit these fingerprints to the Department of Justice not later than four calendar days following employment, residence, or initial presence in the community care facility. These fingerprints shall be on a card provided by the State Department of Social Services for the purpose of obtaining a permanent set of fingerprints. Fingerprints not submitted to the Department of Justice, as required in this section, shall result in the citation of a deficiency and the fingerprints shall then be submitted to the State Department of Social Services for processing. Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprints.

(2) Within 30 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in subdivision (a). If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 15 calendar days of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice shall, within 15 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible.

(3) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of, or is awaiting trial for, a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, 273d, or subdivision (a) or (b) of Section 368 of the Penal Code, or has been convicted of a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (f). If the conviction or arrest was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility; or (2) seek an exemption pursuant to subdivision (f). The State Department of Social Services shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered.

(4) The department may issue an exemption on its own motion pursuant to subdivision (f) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulation to

establish the criteria to grant an exemption pursuant to this paragraph.

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

(d) Before issuing a license, special permit, or certificate of approval to any person or persons to operate or manage a foster family home or certified family home as described in Section 1506, the State Department of Social Services or other approving authority shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other adult person residing in the home has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code or arrested for violating Section 245, 273.5, subdivision (b) of Section 273a, or prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated. That criminal history information shall include the full criminal record, if any, of those persons. No fee shall be charged by the Department of Justice or the State Department of Social Services for the fingerprinting of an applicant for a license, special permit, or certificate of approval described in this subdivision. The record, if any, shall be taken into consideration when evaluating a prospective applicant. If the applicant or other persons specified in this subdivision have convictions that would make the applicant's home unfit as a foster family home or a certified family home, the license, special permit, or certificate of approval shall be denied. For the purposes of this subdivision, a criminal record clearance provided under Section 8712 of the Family Code may be used by the department or other approving agency.

Any person specified in this subdivision shall, as a part of the application, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions or arrests for any crime against a child, spousal/cohabitant abuse or for any crime for which the department cannot grant an exemption if the person was convicted and shall submit these fingerprints to the licensing agency or other approving authority. The foster family agency shall obtain fingerprints from certified home applicants and from persons specified in subdivision (b) and shall submit them directly to the Department of Justice. Within five working days of the receipt of the criminal record or information regarding criminal convictions from the Department of Justice, the department shall notify the applicant of any criminal arrests or convictions. If no arrests or convictions are recorded, the Department of Justice shall provide the foster family agency with a statement of that fact concurrent with providing the

information to the State Department of Social Services. The application shall be denied if it is determined by the approving authority, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, or has been convicted of an offense specified in Section 220, 243.4, 264.1, subdivision (a) of Section 273a, or prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, 289, or subdivision (a) or (b) of Section 368 of the Penal Code, or was convicted of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

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

(f) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which the State Department of Social Services is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(g) (1) After review of the record, the director may grant an exemption from disqualification for a license or special permit pursuant to subdivision (a), or for a license, special permit, or certificate of approval pursuant to subdivision (d), or for employment, residence, or presence in a community care facility as specified in subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision

(c). Except as otherwise provided in this subdivision, no exemption shall be granted pursuant to this subdivision if the conviction was for an offense specified in Section 220, 243.4, 264.1, subdivision (a) of Section 273a, or prior to January 1, 1994, paragraph (1) of subdivision (a) of Section 273a, Sections 273d, 288, 289, or subdivision (a) or (b) of Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code. The director may grant an exemption if the employee or prospective employee, who was convicted of a crime against an individual in paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5 of the Penal Code, has been rehabilitated as provided in Section 4852.03 of the Penal Code and has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years and has the recommendation of the district attorney representing the employee's county of residence, or if the employee or prospective employee has received a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

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

(h) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal records clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another state licensing district office.

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

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

(j) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1558, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(k) (1) In order to expedite the current criminal record clearance and fingerprint process of the Department of Justice pursuant to subdivisions (a) and (c), the Department of Justice shall complete work on all of its current backlog of criminal records clearances for community care facilities licensed by the State Department of Social Services by July 1, 1995.

(2) Effective January 1, 1995, the Department of Justice shall complete all new requests for criminal record clearances for community care facilities within 30 days of receipt.

(3) The Department of Justice shall coordinate with the State Department of Social Services to establish and implement an automated live-scan processing system for fingerprints in two district offices of the Community Care Licensing Division of the State Department of Social Services by July 1, 1995. These live-scan processing units shall be connected to the main system at the Department of Justice by July 1, 1996, and shall become part of that department's pilot project in accordance with its long-range plan. The State Department of Social Services may charge a fee not to exceed five dollars (\$5) or the actual cost of processing a set of live-scan fingerprints.

(4) The Department of Justice shall provide a report to the Assembly Human Services Committee and to the Senate Health and Human Services Committee by July 15, 1995, regarding the completion of backlogged criminal record clearance requests pursuant to paragraph (1) and the progress on implementing the automated live-scan processing system in the two district offices pursuant to paragraph (3). The Department of Justice shall provide a report to the Assembly Human Services Committee and to the Senate Health and Human Services Committee by April 15, 1996, regarding the progress of the implementation of the statewide CAL-CII system; the number of requests for criminal clearances received pursuant to this section during the previous year; the number of criminal record clearances requested and completed pursuant to this section within a 17-day "expedite" period or within the 30-day period required by paragraph (2); and the number of requests and reasons for delays beyond the 30-day period.

SEC. 57. Section 10008 of the Health and Safety Code is amended to read:

10008. (a) When objection is made by either parent to the furnishing of information requested in items (3), (9), and (10) in the confidential portion of the certificate of live birth, specified in subdivision (b) of Section 10125, this information shall not be required to be entered on that portion of the certificate of live birth.

(b) A parent is not required to disclose his or her social security number as required by paragraph (14) of subdivision (b) of Section 10125 if the parent has good cause for not disclosing his or her social security number. Good cause shall be defined by regulations adopted by the State Department of Social Services.

SEC. 58. Section 10125 of the Health and Safety Code is amended to read:

10125. (a) The certificate of live birth for any live birth occurring on or after January 1, 1980, shall contain those items necessary to establish the fact of the birth and shall contain only the following information:

(1) Full name and sex of child.

- (2) Date of birth, including month, day, hour, and year.
- (3) Planned place of birth and place of birth.
- (4) Full name of father, birthplace, and date of birth of father including month, day, and year.
- (5) Full birth name of mother, birthplace, and date of birth of mother including month, day, and year.
- (6) Multiple births and birth order of multiple births.
- (7) Signature, and relationship to child, of a parent or other informant, and date signed.
- (8) Name, title, and mailing address of attending physician and surgeon or principal attendant, signature, and certification of live birth by attending physician and surgeon or principal attendant or certifier, date signed, and name and title of certifier if other than attending physician and surgeon or principal attendant.
- (9) Date accepted for registration and signature of local registrar.
- (10) A state birth certificate number and local registration district and number.

(11) A blank space for entry of date of death with a caption reading "Date of Death."

(b) In addition to the items listed in subdivision (a), the certificate of live birth shall contain the following medical and social information, provided that the information is kept confidential pursuant to Sections 10125.5 and 10125.8 and is clearly labeled "Confidential Information for Public Health Use Only":

- (1) Birth weight.
- (2) Pregnancy history.
- (3) Race and ethnicity of mother and father.
- (4) Residence address of mother.
- (5) A blank space for entry of census tract for mother's address.
- (6) Month prenatal care began and number of prenatal visits.
- (7) Date of last normal menses.
- (8) Description of complications of pregnancy and concurrent illnesses, congenital malformation, and any complication of labor and delivery, including surgery; provided that this information is essential medical information and appears in total on the face of the certificate.
- (9) Mother's and father's occupations and kind of business or industry.
- (10) Education level of mother and father.
- (11) Principal source of pay for prenatal care, which shall include all of the following: Medi-Cal, health maintenance organization or prepaid health plan, private insurance companies, medically indigent, self-pay, other sources which shall include, Medicare, workers' compensation, Title V, other government or nongovernment programs, no charge, and other categories as determined by the State Department of Health Services.

This paragraph shall become inoperative on January 1, 1999, or on the implementation date of the decennial birth certificate revision due to occur on or about January 1, 1999, whichever occurs first.

(12) Expected principal source of pay for delivery, which shall include all of the following: Medi-Cal, health maintenance organization or prepaid health plan, private insurance companies, medically indigent, self-pay, other sources which shall include, Medicare, workers' compensation, Title V, other government or nongovernment programs, no charge, and other categories as determined by the State Department of Health Services.

This paragraph shall become inoperative on January 1, 1999, or on the implementation date of the decennial birth certificate revision due to occur on or about January 1, 1999, whichever occurs first.

(13) An indication of whether or not the child's parent desires the automatic issuance of a Social Security number to the child.

(14) On and after January 1, 1995, the social security numbers of the mother and father, unless subdivision (b) of Section 10008 applies.

(c) Item 8, specified in subdivision (b), shall be completed by the attending physician and surgeon or the attending physician's and surgeon's designated representative. The names and addresses of children born with congenital malformations, who require followup treatment, as determined by the child's physician and surgeon, shall be furnished by the physician and surgeon to the local health officer, if permission is granted by either parent of the child.

(d) The parent shall only be asked to sign the form after both the public portion and the confidential medical and social information items have been entered upon the certificate of live birth.

(e) The State Registrar shall instruct all local registrars to collect the information specified in this section with respect to certificates of live birth. The information shall be transcribed on the certificate of live birth in use at the time and shall be limited to the information specified in this section.

Information relating to concurrent illnesses, complications of pregnancy and delivery, and congenital malformations shall be completed by the physician and surgeon, or physician's and surgeon's designee, inserting in the space provided on the confidential portion of the certificate the appropriate number or numbers listed on the VS-10A supplemental worksheet. The VS-10A supplemental form shall be used as a worksheet only and shall not in any manner be linked with the identity of the child or the mother, nor submitted with the certificate to the State Registrar. All information transferred from the worksheet to the certificate shall be fully explained to the parent or other informant prior to the signing of the certificate. No questions relating to drug or alcohol abuse may be asked.

(f) If the implementation date of the decennial birth certificate revision occurs prior to January 1, 1999, within 30 days of this implementation date the State Department of Health Services shall file a letter with the Secretary of the Senate and with the Chief Clerk of the Assembly, so certifying.

SEC. 59. Section 10125.8 is added to the Health and Safety Code,

to read:

10125.8. Notwithstanding Section 10125.5, a parent's social security number contained in the confidential medical and social information portion of the child's certificate of live birth shall be accessible to the State Department of Social Services and district attorneys for the purposes of operating the Child Support Enforcement Program, as specified in Title IV-D of the federal Social Security Act.

SEC. 59.5. Section 1308.5 of the Labor Code is amended to read:

1308.5. (a) This section, with the exception of paragraph (4) of this subdivision, shall apply to all minors under the age of 16 years. The written consent of the Labor Commissioner is required for any minor, not otherwise exempted by this chapter, for any of the following:

(1) The employment of any minor, in the presentation of any drama, legitimate play, or in any radio broadcasting or television studio.

(2) The employment of any minor 12 years of age or over in any other performance, concert, or entertainment.

(3) The appearance of any minor over the age of eight years in any performance, concert, or entertainment during the public school vacation.

(4) Allowing any minor between the ages of 8 and 18 years, who is by any law of this state permitted to be employed as an actor, actress, or performer in a theater, motion picture studio, radio broadcasting studio, or television studio, before 10 o'clock p.m., in the presentation of a performance, play, or drama continuing from an earlier hour until after 10 o'clock, to continue his part in such presentation between the hours of 10 and 12 p.m.

(5) The appearance of any minor in any entertainment which is noncommercial in nature.

(6) The employment of any minor artist in the making of phonograph recordings.

(7) The employment of any minor as an advertising or photographic model.

(8) The employment or appearance of any minor pursuant to a contract approved by the superior court under Chapter 3 (commencing with Section 6750) of Part 3 of Division 11 of the Family Code.

(b) Any person, or the agent, manager, superintendent or officer thereof, employing either directly or indirectly through third persons, or any parent or guardian of a minor who employs, or permits any minor to be employed in violation of any of the provisions of this section is guilty of a misdemeanor. Failure to produce the written consent from the Labor Commissioner is prima facie evidence of the illegal employment of any minor whose written consent is not produced.

SEC. 60. Section 836 of the Penal Code is amended to read:

836. (a) A peace officer may arrest a person in obedience to a

warrant, or, pursuant to the authority granted to him or her by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, without a warrant, may arrest a person whenever any of the following circumstances occur:

(1) The officer has reasonable cause to believe that the person to be arrested has committed a public offense in the officer's presence.

(2) The person arrested has committed a felony, although not in the officer's presence.

(3) The officer has reasonable cause to believe that the person to be arrested has committed a felony, whether or not a felony, in fact, has been committed.

(b) Any time a peace officer is called out on a domestic call, it shall be mandatory that the officer make a good faith effort to inform the victim of his or her right to make a citizen's arrest. This information shall include advising the victim how to safely execute the arrest.

(c) (1) When a peace officer is responding to a call alleging a violation of a protective order issued under Division 10 (commencing with Section 6200) of the Family Code or Section 136.2 of this code, and the peace officer has reasonable cause to believe that the person against whom the order is issued has notice of the order and has committed an act in violation of the order, the officer may arrest the person without a warrant and take that person into custody whether or not the violation occurred in the presence of the arresting officer. The officer shall, as soon as possible after the arrest, confirm with the appropriate authorities that a true copy of the protective order has been filed, unless the victim provides the officer with a copy of the protective order.

(2) The person against whom a protective order has been issued shall be deemed to have notice of the order if the victim presents to the officer proof of service of the order, the officer confirms with the appropriate authorities that a true copy of the proof of service is on file, or the person against whom the protective order was issued was present at the protective order hearing or was informed by a peace officer of the contents of the protective order.

(3) In situations where mutual protective orders have been issued under Division 10 (commencing with Section 6200) of the Family Code, liability for arrest under this subdivision applies only to those persons who are reasonably believed to have been the primary aggressor. In those situations, prior to making an arrest under this subdivision, the peace officer shall make reasonable efforts to identify, and may arrest, the primary aggressor involved in the incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider (A) the intent of the law to protect victims of domestic violence from continuing abuse, (B) the threats creating fear of physical injury, (C) the history of domestic violence between the persons involved, and (D) whether either person involved acted in self-defense.

SEC. 61. Section 11105.3 of the Penal Code is amended to read:

11105.3. (a) Notwithstanding any other law, a human resource agency or an employer may request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in subdivision (g) of a person who applies for a license, employment, or volunteer position, in which he or she would have supervisory or disciplinary power over a minor or any person under his or her care. The department shall furnish the information to the requesting employer and shall also send a copy of the information to the applicant.

(b) Any request for records under subdivision (a) shall include the applicant's fingerprints, which may be taken by the requester, and any other data specified by the department. The request shall be on a form approved by the department, and the department may charge a fee to be paid by the employer, human resource agency, or applicant for the actual cost of processing the request. However, no fee shall be charged a nonprofit organization. The department shall destroy an application within six months after the requested information is sent to the employer and applicant.

(c) Nothing in this section supersedes any law requiring criminal record access or dissemination of criminal history information. In any conflict with another statute, dissemination of criminal history information shall be pursuant to the mandatory statute. This subdivision applies to, but is not limited to, requirements pursuant to Article 1 (commencing with Section 1500) of Chapter 3 of, and Chapter 3.2 (commencing with Section 1569) and Chapter 3.4 (commencing with Section 1596.70) of, Division 2 of, and Section 1522 of, the Health and Safety Code, and Sections 8712, 8811, and 8908 of the Family Code.

(d) The department may adopt regulations to implement the provisions of this section as necessary.

(e) As used in this section, "employer" means any nonprofit corporation or other organizations specified by the Attorney General which employs or uses the services of volunteers in positions in which the volunteer or employee has supervisory or disciplinary power over a child or children.

(f) As used in this section, "human resource agency" means a public or private entity, excluding any agency responsible for licensing of facilities pursuant to the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500)), the California Residential Care Facilities for the Elderly Act (Chapter 3.2 (commencing with Section 1569)), Chapter 3.01 (commencing with Section 1568.01), and the California Child Day Care Facilities Act (Chapter 3.4 (commencing with Section 1596.70)) of Division 2 of the Health and Safety Code, responsible for determining the character and fitness of a person who is (1) applying for a license, employment, or as a volunteer within the human services field that involves the care and security of children, the elderly, the handicapped, or the mentally impaired, or (2) applying to adopt a child or to be a foster parent.

(g) Records of the following offenses shall be furnished as provided in subdivision (a):

(1) Violations or attempted violations of Section 220, 261, 261.5, 262, 266, 266j, 267, 272, 273a, 273d, 273.5, Sections 285 to 289, inclusive, Section 311.4, 311.10, 311.11, 314, 647.6, former Section 647a, or subdivision (a) or (d) of Section 647, or commitment as a mentally disordered sex offender under former Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(2) Any crime described in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code), provided that, except as otherwise provided in subdivision (c), no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in this section within the immediately preceding 10-year period.

(3) Any felony or misdemeanor conviction within 10 years of the date of the employer's request under subdivision (a), for a violation or attempted violation of Chapter 3 (commencing with Section 207), Section 211 or 215, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that robbery, Section 217.1, Chapter 8 (commencing with Section 236), Chapter 9 (commencing with Section 240), and for a violation of any of the offenses specified in subdivision (c) of Section 667.5, provided that no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in this section within the immediately preceding 10-year period.

(4) A conviction for a violation or attempted violation of an offense committed outside the State of California shall be furnished if the offense would have been a crime as defined in this section if committed in California.

(h) Any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

SEC. 61.1. Section 11105.3 of the Penal Code is amended to read:

11105.3. (a) Notwithstanding any other law, a human resource agency or an employer may request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in subdivision (g) of a person who applies for a license, employment, or volunteer position, in which he or she would have supervisory or disciplinary power over a minor or any person under his or her care. The department shall furnish the information to the requesting employer and shall also send a copy of the information to the applicant.

(b) Any request for records under subdivision (a) shall include the applicant's fingerprints, which may be taken by the requester,

and any other data specified by the department. The request shall be on a form approved by the department, and the department may charge a fee to be paid by the employer, human resource agency, or applicant for the actual cost of processing the request. However, no fee shall be charged a nonprofit organization. The department shall destroy an application within six months after the requested information is sent to the employer and applicant.

(c) Nothing in this section supersedes any law requiring criminal record access or dissemination of criminal history information. In any conflict with another statute, dissemination of criminal history information shall be pursuant to the mandatory statute. This subdivision applies to, but is not limited to, requirements pursuant to Article 1 (commencing with Section 1500) of Chapter 3 of, and Chapter 3.2 (commencing with Section 1569) and Chapter 3.4 (commencing with Section 1596.70) of, Division 2 of, and Section 1522 of, the Health and Safety Code, and Sections 8712, 8811, and 8908 of the Family Code.

(d) The department may adopt regulations to implement the provisions of this section as necessary.

(e) As used in this section, "employer" means any nonprofit corporation or other organizations specified by the Attorney General which employs or uses the services of volunteers in positions in which the volunteer or employee has supervisory or disciplinary power over a child or children.

(f) As used in this section, "human resource agency" means a public or private entity, excluding any agency responsible for licensing of facilities pursuant to the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500)), the California Residential Care Facilities for the Elderly Act (Chapter 3.2 (commencing with Section 1569)), Chapter 3.01 (commencing with Section 1568.01), and the California Child Day Care Facilities Act (Chapter 3.4 (commencing with Section 1596.70)) of Division 2 of the Health and Safety Code, responsible for determining the character and fitness of a person who is (1) applying for a license, employment, or as a volunteer within the human services field that involves the care and security of children, the elderly, the handicapped, or the mentally impaired, or (2) applying to adopt a child or to be a foster parent.

(g) Records of the following offenses shall be furnished as provided in subdivision (a):

(1) Violations or attempted violations of Section 220, 261, 261.5, 262, 266, 266j, 267, 272, 273a, 273d, 273.5, Sections 285 to 289, inclusive, Section 311.4, 311.10, 311.11, 314, 647.6, former Section 647a, or subdivision (a) or (d) of Section 647, or commitment as a mentally disordered sex offender under former Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(2) Any crime described in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the

Health and Safety Code), provided that, except as otherwise provided in subdivision (c), no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in this section within the immediately preceding 10-year period.

(3) Any felony or misdemeanor conviction within 10 years of the date of the employer's request under subdivision (a), for a violation or attempted violation of Chapter 3 (commencing with Section 207), Section 211 or 215, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that offense, Section 217.1, Chapter 8 (commencing with Section 236), Chapter 9 (commencing with Section 240), and for a violation of any of the offenses specified in subdivision (c) of Section 667.5, provided that no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in this section within the immediately preceding 10-year period.

(4) A conviction for a violation or attempted violation of an offense committed outside the State of California shall be furnished if the offense would have been a crime as defined in this section if committed in California.

(h) Any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

SEC. 61.2. Section 11105.3 of the Penal Code is amended to read:

11105.3. (a) Notwithstanding any other law, a human resource agency or an employer may request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in subdivision (g) of a person who applies for a license, employment, or volunteer position, in which he or she would have supervisory or disciplinary power over a minor or any person under his or her care. The department shall furnish the information to the requesting employer and shall also send a copy of the information to the applicant.

(b) Any request for records under subdivision (a) shall include the applicant's fingerprints, which may be taken by the requester, and any other data specified by the department. The request shall be on a form approved by the department, and the department may charge a fee to be paid by the employer, human resource agency, or applicant for the actual cost of processing the request. However, no fee shall be charged a nonprofit organization. The department shall destroy an application within six months after the requested information is sent to the employer and applicant.

(c) Nothing in this section supersedes any law requiring criminal record access or dissemination of criminal history information. In any conflict with another statute, dissemination of criminal history information shall be pursuant to the mandatory statute. This

subdivision applies to, but is not limited to, requirements pursuant to Article 1 (commencing with Section 1500) of Chapter 3 of, and Chapter 3.2 (commencing with Section 1569) and Chapter 3.4 (commencing with Section 1596.70) of, Division 2 of, and Section 1522 of, the Health and Safety Code, and Sections 8712, 8811, and 8908 of the Family Code.

(d) The department may adopt regulations to implement the provisions of this section as necessary.

(e) As used in this section, "employer" means any nonprofit corporation or other organizations specified by the Attorney General which employs or uses the services of volunteers in positions in which the volunteer or employee has supervisory or disciplinary power over a child or children.

(f) As used in this section, "human resource agency" means a public or private entity, excluding any agency responsible for licensing of facilities pursuant to the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500)), the California Residential Care Facilities for the Elderly Act (Chapter 3.2 (commencing with Section 1569)), Chapter 3.01 (commencing with Section 1568.01), and the California Child Day Care Facilities Act (Chapter 3.4 (commencing with Section 1596.70)) of Division 2 of the Health and Safety Code, responsible for determining the character and fitness of a person who is (1) applying for a license, employment, or as a volunteer within the human services field that involves the care and security of children, the elderly, the handicapped, or the mentally impaired, or (2) applying to adopt a child or to be a foster parent.

(g) Records of the following offenses shall be furnished as provided in subdivision (a):

(1) Violations or attempted violations of Section 220, 261, 261.5, 262, 266, 266j, 267, 272, 273a, 273d, 273.5, Sections 285 to 289, inclusive, Section 311.2, 311.3, 311.4, 311.10, 311.11, 314, 647.6, former Section 647a, or subdivision (a) or (d) of Section 647, or commitment as a mentally disordered sex offender under former Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(2) Any crime described in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code), provided that, except as otherwise provided in subdivision (c), no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in this section within the immediately preceding 10-year period.

(3) Any felony or misdemeanor conviction within 10 years of the date of the employer's request under subdivision (a), for a violation or attempted violation of Chapter 3 (commencing with Section 207), Section 211 or 215, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as

provided in subdivision (b) of Section 12022, in the commission of that robbery, Section 217.1, Chapter 8 (commencing with Section 236), Chapter 9 (commencing with Section 240), and for a violation of any of the offenses specified in subdivision (c) of Section 667.5, provided that no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in this section within the immediately preceding 10-year period.

(4) A conviction for a violation or attempted violation of an offense committed outside the State of California shall be furnished if the offense would have been a crime as defined in this section if committed in California.

(h) Any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

SEC. 61.3. Section 11105.3 of the Penal Code is amended to read:

11105.3. (a) Notwithstanding any other law, a human resource agency or an employer may request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in subdivision (g) of a person who applies for a license, employment, or volunteer position, in which he or she would have supervisory or disciplinary power over a minor or any person under his or her care. The department shall furnish the information to the requesting employer and shall also send a copy of the information to the applicant.

(b) Any request for records under subdivision (a) shall include the applicant's fingerprints, which may be taken by the requester, and any other data specified by the department. The request shall be on a form approved by the department, and the department may charge a fee to be paid by the employer, human resource agency, or applicant for the actual cost of processing the request. However, no fee shall be charged a nonprofit organization. The department shall destroy an application within six months after the requested information is sent to the employer and applicant.

(c) Nothing in this section supersedes any law requiring criminal record access or dissemination of criminal history information. In any conflict with another statute, dissemination of criminal history information shall be pursuant to the mandatory statute. This subdivision applies to, but is not limited to, requirements pursuant to Article 1 (commencing with Section 1500) of Chapter 3 of, and Chapter 3.2 (commencing with Section 1569) and Chapter 3.4 (commencing with Section 1596.70) of, Division 2 of, and Section 1522 of, the Health and Safety Code, and Sections 8712, 8811, and 8908 of the Family Code.

(d) The department may adopt regulations to implement the provisions of this section as necessary.

(e) As used in this section, "employer" means any nonprofit corporation or other organizations specified by the Attorney General which employs or uses the services of volunteers in positions in which

the volunteer or employee has supervisory or disciplinary power over a child or children.

(f) As used in this section, "human resource agency" means a public or private entity, excluding any agency responsible for licensing of facilities pursuant to the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500)), the California Residential Care Facilities for the Elderly Act (Chapter 3.2 (commencing with Section 1569)), Chapter 3.01 (commencing with Section 1568.01), and the California Child Day Care Facilities Act (Chapter 3.4 (commencing with Section 1596.70)) of Division 2 of the Health and Safety Code, responsible for determining the character and fitness of a person who is (1) applying for a license, employment, or as a volunteer within the human services field that involves the care and security of children, the elderly, the handicapped, or the mentally impaired, or (2) applying to adopt a child or to be a foster parent.

(g) Records of the following offenses shall be furnished as provided in subdivision (a):

(1) Violations or attempted violations of Section 220, 261, 261.5, 262, 266, 266j, 267, 272, 273a, 273d, 273.5, Sections 285 to 289, inclusive, Section 311.2, 311.3, 311.4, 311.10, 311.11, 314, 647.6, former Section 647a, or subdivision (a) or (d) of Section 647, or commitment as a mentally disordered sex offender under former Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(2) Any crime described in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code), provided that, except as otherwise provided in subdivision (c), no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in this section within the immediately preceding 10-year period.

(3) Any felony or misdemeanor conviction within 10 years of the date of the employer's request under subdivision (a), for a violation or attempted violation of Chapter 3 (commencing with Section 207), Section 211 or 215, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that offense, Section 217.1, Chapter 8 (commencing with Section 236), Chapter 9 (commencing with Section 240), and for a violation of any of the offenses specified in subdivision (c) of Section 667.5, provided that no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in this section within the immediately preceding 10-year period.

(4) A conviction for a violation or attempted violation of an offense committed outside the State of California shall be furnished if the offense would have been a crime as defined in this section if

committed in California.

(h) Any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

SEC. 61.5. Section 13823.11 of the Penal Code is amended to read:

13823.11. The minimum standards for the examination and treatment of victims of sexual assault or attempted sexual assault, including child molestation and the collection and preservation of evidence therefrom include all of the following:

(a) Law enforcement authorities shall be notified.

(b) In conducting the physical examination, the outline indicated in the form adopted pursuant to subdivision (c) of Section 13823.5 shall be followed.

(c) Consent for a physical examination, treatment, and collection of evidence shall be obtained.

(1) Consent to an examination for evidence of sexual assault shall be obtained prior to the examination of a victim of sexual assault and shall include separate written documentation of consent to each of the following:

(A) Examination for the presence of injuries sustained as a result of the assault.

(B) Examination for evidence of sexual assault and collection of physical evidence.

(C) Photographs of injuries.

(2) Consent to treatment shall be obtained in accordance with usual hospital policy.

(3) A victim of sexual assault shall be informed that he or she may refuse to consent to an examination for evidence of sexual assault, including the collection of physical evidence, but that such a refusal is not a ground for denial of treatment of injuries and for possible pregnancy and venereal disease, if the person wishes to obtain treatment and consents thereto.

(4) Pursuant to Chapter 3 (commencing with Section 6920) of Part 4 of Division 11 of the Family Code, a minor may consent to hospital, medical, and surgical care related to a sexual assault without the consent of a parent or guardian.

(5) In cases of known or suspected child abuse, the consent of the parents or legal guardian is not required. In the case of suspected child abuse and nonconsenting parents, the consent of the local agency providing child protective services or the local law enforcement agency shall be obtained. Local procedures regarding obtaining consent for the examination and treatment of, and the collection of evidence from, children from child protective authorities shall be followed.

(d) A history of sexual assault shall be taken.

The history obtained in conjunction with the examination for evidence of sexual assault shall follow the outline of the form established pursuant to subdivision (c) of Section 13823.5 and shall include all of the following:

- (1) A history of the circumstances of the assault.
- (2) For a child, any previous history of child sexual abuse and an explanation of injuries, if different from that given by parent or person accompanying the child.
- (3) Physical injuries reported.
- (4) Sexual acts reported, whether or not ejaculation is suspected, and whether or not a condom or lubricant was used.
- (5) Record of relevant medical history.
- (e) Each adult and minor victim of sexual assault who consents to a medical examination for collection of evidentiary material shall have a physical examination which includes, but is not limited to, all of the following:

- (1) Inspection of the clothing, body, and external genitalia for injuries and foreign materials.
- (2) Examination of the mouth, vagina, cervix, penis, anus, and rectum, as indicated.

- (3) Documentation of injuries and evidence collected.

Prepubital children shall not have internal vaginal or anal examinations unless absolutely necessary (this does not preclude careful collection of evidence using a swab).

(f) The collection of physical evidence shall conform to the following procedures:

(1) Each victim of sexual assault who consents to an examination for collection of evidence shall have the following items of evidence collected, except where he or she specifically objects:

- (A) Clothing worn during assault.
- (B) Foreign materials revealed by an examination of the clothing, body, external genitalia, and pubic hair combings.
- (C) Swabs and slides from the mouth, vagina, rectum, and penis, as indicated, to determine the presence or absence of sperm and sperm motility, and for genetic marker typing.

(2) Each victim of sexual assault who consents to an examination for the collection of evidence shall have reference specimens taken, except when he or she specifically objects thereto. A reference specimen is a standard from which to obtain baseline information (for example: pubic and head hair, blood, and saliva for genetic marker typing). These specimens shall be taken in accordance with the standards of the local criminalistics laboratory.

(3) A baseline gonorrhea culture, and syphilis serology, shall be taken, if indicated by the history of contact. Specimens for a pregnancy test shall be taken, if indicated by the history of contact.

(g) Preservation and disposition of physical evidence shall conform to the following procedures:

- (1) All swabs and slides shall be air-dried prior to packaging.
- (2) All items of evidence including laboratory specimens shall be clearly labeled as to the identity of the source and the identity of the person collecting them.
- (3) The evidence shall have a form attached which documents its chain of custody and shall be properly sealed.

(4) The evidence shall be turned over to the proper law enforcement agency.

SEC. 61.6. Section 13504 of the Probate Code is amended to read:

13504. Notwithstanding the provisions of this part, community property held in a revocable trust described in Section 761 of the Family Code is governed by the provisions, if any, in the trust for disposition in the event of death.

SEC. 61.7. Section 23143 of the Vehicle Code is amended to read:

23143. Notwithstanding Section 6929 of the Family Code, if the court finds it just and reasonable, the court may order the parent or parents of a minor who is ordered to participate in an alcohol education program or a community service program which provides an alcohol education component pursuant to this article, to pay the required fees for the program.

SEC. 62. Section 903 of the Welfare and Institutions Code is amended to read:

903. (a) A parent of a minor, the estate of a parent, and the estate of the minor, shall be liable for the reasonable costs of support of the minor while the minor is placed, or detained in, or committed to, any institution or other place pursuant to Section 625 or pursuant to an order of the juvenile court. However, a county shall not levy charges for the costs of support of a minor detained pursuant to Section 625 unless, at the detention hearing, the juvenile court determines that detention of the minor should be continued, the petition for the offense for which the minor is detained is subsequently sustained, or the minor agrees to a program of supervision pursuant to Section 654. The liability of these persons and estates shall be a joint and several liability.

(b) The county shall limit the charges it seeks to impose to the reasonable costs of support of the minor and shall exclude any costs of incarceration, treatment, or supervision for the protection of society and the minor and the rehabilitation of the minor. In the event that court-ordered child support paid to the county pursuant to subdivision (a) exceeds the amount of the costs authorized by this subdivision and subdivision (a), the county shall either hold the excess in trust for the minor's future needs pursuant to Section 302.52 of Title 45 of the Code of Federal Regulations or, with the approval of the minor's caseworker or the probation officer, pay the excess directly to the minor.

(c) It is the intent of the Legislature in enacting this subdivision to protect the fiscal integrity of the county, to protect persons against whom the county seeks to impose liability from excessive charges, to ensure reasonable uniformity throughout the state in the level of liability being imposed, and to ensure that liability is imposed only on persons with the ability to pay. In evaluating a family's financial ability to pay under this section, the county shall take into consideration the family income, the necessary obligations of the family, and the number of persons dependent upon this income. Except as provided in paragraphs (1), (2), (3), and (4), "costs of

support” as used in this section means only actual costs incurred by the county for food and food preparation, clothing, personal supplies, and medical expenses, not to exceed a combined maximum cost of fifteen dollars (\$15) per day, except that:

(1) The maximum cost of fifteen dollars (\$15) per day shall be adjusted every third year beginning January 1, 1988, to reflect the percentage change in the calendar year annual average of the California Consumer Price Index, All Urban Consumers, published by the Department of Industrial Relations, for the three-year period.

(2) No cost for medical expenses shall be imposed by the county until the county has first exhausted any eligibility the minor may have under private insurance coverage, standard or medically indigent Medi-Cal coverage, and the Robert W. Crown California Children’s Services Act (Article 2 (commencing with Section 248) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code).

(3) In calculating the cost of medical expenses, the county shall not charge in excess of 100 percent of the AFDC fee for service average Medi-Cal payment for that county for that fiscal year as calculated by the State Department of Health Services; however, if a minor has extraordinary medical or dental costs that are not met under any of the coverages listed in paragraph (2), the county may impose these additional costs.

(4) For those placements of a minor subject to this section in which an AFDC-FC grant is made, the district attorney shall seek an order pursuant to Section 11350 and the statewide child support guideline in effect in Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 of Division 9 of the Family Code. For purposes of determining the correct amount of support of a minor subject to this section, the rebuttable presumption set forth in Section 4057 of the Family Code is applicable.

SEC. 62.1. Section 903 of the Welfare and Institutions Code is amended to read:

903. (a) The father, mother, spouse, or other person liable for the support of a minor, the estate of that person, and the estate of the minor, shall be liable for the reasonable costs of support of the minor while the minor is placed, or detained in, or committed to, any institution or other place pursuant to Section 625 or pursuant to an order of the juvenile court. However, a county shall not levy charges for the costs of support of a minor detained pursuant to Section 625 unless, at the detention hearing, the juvenile court determines that detention of the minor should be continued, the petition for the offense for which the minor is detained is subsequently sustained, or the minor agrees to a program of supervision pursuant to Section 654. The liability of these persons and estates shall be a joint and several liability.

(b) The county shall limit the charges it seeks to impose to the reasonable costs of support of the minor and shall exclude any costs of incarceration, treatment, or supervision for the protection of society and the minor and the rehabilitation of the minor. In the

event that court-ordered child support paid to the county pursuant to subdivision (a) exceeds the amount of the costs authorized by this subdivision and subdivision (a), the county shall either hold the excess in trust for the minor's future needs pursuant to Section 302.52 of Title 45 of the Code of Federal Regulations or, with the approval of the minor's caseworker or the probation officer, pay the excess directly to the minor.

(c) It is the intent of the Legislature in enacting this subdivision to protect the fiscal integrity of the county, to protect persons against whom the county seeks to impose liability from excessive charges, to ensure reasonable uniformity throughout the state in the level of liability being imposed, and to ensure that liability is imposed only on persons with the ability to pay. In evaluating a family's financial ability to pay under this section, the county shall take into consideration the family income, the necessary obligations of the family, and the number of persons dependent upon this income. Except as provided in paragraphs (1), (2), (3), and (4), "costs of support" as used in this section means only actual costs incurred by the county for food and food preparation, clothing, personal supplies, and medical expenses, not to exceed a combined maximum cost of fifteen dollars (\$15) per day, except that:

(1) The maximum cost of fifteen dollars (\$15) per day shall be adjusted every third year beginning January 1, 1988, to reflect the percentage change in the calendar year annual average of the California Consumer Price Index, All Urban Consumers, published by the Department of Industrial Relations, for the three-year period.

(2) No cost for medical expenses shall be imposed by the county until the county has first exhausted any eligibility the minor may have under private insurance coverage, standard or medically indigent Medi-Cal coverage, and the Robert W. Crown California Children's Services Act (Article 2 (commencing with Section 248) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code).

(3) In calculating the cost of medical expenses, the county shall not charge in excess of 100 percent of the AFDC fee for service average Medi-Cal payment for that county for that fiscal year as calculated by the State Department of Health Services; however, if a minor has extraordinary medical or dental costs that are not met under any of the coverages listed in paragraph (2), the county may impose these additional costs.

(4) For those placements of a minor subject to this section in which an AFDC-FC grant is made, the district attorney shall seek an order pursuant to Section 11350 and the statewide child support guideline in effect in Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 of Division 9 of the Family Code. For purposes of determining the correct amount of support of a minor subject to this section, the rebuttable presumption set forth in Section 4057 of the Family Code is applicable.

SEC. 62.2. Section 903.41 is added to the Welfare and Institutions Code, to read:

903.41. (a) It is the intention of the Legislature that the family law departments and juvenile departments of each superior court coordinate determinations of parentage and the setting of support to ensure that the State of California remains in compliance with federal regulations for child support guidelines. The Legislature therefore enacts this section for the purpose of ensuring a document exchange between the family law departments and juvenile departments of each superior court as necessary to administer the public social services administered or supervised by the State Department of Social Services.

(b) If the issue of paternity is raised during any hearings pursuant to Section 300, 601, or 602, the court clerk shall notify the district attorney's office for an inquiry concerning any superior court order or judgment which addresses the issue.

(1) If the district attorney's office determines that a judgment for parentage already exists, the district attorney shall obtain and forward certified copies of the judgment to the juvenile court and the court shall take judicial notice thereof.

(2) If the district attorney's office determines that the issue of parentage has not been determined, the juvenile court may determine the issue of parentage and, if it does so, shall give notice to the district attorney's office.

(c) If the court establishes paternity of a minor child, the court clerk shall forward the order on a form to be adopted by the Judicial Council to the Family Support Division of the district attorney's office.

(d) If a child is receiving public assistance under the Aid to Families with Dependent Children (AFDC) program, or if it appears to the court that the child may receive AFDC, the court shall direct the clerk of the court to advise the Family Support Division of the district attorney's office.

(e) The court shall advise the parent of the minor of the possibility that the Family Support Division of the district attorney's office may file an action for support if the child receives AFDC, pursuant to Section 11350.

SEC. 62.3. Section 11350 of the Welfare and Institutions Code is amended to read:

11350. (a) In any case of separation or desertion of a parent or parents from a child or children which results in aid under this chapter being granted to that family, the noncustodial parent or parents shall be obligated to the county for an amount equal to the following:

(1) The amount specified in an order for the support and maintenance of such family issued by a court of competent jurisdiction; or in the absence of such court order, the amount specified in paragraph (2).

(2) The amount of support which would have been specified in an order for the support and maintenance of the family during the period of separation or desertion provided that any such amount in

excess of the aid paid to the family shall not be retained by the county, but disbursed to the family.

(3) The obligation shall be reduced by any amount actually paid by such parent directly to the custodian of the child or to the district attorney of the county in which the child is receiving aid during the period of separation or desertion for the support and maintenance of the family.

(b) The district attorney shall take appropriate action pursuant to this section as provided in subdivision (1) of Section 11475.1. The district attorney may establish liability for child support as provided in subdivision (a) when public assistance was provided by another county or by other counties.

(c) The amount of the obligation established under paragraph (2) of subdivision (a) shall be determined by using the appropriate child support guidelines currently in effect. If one parent remains as a custodial parent, the guideline support shall be computed in the normal manner. If neither parent remains as a custodial parent, the support shall be computed by combining the noncustodial parents' incomes and placing the figure obtained in the column for noncustodial parent. A zero shall be placed in the column for the custodial parent and the amount of guideline support resulting shall be proportionately shared between the parents as directed by the court. The parents shall pay the amount of support specified in the support order to the district attorney.

SEC. 62.4. Section 11351 is added to the Welfare and Institutions Code, to read:

11351. (a) Notwithstanding Section 11350.1, upon noticed motion of the district attorney, the superior court may consolidate or combine support or reimbursement arrearages owed by one obligor to one obligee in two or more court files into a single court file, or combine or consolidate two or more orders for current child support into a single court file. A motion to consolidate may be made by a district attorney only if he or she is seeking to enforce the orders being consolidated. The motion shall be filed only in the court file the district attorney is seeking to have designated as the primary file.

(b) Orders may be consolidated regardless of the nature of the underlying action, whether initiated under the Family Code, this code, or another law. Orders for support shall not be consolidated unless the children involved have the same mother and father and venue is proper pursuant to Section 11475.1.

(c) Upon consolidation of orders, the court shall designate which court file the support orders are being consolidated into the primary file, and which court files are subordinate. Upon consolidation, the court shall order the district attorney to file a notice in the subordinate court actions indicating the support orders in those actions were consolidated into the primary file. The notice shall state the date of the consolidation, the name of the court, and the primary file number.

(d) Upon consolidation of orders, the superior court shall not issue

further orders pertaining to support in a subordinate court file; and all enforcement and modification of support orders shall occur in the primary court action.

(e) After consolidation of court orders, a single wage assignment for current support and arrearages may be issued when possible.

SEC. 62.5. Section 11352 is added to the Welfare and Institutions Code, to read:

11352. In any action or judgment brought or obtained pursuant to Section 11350, 11350.1, 11475.1, or 11476.1, a supplemental complaint may be filed, pursuant to Section 464 of the Code of Civil Procedure and Section 2330.1 of the Family Code, either before or after a final judgment, seeking a judgment or order of paternity or support for a child of the mother and father of the child whose paternity and support are already in issue before the court. A supplemental complaint for paternity or support of children may be filed without leave of court either before or after final judgment in the underlying action. Service of the supplemental summons and complaint shall be made in the manner provided for the initial service of a summons by the Code of Civil Procedure.

SEC. 63. Section 11475.1 of the Welfare and Institutions Code is amended to read:

11475.1. (a) Each county shall maintain a single organizational unit located in the office of the district attorney which shall have the responsibility for promptly and effectively establishing, modifying, and enforcing child support obligations, including medical support, enforcing spousal support orders established by a court of competent jurisdiction, and determining paternity in the case of a child born out of wedlock. The district attorney shall take appropriate action, both civil and criminal, to establish, modify, and enforce child support and when appropriate enforce spousal support orders when the child is receiving public assistance, including Medi-Cal, and, when appropriate, to take the same actions on behalf of a child who is not receiving public assistance, including Medi-Cal.

(b) Actions brought by the district attorney to establish paternity or child support or to enforce child support obligations shall be completed within the time limits set forth by federal law. The district attorney's responsibility applies to spousal support only where the spousal support obligation has been reduced to an order of a court of competent jurisdiction. In any action brought for modification or revocation of an order that is being enforced under Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.), the effective date of the modification or revocation shall be as prescribed by federal law (42 U.S.C. Sec. 666(a)(9)), or any subsequent date.

(c) In any action brought or enforcement proceedings instituted by the district attorney pursuant to this section for payment of child or spousal support, an action to recover an arrearage in support payments may be maintained by the district attorney at any time within the period otherwise specified for the enforcement of a support judgment, notwithstanding the fact that the child has

attained the age of majority.

(d) The county shall undertake an outreach program to inform the public that the services described in subdivisions (a) to (c), inclusive, are available to persons not receiving public assistance. There shall be prominently displayed in every public area of every office of the units established by this section a notice, in clear and simple language prescribed by the Director of Social Services, that the services provided in subdivisions (a) to (c), inclusive, are provided to all individuals whether or not they are recipients of public social services.

(e) In any action to establish a child support order brought by the district attorney in the performance of duties under this section, the district attorney may make a motion for an order effective during the pendency of that action, for the support, maintenance, and education of the child or children that are the subject of the action. This order shall be referred to as an order for temporary support. This order shall have the same force and effect as a like or similar order under the Family Code.

The district attorney shall file a motion for an order for temporary support within the following time limits:

(1) If the defendant is the mother, a presumed father under Section 7611 of the Family Code, or any father where the child is at least six months old when the defendant files his answer, the time limit is 90 days after the defendant files an answer.

(2) In any other case where the defendant has filed an answer prior to the birth of the child or not more than six months after the birth of the child, then the time limit is nine months after the birth of the child.

If more than one child is the subject of the action, the limitation on reimbursement shall apply only as to those children whose parental relationship and age would bar recovery were a separate action brought for support of that child or those children.

If the district attorney fails to file a motion for an order for temporary support within time limits specified in this section, the district attorney shall be barred from obtaining a judgment of reimbursement for any support provided for that child during the period between the date the time limit expired and the motion was filed, or, if no such motion is filed, when a final judgment is entered.

Nothing in this section prohibits the district attorney from entering into cooperative arrangements with other county departments as necessary to carry out the responsibilities imposed by this section pursuant to plans of cooperation with the departments approved by the State Department of Social Services.

Nothing in this section shall otherwise limit the ability of the district attorney from securing and enforcing orders for support of a spouse or former spouse as authorized under any other provision of law.

In counties which operate an expedited process in accordance with Section 640.1 of the Code of Civil Procedure, commissioners and

referees shall order a temporary support order prior to referring those cases to the full judicial system.

(f) As used in this article, “enforcing obligations” includes, but is not limited to, (1) the use of all interception and notification systems operated by the State Department of Social Services for the purposes of aiding in the enforcement of support obligations, (2) the obtaining by the district attorney of an initial order for child support, which may include medical support or which is for medical support only, by civil or criminal process, (3) the initiation of a motion or order to show cause to increase an existing child support order, and the response to a motion or order to show cause brought by an obligor parent to decrease an existing child support order, or the initiation of a motion or order to show cause to obtain an order for medical support, and the response to a motion or order to show cause brought by an obligor parent to decrease or terminate an existing medical support order, without regard to whether the child is receiving public assistance, and (4) the response to a notice of motion or order to show cause brought by an obligor parent to decrease an existing spousal support order when the child or children are residing with the obligee parent and the district attorney is also enforcing a related child support obligation owed to the obligee parent by the same obligor.

(g) As used in this section, “out of wedlock” means that the biological parents of the child were not married to each other at the time of the child’s conception.

(h) The district attorney is the public agency responsible for administering wage withholding for the purposes of Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.). The district attorney shall seek an earnings assignment order for support in any case as soon as the obligor is in arrears in payment of support pursuant to Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code.

Nothing in this section shall limit the authority of the district attorney granted by other sections of this code or otherwise granted by law.

(i) In the exercise of the authority granted under this article, the district attorney may intervene, pursuant to subdivision (b) of Section 387 of the Code of Civil Procedure, by ex parte application, in any action under the Family Code, or other proceeding wherein child support is an issue or a reduction in spousal support is sought. By notice of motion, order to show cause, or responsive pleading served upon all parties to the action, the district attorney may request such relief as appropriate which the district attorney is authorized to seek.

(j) The district attorney shall comply with any guidelines established by the State Department of Social Services which set time standards for responding to requests for assistance in locating absent parents, establishing paternity, establishing child support awards, and collecting child support payments.

(k) As used in this article, medical support activities which the district attorney is authorized to perform are limited to the following:

(1) The obtaining and enforcing of court orders for health insurance coverage.

(2) Any other medical support activity mandated by federal law or regulation.

(l) (1) Notwithstanding any other provision of law, venue for an action or proceeding under this part shall be determined follows:

(A) Venue shall be in the superior court in the county that is currently expending public assistance.

(B) If public assistance is not currently being expended, venue shall be in the superior court in the county where the child who is entitled to current support resides or is domiciled.

(C) If current support is no longer payable through, or enforceable by, the district attorney, venue shall be in the superior court in the county that last provided public assistance for actions to enforce arrearages assigned pursuant to Section 11477.

(D) If subparagraphs (A), (B), and (C) do not apply, venue shall be in the superior court in the county of residence of the support obligee.

(E) If the support obligee does not reside in California, and subparagraphs (A), (B), (C), and (D) do not apply, venue shall be in the superior court of the county of residence of the obligor.

(2) Notwithstanding paragraph (1), if the child becomes a resident of another county after an action under this part has been filed, venue may remain in the county where the action was filed until the action is completed.

(m) The district attorney of one county may appear on behalf of the district attorney of any other county in an action or proceeding under this part.

SEC. 63.5. Section 11475.1 of the Welfare and Institutions Code is amended to read:

11475.1. (a) Each county shall maintain a single organizational unit located in the office of the district attorney which shall have the responsibility for promptly and effectively establishing, modifying, and enforcing child support obligations, including medical support, enforcing spousal support orders established by a court of competent jurisdiction, and determining paternity in the case of a child born out of wedlock. The district attorney shall take appropriate action, both civil and criminal, to establish, modify, and enforce child support and when appropriate enforce spousal support orders when the child is receiving public assistance, including Medi-Cal, and, when appropriate, to take the same actions on behalf of a child who is not receiving public assistance, including Medi-Cal.

(b) Actions brought by the district attorney to establish paternity or child support or to enforce child support obligations shall be completed within the time limits set forth by federal law. The district attorney's responsibility applies to spousal support only where the

spousal support obligation has been reduced to an order of a court of competent jurisdiction. In any action brought for modification or revocation of an order that is being enforced under Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.), the effective date of the modification or revocation shall be as prescribed by federal law (42 U.S.C. Sec. 666(a)(9)), or any subsequent date.

(c) (1) The Judicial Council, in consultation with the department and representatives of the California Family Support Council, the Senate Judiciary Committee, the Assembly Judiciary Committee, and a legal services organization providing representation on child support matters, shall develop simplified complaint and answer forms for any action for support brought pursuant to this section or Section 11350.1.

(2) The simplified complaint form shall provide the defendant with notice of the amount of child support that is sought pursuant to the guidelines set forth in Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 of the Family Code by stating the possible amount of an order in terms of a percentage of the defendant's income for the number of children specified in the order. The Judicial Council shall determine the percentage estimates. The complaint shall state that the estimated percentage is only an estimate and that the actual order will be based upon the defendant's actual ability to pay and may be significantly higher or lower than the estimated percentage.

(3) (A) The simplified answer form shall be written in simple English and shall permit a defendant to answer and raise defenses by checking applicable boxes. The answer form shall include instructions for completion of the form and instructions for proper filing of the answer.

(B) The answer form shall include a blank standard or simplified Declaration of Income and Expenses form and instructions on how to complete the Declaration of Income and Expenses. The answer form shall direct the defendant to file the completed Declaration of Income and Expenses with the answer, but shall state that the answer will be accepted by a court without the Declaration of Income and Expenses.

(C) The clerk of the court shall accept and file answers that are completed by hand provided they are legible.

(4) (A) The simplified complaint form prepared pursuant to this subdivision shall be used by the district attorney or the Attorney General in all cases brought under this section or Section 11350.1.

(B) The simplified answer form prepared pursuant to this subdivision shall be served on all defendants with the simplified complaint. Failure to serve the simplified answer form on all defendants shall not invalidate any judgment obtained. However, failure to serve the answer form may be used as evidence in any proceeding under Section 473 of the Code of Civil Procedure.

(C) The Judicial Council shall add language to the governmental summons, for use by the district attorney with the governmental

complaint to establish parental relationship and child support, informing defendants that a blank answer form should have been received with the summons and additional copies may be obtained from either the district attorney's office or the superior court clerk.

(d) In any action brought or enforcement proceedings instituted by the district attorney pursuant to this section for payment of child or spousal support, an action to recover an arrearage in support payments may be maintained by the district attorney at any time within the period otherwise specified for the enforcement of a support judgment, notwithstanding the fact that the child has attained the age of majority.

(e) The county shall undertake an outreach program to inform the public that the services described in subdivisions (a) to (c), inclusive, are available to persons not receiving public assistance. There shall be prominently displayed in every public area of every office of the units established by this section a notice, in clear and simple language prescribed by the Director of Social Services, that the services provided in subdivisions (a) to (c), inclusive, are provided to all individuals whether or not they are recipients of public social services.

(f) In any action to establish a child support order brought by the district attorney in the performance of duties under this section, the district attorney may make a motion for an order effective during the pendency of that action, for the support, maintenance, and education of the child or children that are the subject of the action. This order shall be referred to as an order for temporary support. This order shall have the same force and effect as a like or similar order under the Family Code.

The district attorney shall file a motion for an order for temporary support within the following time limits:

(1) If the defendant is the mother, a presumed father under Section 7611 of the Family Code, or any father where the child is at least six months old when the defendant files his answer, the time limit is 90 days after the defendant files an answer.

(2) In any other case where the defendant has filed an answer prior to the birth of the child or not more than six months after the birth of the child, then the time limit is nine months after the birth of the child.

If more than one child is the subject of the action, the limitation on reimbursement shall apply only as to those children whose parental relationship and age would bar recovery were a separate action brought for support of that child or those children.

If the district attorney fails to file a motion for an order for temporary support within time limits specified in this section, the district attorney shall be barred from obtaining a judgment of reimbursement for any support provided for that child during the period between the date the time limit expired and the motion was filed, or, if no such motion is filed, when a final judgment is entered.

Nothing in this section prohibits the district attorney from

entering into cooperative arrangements with other county departments as necessary to carry out the responsibilities imposed by this section pursuant to plans of cooperation with the departments approved by the State Department of Social Services.

Nothing in this section shall otherwise limit the ability of the district attorney from securing and enforcing orders for support of a spouse or former spouse as authorized under any other provision of law.

In counties which operate an expedited process in accordance with Section 640.1 of the Code of Civil Procedure, commissioners and referees shall order a temporary support order prior to referring those cases to the full judicial system.

(g) As used in this article, "enforcing obligations" includes, but is not limited to, (1) the use of all interception and notification systems operated by the State Department of Social Services for the purposes of aiding in the enforcement of support obligations, (2) the obtaining by the district attorney of an initial order for child support, which may include medical support or which is for medical support only, by civil or criminal process, (3) the initiation of a motion or order to show cause to increase an existing child support order, and the response to a motion or order to show cause brought by an obligor parent to decrease an existing child support order, or the initiation of a motion or order to show cause to obtain an order for medical support, and the response to a motion or order to show cause brought by an obligor parent to decrease or terminate an existing medical support order, without regard to whether the child is receiving public assistance, and (4) the response to a notice of motion or order to show cause brought by an obligor parent to decrease an existing spousal support order when the child or children are residing with the obligee parent and the district attorney is also enforcing a related child support obligation owed to the obligee parent by the same obligor.

(h) As used in this section, "out of wedlock" means that the biological parents of the child were not married to each other at the time of the child's conception.

(i) The district attorney is the public agency responsible for administering wage withholding for the purposes of Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.). The district attorney shall seek an earnings assignment order for support in any case as soon as the obligor is in arrears in payment of support pursuant to Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code.

Nothing in this section shall limit the authority of the district attorney granted by other sections of this code or otherwise granted by law.

(j) In the exercise of the authority granted under this article, the district attorney may intervene, pursuant to subdivision (b) of Section 387 of the Code of Civil Procedure, by ex parte application, in any action under the Family Code, or other proceeding wherein

child support is an issue or a reduction in spousal support is sought. By notice of motion, order to show cause, or responsive pleading served upon all parties to the action, the district attorney may request such relief as appropriate which the district attorney is authorized to seek.

(k) The district attorney shall comply with any guidelines established by the State Department of Social Services which set time standards for responding to requests for assistance in locating absent parents, establishing paternity, establishing child support awards, and collecting child support payments.

(l) As used in this article, medical support activities which the district attorney is authorized to perform are limited to the following:

(1) The obtaining and enforcing of court orders for health insurance coverage.

(2) Any other medical support activity mandated by federal law or regulation.

(m) (1) Notwithstanding any other provision of law, venue for an action or proceeding under this part shall be determined as follows:

(A) Venue shall be in the superior court in the county that is currently expending public assistance.

(B) If public assistance is not currently being expended, venue shall be in the superior court in the county where the child who is entitled to current support resides or is domiciled.

(C) If current support is no longer payable through, or enforceable by, the district attorney, venue shall be in the superior court in the county that last provided public assistance for actions to enforce arrearages assigned pursuant to Section 11477.

(D) If subparagraphs (A), (B), and (C) do not apply, venue shall be in the superior court in the county of residence of the support obligee.

(E) If the support obligee does not reside in California, and subparagraphs (A), (B), (C), and (D) do not apply, venue shall be in the superior court of the county of residence of the obligor.

(2) Notwithstanding paragraph (1), if the child becomes a resident of another county after an action under this part has been filed, venue may remain in the county where the action was filed until the action is completed.

(n) The district attorney of one county may appear on behalf of the district attorney of any other county in an action or proceeding under this part.

SEC. 64. Section 11478.5 of the Welfare and Institutions Code is amended to read:

11478.5. (a) There is in the Department of Justice the California Parent Locator Service and Central Registry which shall collect and disseminate all of the following, with respect to any parent, putative parent, spouse, or former spouse:

(1) The full and true name of the parent together with any known aliases.

- (2) Date and place of birth.
- (3) Physical description.
- (4) Social security number.
- (5) Employment history and earnings.
- (6) Military status and Veterans Administration or military service serial number.
- (7) Last known address, telephone number, and date thereof.
- (8) Driver's license number, driving record, and vehicle registration information.
- (9) Criminal, licensing, and applicant records and information.
- (10) (A) Any additional location, asset, and income information, including income tax return information obtained pursuant to Section 19285.1 of the Revenue and Taxation Code, and the address, telephone number, and social security information obtained from a public utility that may be of assistance in locating the parent, putative parent, abducting, concealing, or detaining parent, spouse, or former spouse, in establishing a parent and child relationship, in enforcing the child support liability of the absent parent, or enforcing the spousal support liability of the spouse or former spouse to the extent required by the state plan pursuant to Section 11475.2.
- (B) For purposes of this subdivision "income tax return information" means all of the following regarding the taxpayer:
 - (i) Assets.
 - (ii) Credits.
 - (iii) Deductions.
 - (iv) Exemptions.
 - (v) Identity.
 - (vi) Liabilities.
 - (vii) Nature, source, and amount of income.
 - (viii) Net worth.
 - (ix) Payments.
 - (x) Receipts.
 - (xi) Address.
 - (xii) Social security number.

(b) To effectuate the purposes of this section, the California Parent Locator Service and Central Registry shall utilize the federal Parent Locator Service to the extent necessary, and may request and shall receive from all departments, boards, bureaus, or other agencies of the state, or any of its political subdivisions, and those entities shall provide, that assistance and data which will enable the Department of Justice and other public agencies to carry out their powers and duties to locate parents, spouses, and former spouses, and to identify their assets, to establish parent-child relationships, and to enforce liability for child or spousal support, and for any other obligations incurred on behalf of children, and shall also provide that information to any district attorney in fulfilling the duties prescribed in Section 270 of the Penal Code, and in Chapter 8 (commencing with Section 3130) of Part 2 of Division 8 of the Family Code, relating to abducted, concealed, or detained children. The State Department

of Social Services' Statewide Automated Child Support System shall be entitled to the same cooperation and information as the California Parent Locator Service, to the extent allowed by law. The Statewide Automated Child Support System shall be allowed access to criminal record information only to the extent that access is allowed by state and federal law.

(c) (1) To effectuate the purposes of this section, and notwithstanding any other provision of California law, regulation, or tariff, and to the extent permitted by federal law, the California Parent Locator Service and Central Registry and the Statewide Automated Child Support System may request and shall receive from public utilities, as defined in Section 216 of the Public Utilities Code, customer service information, including the full name, address, telephone number, date of birth, and social security number of customers of the public utility, to the extent that this information is stored within the computer data base of the public utility.

(2) In order to protect the privacy of utility customers, a request to a public utility for customer service information pursuant to this section shall meet the following requirements:

(A) Be submitted to the public utility in writing, on a transmittal document prepared by the California Parent Locator Service and Central Registry or the Statewide Automated Child Support System and approved by all of the public utilities.

(B) Have the signature of a representative authorized by the California Parent Locator Service and Central Registry or the Statewide Automated Child Support System.

(C) Contain at least three of the following data elements regarding the person sought:

- (i) First and last name, and middle initial, if known.
- (ii) Social security number.
- (iii) Driver's license number.
- (iv) Birth date.
- (v) Last known address.
- (vi) Spouse's name.

(D) The California Parent Locator Service and Central Registry and the Statewide Automated Child Support System shall ensure that each public utility has at all times a current list of the names of persons authorized to request customer service information.

(E) The California Parent Locator Service and Central Registry shall ensure that customer service information supplied by a public utility is applicable to the person who is being sought before releasing the information pursuant to subdivision (d).

(3) The public utility may charge a fee to the California Parent Locator Service and Central Registry or the Statewide Automated Child Support System for each search performed pursuant to this subdivision to cover the actual costs to the public utility for providing this information.

(4) No public utility, or official or employee thereof, shall be subject to criminal or civil liability for the release of customer service

information as authorized by this subdivision.

(d) Notwithstanding Section 14202 of the Penal Code, any records established pursuant to this section shall be disseminated only to the Department of Justice, the California Parent Locator Service and Central Registry, the parent locator services and central registries of other states as defined by federal statutes and regulations, a district attorney of any county in this state, the federal Parent Locator Service, and official child support enforcement agencies. The State Department of Social Services' Statewide Automated Child Support Enforcement System shall be allowed access to criminal offender record information only to the extent that access is allowed by law.

(e) (1) At no time shall any information received by the California Parent Locator Service and Central Registry or by the Statewide Automated Child Support System be disclosed to any person, agency, or other entity, other than those persons, agencies, and entities specified pursuant to Section 11478, this section, or any other provision of law.

(2) This subdivision shall not otherwise affect discovery between parties in any action to establish, modify, or enforce child, family, or spousal support, that relates to custody or visitation.

(f) (1) The Department of Justice, in consultation with the State Department of Social Services, shall promulgate rules and regulations to facilitate maximum and efficient use of the California Parent Locator Service and Central Registry.

(2) The Department of Justice, in consultation with the State Department of Social Services and the Public Utilities Commission, shall develop procedures for obtaining the information described in subdivision (c) from public utilities, and for compensating the public utilities for providing that information.

(g) The State Department of Social Services and the Department of Justice shall implement the provisions of this section regarding public utilities, as defined by Section 216 of the Public Utilities Code, only where there is a reasonable likelihood that the cost of obtaining customer service information from public utilities pursuant to this section would be less than the additional collections obtained through use of that information.

(h) The California Parent Locator Service and Central Registry may charge a fee not to exceed eighteen dollars (\$18) for any service it provides pursuant to this section that is not performed or funded pursuant to Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code.

(i) This section shall be construed in a manner consistent with the other provisions of this article.

SEC. 64.5. Section 11479 of the Welfare and Institutions Code is amended to read:

11479. In all cases in which the paternity of the child has not been established to the satisfaction of the county department, the county department shall refer the applicant to the district attorney at the time the application is signed. Upon the advice of a county

department that a child is being considered for adoption, and regardless of whether or not the whereabouts of the parent is known, the district attorney shall delay his or her investigation and other action with respect to the case until advised that the adoption is no longer under consideration. The district attorney shall conduct such investigation as he or she considers necessary, and where he or she deems it appropriate, he or she may bring an action under Chapter 4 (commencing with Section 7630) of Part 3 of Division 12 of the Family Code. When the cause is at issue, it shall be set for trial at the earliest possible date and shall take precedence over all other cases except older matters of the same character and matters to which precedence may be given by law.

SEC. 65. Section 12300 of the Welfare and Institutions Code is amended to read:

12300. (a) The purpose of this article is to provide in every county in a manner consistent with this chapter and the annual Budget Act those supportive services identified in this section to aged, blind, or disabled persons, as defined under this chapter, who are unable to perform the services themselves and who cannot safely remain in their homes or abodes of their own choosing unless these services are provided.

(b) Supportive services shall include domestic services and services related to domestic services, heavy cleaning, personal care services, accompaniment by a provider when needed during necessary travel to health-related appointments or to alternative resource sites, yard hazard abatement, protective supervision, teaching and demonstration directed at reducing the need for other supportive services, and paramedical services which make it possible for the recipient to establish and maintain an independent living arrangement.

(c) Personal care services shall mean all of the following:

- (1) Assistance with ambulation.
- (2) Bathing, oral hygiene, and grooming.
- (3) Dressing.
- (4) Care and assistance with prosthetic devices.
- (5) Bowel, bladder, and menstrual care.
- (6) Repositioning, skin care, range of motion exercises, and transfers.

(7) Feeding and assurance of adequate fluid intake.

(8) Respiration.

(9) Assistance with self-administration of medications.

(d) Where supportive services are provided by a person having the legal duty pursuant to the Family Code to provide for the care of his or her child who is the recipient, the provider of supportive services shall receive remuneration for the services only when the provider leaves full-time employment or is prevented from obtaining full-time employment because no other suitable provider is available and where the inability of the provider to provide supportive services may result in inappropriate placement or

inadequate care.

These providers shall be paid only for the following:

- (1) Services related to domestic services.
- (2) Personal care services.
- (3) Accompaniment by a provider when needed during necessary travel to health-related appointments or to alternative resource sites.
- (4) Protective supervision only as needed because of the functional limitations of the child.
- (5) Paramedical services.

(e) To encourage maximum voluntary services, so as to reduce governmental costs, respite care shall also be provided. Respite care is temporary or periodic service for eligible recipients to relieve persons who are providing care without compensation.

(f) A person who is eligible to receive a personal care service or an ancillary service provided pursuant to Section 14132.95 shall not be eligible to receive that same service pursuant to this article.

(g) (1) All services provided pursuant to this article shall be equal in amount, scope, and duration to the same services provided pursuant to Section 14132.95, including any adjustments that may be made to those services pursuant to subdivision (e) of Section 14132.95.

(2) Any recipient receiving services under both Section 14132.95 and this article shall receive no more than 283 hours of service per month, combined, and any recipient of services under this article shall receive no more than the applicable maximum specified in Section 12303.4.

SEC. 65.1. Section 12300 of the Welfare and Institutions Code is amended to read:

12300. (a) The purpose of this article is to provide in every county in a manner consistent with this chapter and the annual Budget Act those supportive services identified in this section to aged, blind, or disabled persons, as defined under this chapter, who are unable to perform the services themselves and who cannot safely remain in their homes or abodes of their own choosing unless these services are provided.

(b) Supportive services shall include domestic services and services related to domestic services, heavy cleaning, personal care services, accompaniment by a provider when needed during necessary travel to health-related appointments or to alternative resource sites, yard hazard abatement, protective supervision, teaching and demonstration directed at reducing the need for other supportive services, and paramedical services which make it possible for the recipient to establish and maintain an independent living arrangement.

(c) Personal care services shall mean all of the following:

- (1) Assistance with ambulation.
- (2) Bathing, oral hygiene, and grooming.
- (3) Dressing.
- (4) Care and assistance with prosthetic devices.

(5) Bowel, bladder, and menstrual care.
(6) Repositioning, skin care, range of motion exercises, and transfers.

(7) Feeding and assurance of adequate fluid intake.

(8) Respiration.

(9) Assistance with self-administration of medications.

(d) Where supportive services are provided by a person having the legal duty pursuant to the Family Code to provide for the care of his or her child who is the recipient, the provider of supportive services shall receive remuneration for the services only when the provider leaves full-time employment or is prevented from obtaining full-time employment because no other suitable provider is available and where the inability of the provider to provide supportive services may result in inappropriate placement or inadequate care.

These providers shall be paid only for the following:

(1) Services related to domestic services.

(2) Personal care services.

(3) Accompaniment by a provider when needed during necessary travel to health-related appointments or to alternative resource sites.

(4) Protective supervision only as needed because of the functional limitations of the child.

(5) Paramedical services.

(e) To encourage maximum voluntary services, so as to reduce governmental costs, respite care shall also be provided. Respite care is temporary or periodic service for eligible recipients to relieve persons who are providing care without compensation.

(f) A person who is eligible to receive a personal care service or an ancillary service provided pursuant to Section 14132.95 shall not be eligible to receive that same service pursuant to this article.

(g) (1) All services provided pursuant to this article shall be equal in amount, scope, and duration to the same services provided pursuant to Section 14132.95, including any adjustments that may be made to those services pursuant to subdivision (e) of Section 14132.95.

(2) Notwithstanding any other provision of this article, the rate of reimbursement for in-home supportive services provided through any mode of service shall not exceed the rate of reimbursement established under subdivision (j) of Section 14132.95 for the same mode of service unless otherwise provided in the annual Budget Act.

(3) Any recipient receiving services under both Section 14132.95 and this article shall receive no more than 283 hours of service per month, combined, and any recipient of services under this article shall receive no more than the applicable maximum specified in Section 12303.4.

SEC. 65.5. Section 16501.1 of the Welfare and Institutions Code is amended to read:

16501.1. (a) The Legislature finds and declares that the foundation and central unifying tool in child welfare services is the

case plan.

(b) The Legislature further finds and declares that a case plan ensures that the child receives protection and proper case management, and that services are provided to the parents or other caretakers as appropriate. A case plan shall be based upon the principles of this section and shall document that a preplacement assessment of the service needs of the child and family, and preplacement preventive services, have been provided, and that reasonable efforts to prevent out-of-home placement have been made.

(c) When out-of-home placement is used to attain case plan goals, the decision regarding choice of placement shall be based upon selection of the least restrictive or most familylike setting, selection of the environment best suited to meet the child's special needs and best interests, or both. The selection shall consider, in order of priority, placement with relatives, tribal members, and foster family, group care, and residential treatment pursuant to Section 7950 of the Family Code.

(d) A written case plan shall be completed within 30 days of the initial removal of the child or of the in-person response required under subdivision (f) of Section 16501 if the child has not been removed from his or her home, or by the date of the dispositional hearing pursuant to Section 358, whichever occurs first. The case plan shall be updated, as the service needs of the child and family dictate. At a minimum, the case plan shall be updated in conjunction with each status review hearing conducted pursuant to Section 366.21, and the hearing conducted pursuant to Section 366.25 or 366.26, but no less frequently than once every six months.

(e) The child welfare services case plan shall be comprehensive enough to meet the juvenile court dependency proceedings requirements pursuant to Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of Division 2.

(f) The case plan shall be developed as follows:

(1) The case plan shall be based upon an assessment of the circumstances which required child welfare services intervention.

(2) The case plan shall identify specific goals, and the appropriateness of the planned services in meeting those goals.

(3) The case plan shall identify the original allegations of abuse or neglect, as defined in Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code, or the conditions cited as the basis for declaring the child a dependent of the court pursuant to Section 300, or all of these, and the other precipitating incidents which led to child welfare services intervention.

(4) The case plan shall include a description of the schedule of the social worker contacts with the child and the family or other caretakers. The frequency of these contacts shall be in accordance with regulations adopted by the State Department of Social Services.

(5) When out-of-home services are used, the frequency of contact between the natural parents or legal guardians and the child shall be

specified in the case plan. The frequency of those contacts shall reflect overall case goals, and consider other principles outlined in this section.

(6) When out-of-home services are used, the case plan shall include a recommendation regarding the appropriateness of unsupervised visitation between the child and any of the child's siblings. This recommendation shall include a statement regarding the child's and the siblings' willingness to participate in unsupervised visitation. If the case plan includes a recommendation for unsupervised sibling visitation, the plan shall also note that information necessary to accomplish this visitation has been provided to the child or to the child's siblings.

(7) Parents and legal guardians shall have an opportunity to review the case plan, sign it whenever possible, and then shall receive a copy of the plan. In any voluntary service or placement agreement, the parents or legal guardians shall be required to review and sign the case plan. Whenever possible, parents and legal guardians shall participate in the development of the case plan.

(8) The case plan shall be included in the court report and shall be considered by the court at the initial hearing and each review hearing. Modifications to the case plan made during the period between review hearings need not be approved by the court if the casework supervisor for that case determines that the modifications further the goals of the plan.

(g) If the court finds, after considering the case plan, that unsupervised sibling visitation is appropriate and has been consented to, the court shall order that the child or the child's siblings be provided with information necessary to accomplish this visitation. Nothing in this section shall be construed to require or prohibit the probation officer's facilitation, transportation, or supervision of visits between the child and his or her siblings.

SEC. 65.6. Section 16501.1 of the Welfare and Institutions Code is amended to read:

16501.1. (a) The Legislature finds and declares that the foundation and central unifying tool in child welfare services is the case plan.

(b) The Legislature further finds and declares that a case plan ensures that the child receives protection and proper case management, and that services are provided to the parents or other caretakers as appropriate. A case plan shall be based upon the principles of this section and shall document that a preplacement assessment of the service needs of the child and family, and preplacement preventive services, have been provided, and that reasonable efforts to prevent out-of-home placement have been made.

(c) When out-of-home placement is used to attain case plan goals, the decision regarding choice of placement shall be based upon selection of the least restrictive or most familylike setting, selection of the environment best suited to meet the child's special needs and

best interests, or both. The selection shall consider, in order of priority, placement with relatives, tribal members, and foster family, group care, and residential treatment pursuant to Section 7950 of the Family Code.

(d) A written case plan shall be completed within 30 days of the initial removal of the child or of the in-person response required under subdivision (f) of Section 16501 if the child has not been removed from his or her home, or by the date of the dispositional hearing pursuant to Section 358, whichever occurs first. The case plan shall be updated, as the service needs of the child and family dictate. At a minimum, the case plan shall be updated in conjunction with each status review hearing conducted pursuant to Section 366.21, and the hearing conducted pursuant to Section 366.25 or 366.26, but no less frequently than once every six months.

(e) The child welfare services case plan shall be comprehensive enough to meet the juvenile court dependency proceedings requirements pursuant to Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of Division 2.

(f) The case plan shall be developed as follows:

(1) The case plan shall be based upon an assessment of the circumstances which required child welfare services intervention.

(2) The case plan shall identify specific goals, and the appropriateness of the planned services in meeting those goals.

(3) The case plan shall identify the original allegations of abuse or neglect, as defined in Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code, or the conditions cited as the basis for declaring the child a dependent of the court pursuant to Section 300, or all of these, and the other precipitating incidents which led to child welfare services intervention.

(4) The case plan shall include a description of the schedule of the social worker contacts with the child and the family or other caretakers. The frequency of these contacts shall be in accordance with regulations adopted by the State Department of Social Services.

(5) When out-of-home services are used, the frequency of contact between the natural parents or legal guardians and the child shall be specified in the case plan. The frequency of those contacts shall reflect overall case goals, and consider other principles outlined in this section.

(6) When out-of-home placement is made, the case plan shall include documentation of the provisions specified in subdivisions (b), (c), and (d) of Section 16002.

(7) When out-of-home services are used, the case plan shall include a recommendation regarding the appropriateness of unsupervised visitation between the child and any of the child's siblings. This recommendation shall include a statement regarding the child's and the siblings' willingness to participate in unsupervised visitation. If the case plan includes a recommendation for unsupervised sibling visitation, the plan shall also note that information necessary to accomplish this visitation has been

provided to the child or to the child's siblings.

(8) Parents and legal guardians shall have an opportunity to review the case plan, sign it whenever possible, and then shall receive a copy of the plan. In any voluntary service or placement agreement, the parents or legal guardians shall be required to review and sign the case plan. Whenever possible, parents and legal guardians shall participate in the development of the case plan.

(9) The case plan shall be included in the court report and shall be considered by the court at the initial hearing and each review hearing. Modifications to the case plan made during the period between review hearings need not be approved by the court if the casework supervisor for that case determines that the modifications further the goals of the plan.

(g) If the court finds, after considering the case plan, that unsupervised sibling visitation is appropriate and has been consented to, the court shall order that the child or the child's siblings be provided with information necessary to accomplish this visitation. Nothing in this section shall be construed to require or prohibit the probation officer's facilitation, transportation, or supervision of visits between the child and his or her siblings.

(h) The case plan documentation on sibling placements required under this section shall not require modification of existing case plan forms until the Child Welfare Services Case Management System is implemented on a statewide basis.

SEC. 66. Section 25.5 of this bill incorporates amendments to Section 2610 of the Family Code proposed by both this bill and SB 1500. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 2610 of the Family Code, and (3) this bill is enacted after SB 1500, in which case Section 25 of this bill shall not become operative.

SEC. 67. Section 52.3 of this bill incorporates, in substantive effect, amendments to Section 7575 of the Family Code proposed by both this bill and AB 3804. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 7575 of the Family Code, and (3) this bill is enacted after AB 3804, in which case Section 52.2 of this bill shall not become operative.

SEC. 68. Section 53.5 of this bill incorporates amendments to Section 7611 of the Family Code proposed by both this bill and SB 997. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 7611 of the Family Code, and (3) this bill is enacted after SB 997, in which case Section 53 of this bill shall not become operative.

SEC. 69. Section 54.5 of this bill incorporates amendments to Section 7612 of the Family Code proposed by both this bill and SB 997. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 7612 of the Family Code, and (3) this bill is enacted after SB 997, in which case Section 54 of this bill shall not become operative.

SEC. 70. (a) Section 56.7 of this bill incorporates amendments to Section 1522 of the Health and Safety Code proposed by both this bill and AB 3628. It shall only become operative if (1) both bills are enacted and become effective January 1, 1995, (2) each bill amends Section 1522 of the Health and Safety Code, and (3) SB 1984 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 3628, in which case Sections 56.6, 56.8, and 56.9 of this bill shall not become operative.

(b) Section 56.8 of this bill incorporates amendments to Section 1522 of the Health and Safety Code proposed by both this bill and SB 1984. It shall only become operative if (1) both bills are enacted and become effective January 1, 1995, (2) each bill amends Section 1522 of the Health and Safety Code, (3) AB 3628 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1984 in which case Sections 56.6, 56.7, and 56.9 of this bill shall not become operative.

(c) Section 56.9 of this bill incorporates amendments to Section 1522 of the Health and Safety Code proposed by this bill, AB 3628, and SB 1984. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1995, (2) all three bills amend Section 1522 of the Health and Safety Code, and (3) this bill is enacted after AB 3628 and SB 1984, in which case Sections 56.6, 56.7, and 56.8 of this bill shall not become operative.

SEC. 71. (a) Section 61.1 of this bill incorporates amendments to Section 11105.3 of the Penal Code proposed by both this bill and AB 1328. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 11105.3 of the Penal Code, (3) AB 3738 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1328, in which case Sections 61, 61.2, and 61.3 of this bill shall not become operative.

(b) Section 61.2 of this bill incorporates amendments to Section 11105.3 of the Penal Code proposed by both this bill and AB 3738. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 11105.3 of the Penal Code, (3) AB 1328 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 3738, in which case Sections 61, 61.1, and 61.3 of this bill shall not become operative.

(c) Section 61.3 of this bill incorporates amendments to Section 11105.3 of the Penal Code proposed by this bill, AB 1328, and AB 3738. It shall only become operative if (1) all three bills are enacted and become effective on January 1, 1995, (2) all three bills amend Section 11105.3 of the Penal Code, and (3) this bill is enacted after AB 1328 and AB 3738, in which case Sections 61, 61.1, and 61.2 of this bill shall not become operative.

SEC. 72. Section 62.1 of this bill incorporates amendments to Section 903 of the Welfare and Institutions Code proposed by both this bill and AB 1327. It shall only become operative if (1) both bills

are enacted and become effective on or before January 1, 1995, (2) each bill amends Section 903 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 1327, in which case Section 62 of this bill shall not become operative.

SEC. 73. Section 63.5 of this bill incorporates amendments to Section 11475.1 of the Welfare and Institutions Code proposed by both this bill and AB 2142. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 11475.1 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 2142, in which case Section 63 of this bill shall not become operative.

SEC. 74. Section 65.1 of this bill incorporates amendments to Section 12300 of the Welfare and Institutions Code proposed by both this bill and AB 1354. It shall only become operative if (1) both bills are enacted and become effective January 1, 1995, (2) each bill amends Section 12300 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 1354, in which case Section 65 of this bill shall not become operative.

SEC. 75. Section 65.6 of this bill incorporates amendments to Section 16501.1 of the Welfare and Institutions Code proposed by both this bill and SB 17. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1995, (2) each bill amends Section 16501.1 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 17, in which case Section 65.5 of this bill shall not become operative.

SEC. 76. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1270

An act to amend Section 1010 of, and to repeal Section 1014.5 of, the Evidence Code, relating to privilege.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 1010 of the Evidence Code is amended to read:

1010. As used in this article, "psychotherapist" means:

(a) A person authorized, or reasonably believed by the patient to be authorized, to practice medicine in any state or nation who devotes, or is reasonably believed by the patient to devote, a substantial portion of his or her time to the practice of psychiatry.

(b) A person licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(c) A person licensed as a clinical social worker under Article 4 (commencing with Section 4996) of Chapter 14 of Division 2 of the Business and Professions Code, when he or she is engaged in applied psychotherapy of a nonmedical nature.

(d) A person who is serving as a school psychologist and holds a credential authorizing that service issued by the state.

(e) A person licensed as a marriage, family, and child counselor under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(f) A person registered as a psychological assistant who is under the supervision of a licensed psychologist or board certified psychiatrist as required by Section 2913 of the Business and Professions Code, or a person registered as a marriage, family, and child counselor intern who is under the supervision of a licensed marriage, family, and child counselor, a licensed clinical social worker, a licensed psychologist, or a licensed physician certified in psychiatry, as specified in Section 4980.44 of the Business and Professions Code.

(g) A person registered as an associate clinical social worker who is under the supervision of a licensed clinical social worker, a licensed psychologist, or a board certified psychiatrist as required by Section 4996.20 of the Business and Professions Code.

(h) A person exempt from the Psychology Licensing Law pursuant to subdivision (d) of Section 2909 of the Business and Professions Code who is under the supervision of a licensed psychologist or board certified psychiatrist.

(i) A psychological intern as defined in Section 2911 of the Business and Professions Code who is under the supervision of a licensed psychologist or board certified psychiatrist.

(j) A trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code, who is fulfilling his or her supervised practicum required by subdivision (b) of Section 4980.40 of the Business and Professions Code and is supervised by a licensed psychologist, board certified psychiatrist, a licensed clinical social worker, or a licensed marriage, family, and child counselor.

(k) A person licensed as a registered nurse pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code, who possesses a master's degree in psychiatric mental health nursing.

(l) A person rendering mental health treatment or counseling services as authorized pursuant to Section 6924 of the Family Code.

SEC. 2. Section 1014.5 of the Evidence Code is repealed.

CHAPTER 1271

An act to amend Section 10263 of the Public Contract Code, relating to contract retention funds.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 10263 of the Public Contract Code is amended to read:

10263. (a) Provisions shall be included in any invitation for bid and in any contract documents to permit the substitution of securities for any moneys withheld by a public agency to ensure performance under a contract. At the request and expense of the contractor, securities equivalent to the amount withheld shall be deposited with the State Treasurer or, a state or federally chartered bank in California, as the escrow agent, who shall then pay the moneys to the contractor. Upon satisfactory completion of the contract, the securities shall be returned to the contractor.

(b) Alternatively, the contractor may request and the owner shall make payment of retentions earned directly to the escrow agent. The contractor may direct the investment of the payments into securities and the contractor shall receive the interest earned on the investments upon the same terms provided for in this section for securities deposited by the contractor. Upon satisfactory completion of the contract, the contractor shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from the owner, pursuant to the terms of this section.

(c) Alternatively, and subject to the approval of the public agency, the payment of retentions earned may be deposited directly with a person licensed under Division 6 (commencing with Section 17000) of the Financial Code as the escrow agent. Upon written

request of an escrow agent that has not been approved by the public agency under this subdivision, the public agency shall provide written notice to that escrow agent within 10 business days of receipt of the request indicating the reason or reasons for not approving that escrow agent. The payments shall be deposited in a trust account with a federally chartered bank or savings association within 24 hours of receipt by the escrow agent. The contractor shall not place any retentions with the escrow agent in excess of the coverage provided to that escrow agent pursuant to subdivision (b) of Section 17314 of the Financial Code. In all respects not inconsistent with this subdivision, the remaining provisions of this section shall apply to escrow agents acting pursuant to this subdivision.

This subdivision shall not be applicable to payments deposited on or after January 1, 1997.

(d) Securities eligible for investment under this section shall include those listed in Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the contractor and the public agency.

The contractor shall be beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon.

Failure to include the provisions prescribed by this section in bid and contract documents shall void any provisions for performance retentions in a public agency contract.

(e) The Legislature hereby finds and declares that the provisions of this section are of statewide concern and are necessary to encourage full participation by contractors in public contract procedures.

(f) The escrow agreement used pursuant to this section shall be null, void, and unenforceable unless it is substantially similar to the following form:

**ESCROW AGREEMENT FOR
SECURITY DEPOSITS IN LIEU OF RETENTION**

This Escrow Agreement is made and entered into by and between

_____	whose address is _____
_____	hereinafter called "owner,"
_____	whose address is _____
_____	hereinafter called "contractor," and
_____	whose address is _____
_____	hereinafter called "escrow agent."

For the consideration hereinafter set forth, the owner, contractor, and escrow agent agree as follows:

(1) Pursuant to Section 10263 of the Public Contract Code of the State of California, the contractor has the option to deposit securities

with the escrow agent as a substitute for retention earnings required to be withheld by the owner pursuant to the construction contract entered into between the owner and contractor for _____ in the amount of _____ dated _____ (hereafter referred to as the "contract"). Alternatively, on written request of the contractor, the owner shall make payments of the retention earnings directly to the escrow agent. When the contractor deposits the securities as a substitute for the contract earnings, the escrow agent shall notify the owner within ten days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the contract between the owner and contractor. Securities shall be held in the name of the _____, and shall designate the contractor as the beneficial owner.

(2) The owner shall make progress payments to the contractor for those funds which otherwise would be withheld from progress payments pursuant to the contract provision, provided that the escrow agent holds securities in the form and amount specified above.

(3) When the owner makes payment of retentions earned directly to the escrow agent, the escrow agent shall hold them for the benefit of the contractor until such time as the escrow created under this contract is terminated. The contractor may direct the investment of the payments into securities. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the owner pays the escrow agent directly.

(4) The contractor shall be responsible for paying all fees for the expenses incurred by the escrow agent in administering the escrow account. These expenses and payment terms shall be determined by the contractor and escrow agent.

(5) The interest earned on the securities or the money market accounts held in escrow and all interest earned on the interest shall be for the sole account of contractor and shall be subject to withdrawal by contractor at any time and from time to time without notice to the owner.

(6) The contractor shall have the right to withdraw all or any part of the principal in the escrow account only by written notice to the escrow agent accompanied by written authorization from the owner to the escrow agent that the owner consents to the withdrawal of the amount sought to be withdrawn by contractor.

(7) The owner shall have a right to draw upon the securities in the event of default by the contractor. Upon seven days' written notice to the escrow agent from the owner of the default, the escrow agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the owner.

(8) Upon receipt of written notification from the owner certifying that the contract is final and complete, and that the contractor has complied with all requirements and procedures applicable to the

contract, the escrow agent shall release to the contractor all securities and interest on deposit less escrow fees and charges of the escrow account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges.

(9) The escrow agent shall rely on the written notifications from the owner and the contractor pursuant to Sections (1) to (8), inclusive, of this agreement and the owner and contractor shall hold the escrow agent harmless from the escrow agent's release, conversion, and disbursement of the securities and interest as set forth above.

(10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of the owner and on behalf of the contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of the owner:

On behalf of the contractor:

Title

Name

Signature

Address

Title

Name

Signature

Address

On behalf of the escrow agent:

Title

Name

Signature

Address

At the time the escrow account is opened, the owner and contractor shall deliver to the escrow agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

Owner	Contractor
_____	_____
Title	Title
_____	_____
Name	Name
_____	_____
Signature	Signature

CHAPTER 1272

An act relating to criminal statistics, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. The Legislature recognizes the importance of preventing crimes motivated, in whole or in part, by the victim's race, ethnicity, religion, sexual orientation, or physical or mental disability. In formulating legislation to prevent these crimes it is necessary that the Legislature have accurate and adequate statistical information relative to any criminal acts or attempted criminal acts where there is reasonable cause to believe that the crime was motivated by race, ethnicity, religion, sexual orientation, or physical or mental disability.

It is the intention of the Legislature to seek adequate funding to continue the collection of this information by the Department of Justice from appropriations in the Budget Act of 1995.

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

In order to protect and provide security to people without regard to race, ethnicity, religion, sexual orientation, or physical and mental disability, it is necessary for the Department of Justice to prepare a report, on the basis of information obtained from local law enforcement agencies, for submission to the Legislature so that the Legislature may formulate legislation to prevent hate crimes as expeditiously as possible.

CHAPTER 1273

An act to amend Section 5024 of, and to amend, repeal, and add Sections 5000, 5002, 5023, and 5029 of, and to add Section 202.5 to, the Business and Professions Code, relating to consumer affairs.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 202.5 is added to the Business and Professions Code, to read:

202.5. Prior to payment to the Department of Justice of any charges for legal services rendered to any board within the department, the Department of Justice shall submit to the board an itemized statement of the services and charges. The itemized statement shall include detailed information regarding the services performed and the amount of time billed for each of those services.

SEC. 2. Section 5000 of the Business and Professions Code is amended to read:

5000. (a) There is in the Department of Consumer Affairs a State Board of Accountancy, which consists of 12 members, seven of whom shall be certified public accountants, one of whom shall be a public accountant, and four of whom shall be public members who shall not be licentiates of the board or registered by the board. The board has the powers and duties conferred by this chapter.

The Governor shall appoint two of the public members and the eight accountant members qualified as provided in this section. The Senate Rules Committee and the Speaker of the Assembly shall each appoint a public member. In appointing the seven certified public accountant members, the Governor shall appoint members representing a cross section of the accounting profession with at least one member representing a small public accounting firm. For the purposes of this chapter, a small public accounting firm shall be defined as a professional firm that employs a total of no more than four certified public accountants as partners, owners, or full-time employees in the practice of public accountancy within the State of California.

(b) This section shall remain in effect only until July 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 1997, deletes or extends that date.

SEC. 3. Section 5000 is added to the Business and Professions Code, to read:

5000. There is in the Department of Consumer Affairs the State Board of Accountancy, which consists of 10 members, five of whom shall be certified public accountants, one of whom shall be a public accountant, and four of whom shall be public members who shall not be licentiates of the board or registered by the board. The board has

the powers and duties conferred by this chapter.

The Governor shall appoint two of the public members, the five certified public accountant members, and the public accountant member qualified as provided in this section. The Senate Rules Committee and the Speaker of the Assembly shall each appoint a public member. In appointing the five certified public accountant members, the Governor shall appoint members representing a cross section of the accounting profession with at least one member representing a small public accounting firm. For the purposes of this chapter, a small public accounting firm shall be defined as a professional firm that employs a total of no more than four certified public accountants as partners, owners, or full-time employees in the practice of public accountancy within the State of California.

This section shall become operative on July 1, 1997.

SEC. 4. Section 5020 of the Business and Professions Code is amended to read:

5020. The board shall appoint an administrative committee of not less than three nor more than five members who shall be public accountants, and not less than 10 nor more than 12 members who shall be certified public accountants, to perform any of the following duties, and the committee shall be vested with the full powers of the board for those purposes:

(a) To receive and investigate complaints and to initiate and conduct investigations or hearings, with or without the filing of any complaint, and to obtain information and evidence relating to any matter involving the conduct of public accountants and certified public accountants.

(b) To receive and investigate complaints and to initiate and conduct investigations or hearings, with or without the filing of any complaint, and to obtain information and evidence relating to any matter involving any violation or alleged violation of this chapter by public accountants and certified public accountants.

(c) This section shall remain in effect only until July 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 1997, deletes or extends that date.

SEC. 5. Section 5020 is added to the Business and Professions Code, to read:

5020. The board may establish an administrative committee of nine members, six of whom shall be certified public accountants, two of whom shall be board members, one of whom is a public member of the board, and one of whom shall be a public accountant, to perform any of the following duties:

(a) To receive and investigate complaints and to initiate and conduct investigations or hearings, with or without the filing of any complaint, and to obtain information and evidence relating to any matter involving the conduct of public accountants and certified public accountants.

(b) To receive and investigate complaints and to initiate and conduct investigations or hearings, with or without the filing of any

complaint, and to obtain information and evidence relating to any matter involving any violation or alleged violation of this chapter by public accountants and certified public accountants.

This section shall become operative on July 1, 1997.

SEC. 6. Section 5023 of the Business and Professions Code is amended to read:

5023. The board may establish an examining committee of its own certified public accountant members or other certified public accountants of the state in good standing, having the power:

(a) To examine all applicants for the certificate of certified public accountant.

(b) To recommend to the board applicants for the certificate of certified public accountant who fulfill the requirements of this chapter.

The examining committee shall follow the rules and regulations adopted by the board for the purpose of making effective the qualifications prescribed in Articles 4 (commencing at Section 5070) and 5 (commencing at Section 5080).

(c) This section shall remain in effect only until July 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 1997, deletes or extends that date.

SEC. 7. Section 5023 is added to the Business and Professions Code, to read:

5023. The board may establish an examining committee of nine members, six of whom shall be certified public accountants, two of whom shall be board members, one of whom is a public member of the board, and one of whom shall be a public accountant, to perform any of the following duties:

(a) To examine all applicants for the certificate of certified public accountant.

(b) To recommend to the board applicants for the certificate of certified public accountant who fulfill the requirements of this chapter.

The examining committee shall follow the rules and regulations adopted by the board for the purpose of making effective the qualifications prescribed in Articles 4 (commencing at Section 5070) and 5 (commencing at Section 5080).

This section shall become operative on July 1, 1997.

SEC. 8. Section 5024 of the Business and Professions Code is amended to read:

5024. The board may create and appoint other committees consisting of public accountants or certified public accountants of this state in good standing and who need not be members of the board for the purpose of making recommendations on such matters as may be specified by the board.

SEC. 9. Section 5029 of the Business and Professions Code is amended to read:

5029. The board may appoint a continuing education committee of not less than five members. The committee shall perform the

following duties, and the committee shall be vested with the full powers of the board for the following purposes:

(a) To evaluate programs to determine whether they qualify under the regulations adopted by the board pursuant to subdivision (b) of Section 5027. Educational courses offered by professional accounting societies shall be accepted by the board as qualifying if the courses are approved by the committee as meeting the requirements of the board under the regulations.

(b) To consider applications for exceptions as permitted under Section 5028.

(c) To consider other matters relating to the requirements of this article as the board may assign to the committee.

(d) This section shall remain in effect only until July 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 1997, deletes or extends that date.

SEC. 10. Section 5029 is added to the Business and Professions Code, to read:

5029. The board may establish a continuing education committee of nine members, six of whom shall be certified public accountants, two of whom shall be board members, one of whom is a public member of the board, and one of whom shall be a public accountant, to perform any of the following duties:

(a) To evaluate programs to determine whether they qualify under the regulations adopted by the board pursuant to subdivision (b) of Section 5027. Educational courses offered by professional accounting societies shall be accepted by the board as qualifying if the courses are approved by the committee as meeting the requirements of the board under the regulations.

(b) To consider applications for exceptions as permitted under Section 5028.

(c) To consider other matters relating to the requirements of this article as the board may assign to the committee.

This section shall become operative on July 1, 1997.

CHAPTER 1274

An act to to amend Sections 101, 130, 149, 808, 3704, 3710, 3711, 3712, 3713, 3714, 3715, 3716, 3717, 3718, 3719, 3720, 3721, 3722, 3730, 3731, 3732, 3733, 3735, 3735.3, 3735.5, 3736, 3736.5, 3737, 3739, 3740, 3750, 3750.5, 3751, 3752, 3753.5, 3754, 3754.5, 3755, 3756, 3757, 3760, 3761, 3762, 3763, 3764, 3771, 3773, 3774, 3775, 3775.5, and 3776, of, to add Sections 2960.1, 3750.6, 3751.5, 3752.7, 3775.1, 4982.26, 4986.71, and 4992.33 to, and to repeal Section 3734 of, the Business and Professions Code, relating to healing arts, and making an appropriation therefor.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 101 of the Business and Professions Code is amended to read:

101. The department is comprised of:

- (a) The Board of Dental Examiners of California.
- (b) The Medical Board of California.
- (c) The State Board of Optometry.
- (d) The California State Board of Pharmacy.
- (e) The Board of Examiners in Veterinary Medicine.
- (f) The Board of Accountancy.
- (g) The California State Board of Architectural Examiners.
- (h) The State Board of Barbering and Cosmetology.
- (i) The State Board of Registration for Professional Engineers and Land Surveyors.
- (j) The Contractors' State License Board.
- (k) The State Board of Funeral Directors and Embalmers.
- (l) The Structural Pest Control Board.
- (m) The Bureau of Home Furnishings and Thermal Insulation.
- (n) The Board of Registered Nursing.
- (o) The Board of Behavioral Science Examiners.
- (p) The State Athletic Commission.
- (q) The Cemetery Board.
- (r) The State Board of Guide Dogs for the Blind.
- (s) The Bureau of Security and Investigative Services.
- (t) The Court Reporters Board of California.
- (u) The Board of Vocational Nurse and Psychiatric Technician Examiners of the State of California.
- (v) The California State Board of Landscape Architects.
- (w) The Bureau of Electronic and Appliance Repair.
- (x) The Division of Investigation.
- (y) The Bureau of Automotive Repair.
- (z) The State Board of Registration for Geologists and Geophysicists.
- (aa) The State Board of Examiners of Nursing Home Administrators.
- (ab) The Respiratory Care Board of California.
- (ac) The Acupuncture Examining Committee.
- (ad) The Board of Psychology.
- (ae) The California Board of Podiatric Medicine.
- (af) The Physical Therapy Examining Committee.
- (ag) The Arbitration Review Program.
- (ah) The Committee on Dental Auxiliaries.
- (ai) The Hearing Aid Dispensers Examining Committee.
- (aj) The Physician Assistant Examining Committee.
- (ak) The Speech-Language Pathology and Audiology Examining

Committee.

(al) The Tax Preparers Program.

(am) Any other boards, offices, or officers subject to its jurisdiction by law.

SEC. 1.3. Section 130 of the Business and Professions Code is amended to read:

130. (a) Notwithstanding any other provision of law, the term of office of any member of an agency designated in subdivision (b) shall be for a term of four years expiring on June 1.

(b) Subdivision (a) applies to the following boards or committees:

- (1) Medical Board of California.
- (2) California Board of Podiatric Medicine.
- (3) Physical Therapy Examining Committee.
- (4) Board of Registered Nursing.
- (5) Board of Vocational Nurse and Psychiatric Technician Examiners of the State of California.
- (6) State Board of Optometry.
- (7) California State Board of Pharmacy.
- (8) Board of Examiners in Veterinary Medicine.
- (9) California Board of Architectural Examiners.
- (10) California State Board of Landscape Architects.
- (11) State Board of Barbering and Cosmetology.
- (12) State Board of Registration for Professional Engineers and Land Surveyors.

- (13) Contractors' State License Board.
- (14) State Board of Guide Dogs for the Blind.
- (15) State Board of Funeral Directors and Embalmers.
- (16) Board of Behavioral Science Examiners.
- (17) Structural Pest Control Board.
- (18) Cemetery Board.
- (19) Bureau of Electronic and Appliance Repair Advisory Board.
- (20) Court Reporters Board of California.
- (21) State Board of Registration for Geologists and Geophysicists.
- (22) State Athletic Commission.
- (23) Osteopathic Medical Board of California.
- (24) The Respiratory Care Board of California.
- (25) The Acupuncture Examining Committee.
- (26) The Board of Psychology.

SEC. 1.5. Section 149 of the Business and Professions Code is amended to read:

149. (a) If, upon investigation, an agency designated in subdivision (e) has probable cause to believe that a person is advertising in a telephone directory with respect to the offering or performance of services, without being properly licensed by or registered with the agency to offer or perform those services, the agency may issue a citation under Section 148 containing an order of correction which requires the violator to do both of the following:

- (1) Cease the unlawful advertising.
- (2) Notify the telephone company furnishing services to the

violator to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

(b) This action is stayed if the person to whom a citation is issued under subdivision (a) notifies the agency in writing that he or she intends to contest the citation. The agency shall afford an opportunity for a hearing, as specified in Section 125.9.

(c) If the person to whom a citation and order of correction is issued under subdivision (a) fails to comply with the order of correction after that order is final, the agency shall inform the Public Utilities Commission of the violation and the Public Utilities Commission shall require the telephone corporation furnishing services to that person to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

(d) The good faith compliance by a telephone corporation with an order of the Public Utilities Commission to terminate service issued pursuant to this section shall constitute a complete defense to any civil or criminal action brought against the telephone corporation arising from the termination of service.

(e) Subdivision (a) shall apply to the following boards, bureaus, committees, commissions, or programs:

- (1) The State Board of Barbering and Cosmetology.
- (2) The State Board of Funeral Directors and Embalmers.
- (3) The Board of Examiners in Veterinary Medicine.
- (4) The Hearing Aid Dispensers Examining Committee.
- (5) The State Board of Landscape Architects.
- (6) The California Board of Podiatric Medicine.
- (7) The Respiratory Care Board of California.
- (8) The Bureau of Home Furnishings and Thermal Insulation.
- (9) The Bureau of Security and Investigative Services.
- (10) The Bureau of Electronic and Appliance Repair.
- (11) The Bureau of Automotive Repair.
- (12) The Tax Preparers Program.
- (13) The California Board of Architectural Examiners.
- (14) The Speech-Language Pathology and Audiology Examining Committee.
- (15) The Board of Registration for Professional Engineers and Land Surveyors.
- (16) The Board of Behavioral Science Examiners.
- (17) The State Board of Registration for Geologists and Geophysicists.
- (18) The Structural Pest Control Board.
- (19) The Acupuncture Examining Committee.
- (20) The Board of Psychology.
- (21) The State Board of Accountancy.

SEC. 1.7. Section 808 of the Business and Professions Code is amended to read:

808. For purposes of this article, reports affecting respiratory care practitioners required to be filed under Sections 801, 802, and 803 shall be filed with the Respiratory Care Board of California.

SEC. 1.8. Section 2960.1 is added to the Business and Professions Code, to read:

2960.1. Notwithstanding Section 2960, any proposed decision or decision issued under this chapter in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, as defined in Section 729, when that act is with a patient, or with a former patient when the relationship was terminated primarily for the purpose of engaging in that act, shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge.

SEC. 2. Section 3704 of the Business and Professions Code is amended to read:

3704. As used in this chapter, these terms shall be defined as follows:

- (a) "Board" means the Respiratory Care Board of California.
- (b) "Department" means the Department of Consumer Affairs.
- (c) "Medical director" means a physician and surgeon who is a member of a health care facility's active medical staff and who is knowledgeable in respiratory care.
- (d) "Respiratory care" includes "respiratory therapy" or "inhalation therapy," where those terms mean respiratory care.
- (e) "Respiratory therapy school" means a program reviewed and approved by the board.

SEC. 2.3. Section 3710 of the Business and Professions Code is amended to read:

3710. There is hereby created within the jurisdiction of the Medical Board of California, the Respiratory Care Board of California, hereafter referred to as the board. The board shall enforce and administer this chapter.

SEC. 2.5. Section 3711 of the Business and Professions Code is amended to read:

3711. The members of the board shall be the following: two physicians and surgeons, four respiratory care practitioners, each of whom shall have practiced respiratory care and three public members who shall not be licensed by the board.

SEC. 3. Section 3712 of the Business and Professions Code is amended to read:

3712. The members of the board shall be appointed as follows:

- (a) Two respiratory care practitioners and one public member shall be appointed by the Speaker of the Assembly.
- (b) One physician and surgeon, one respiratory care practitioner, and one public member shall be appointed by the Senate Rules Committee.
- (c) One physician and surgeon, one respiratory care practitioner, and one public member shall be appointed by the Governor.

The initial members shall be appointed as follows: one respiratory care practitioner and one public member for a term of one year; one

respiratory care practitioner and one physician and surgeon for a term of two years; one respiratory care practitioner and one public member for a term of three years; and one physician and surgeon, one respiratory care practitioner, and one public member for a term of four years. Thereafter, appointments shall be made for four-year terms, expiring on the first day of June of each year, and vacancies shall be filled for the unexpired term.

The members first appointed shall determine by lot the terms to which they are appointed.

No member shall serve for more than two consecutive terms. Not more than two members of the board shall be appointed from the full-time faculty of any university, college, or other educational institution.

Annually, the board shall elect one of its members as president.

The appointing power shall have the authority to remove any member of the board from office for neglect of any duty required by law or for incompetency or unprofessional or dishonorable conduct.

SEC. 3.1. Section 3713 of the Business and Professions Code is amended to read:

3713. (a) The public members shall be appointed from persons having the following qualifications:

- (1) Be a citizen of the United States of America.
- (2) Be a resident of the State of California.
- (3) Shall not be an officer or faculty member of any college, school, or institution engaged in respiratory therapy education.
- (4) Shall not be licensed by the board or by any board under this division.
- (5) Shall have no pecuniary interests in the provision of health care.

(b) The respiratory care practitioner members shall be appointed from persons having the following qualifications:

- (1) Be a citizen of the United States of America.
- (2) Be a resident of the State of California.
- (3) One respiratory care practitioner member shall be a technical director of a respiratory care department or respiratory care corporation.
- (4) One respiratory care practitioner shall be an officer or faculty member of any college, school, or institution engaged in respiratory therapy education.

(5) Two respiratory care practitioners who are involved in direct patient care.

(6) Have at least five years' experience in respiratory care or respiratory therapy education, and have been actively engaged therein for at least three years immediately preceding appointment.

(7) Subsequent to the first appointments to the board, shall be licensed as a respiratory care practitioner in the State of California.

(c) The physician and surgeon member shall be appointed from persons having the following qualifications:

- (1) Be a citizen of the United States of America.

(2) Be a resident of the State of California.

(3) Be a licensed practicing physician and surgeon in the State of California.

(4) Be knowledgeable in respiratory care.

SEC. 3.3. Section 3714 of the Business and Professions Code is amended to read:

3714. It shall be the duty of the board to examine applicants for licensure as provided by this chapter, at the places and at the times designated by the board in its discretion.

SEC. 3.5. Section 3715 of the Business and Professions Code is amended to read:

3715. Each member of the board shall receive a per diem and expenses as provided in Section 103.

SEC. 3.7. Section 3716 of the Business and Professions Code is amended to read:

3716. The board may employ an executive officer exempt from civil service and, subject to the provisions of law relating to civil service, clerical assistants and, except as provided in Section 159.5, other employees as it may deem necessary to carry out its powers and duties.

SEC. 4. Section 3717 of the Business and Professions Code is amended to read:

3717. Each member of the board, or any licensed respiratory care practitioner or investigative unit appointed by the board, may inspect, or require reports from, a general or specialized hospital or any other facility or corporation providing respiratory care, treatment, or services and the respiratory care staff thereof, with respect to the respiratory care, treatment, services, or facilities provided therein, or the employment of staff providing the respiratory care, treatment, or services, and may inspect respiratory care patient records with respect to the care, treatment, services, or facilities. Those persons may also inspect employment records relevant to an official investigation so long as the written request to inspect the records specifies the portion of the records to be inspected. The authority to make inspections and to require reports as provided by this section shall be subject to the restrictions against disclosure described in Section 2225.

SEC. 4.3. Section 3718 of the Business and Professions Code is amended to read:

3718. The board shall issue, suspend, and revoke licenses to practice respiratory care as provided in this chapter.

SEC. 4.5. Section 3719 of the Business and Professions Code is amended to read:

3719. The board shall develop and implement rules and regulations for continuing education within two years of the effective date of this chapter. Continuing education requirements shall not exceed 15 hours every two years.

A successfully completed examination approved by the board may be submitted by a licensee for continuing education credit. The

board shall determine the hours of credit to be granted for passage of particular examinations.

SEC. 5. Section 3720 of the Business and Professions Code is amended to read:

3720. The board shall hold at least one regular meeting annually. The board may convene from time to time until its business is concluded. Special meetings may be held at the time and place the board may designate. Additional meetings may be held upon call of the president or at the written request of any two members of the board.

SEC. 5.3. Section 3721 of the Business and Professions Code is amended to read:

3721. Notice of each regular or special meeting shall be sent to all board members 15 days prior to the meeting. In addition, notice of each meeting of the board shall be published in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

SEC. 5.5. Section 3722 of the Business and Professions Code is amended to read:

3722. The board shall adopt any regulations as may be necessary to effectuate this chapter. In adopting rules and regulations, the board shall comply with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 6. Section 3730 of the Business and Professions Code is amended to read:

3730. All licenses for the practice of respiratory care in this state shall be issued by the board, and all applications for those licenses shall be submitted directly to and filed with the board. Except as otherwise required by the director pursuant to Section 164, the license issued by the board shall describe the license holder as a "respiratory care practitioner licensed by the Respiratory Care Board of California."

Each application shall be accompanied by the application fee prescribed in Section 3775, shall be signed by the applicant, and shall contain a statement under oath of the facts entitling the applicant to receive a license without examination or to take an examination.

The application shall contain other information as the board deems necessary to determine the qualifications of the applicant.

SEC. 7. Section 3731 of the Business and Professions Code is amended to read:

3731. A person holding a license as a respiratory care practitioner issued by the board shall use the title "respiratory care practitioner" or the letters "RCP". The license as a respiratory care practitioner shall not authorize the use of the prefix "Dr.", or the word "doctor", or any suffix or affix indicating or implying that the licensed person is a doctor or a physician and surgeon.

The suffix "M.D." shall not be used unless the licensed practitioner is licensed as a physician and surgeon in this state.

SEC. 7.5. Section 3732 of the Business and Professions Code is amended to read:

3732. The board shall investigate each and every applicant for a license, before a license is issued, in order to determine whether or not the applicant has in fact the qualifications required by this chapter.

SEC. 8. Section 3733 of the Business and Professions Code is amended to read:

3733. (a) Every applicant for a license under this chapter shall, at the time of application, be a person over 18 years of age, have successfully completed courses of training equivalent to the minimum standard established in this chapter for approval by the board, and not have committed acts or crimes constituting grounds for denial of licensure.

(b) The board may order the denial of an application, or the issuance of a license with terms and conditions, for any of the causes specified in this chapter for suspension or revocation of a license, including, but not limited to, those causes specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761.

SEC. 9. Section 3734 of the Business and Professions Code is repealed.

SEC. 10. Section 3735 of the Business and Professions Code is amended to read:

3735. Except as otherwise provided in this chapter, no person shall receive a license under this chapter without first successfully passing an examination given under the direction of the board. The examination shall be in writing and shall be conducted under the regulations prescribed by the board.

SEC. 10.5. Section 3735.3 of the Business and Professions Code is amended to read:

3735.3. An applicant for a license as a respiratory care practitioner may not sit for the examination unless a verification from the program director, in a form acceptable to the board, declaring the applicant has graduated from the training program is received in the board's office at least 15 days prior to the date of the examination. A certified copy of a certificate of completion or official transcript from the training program shall be submitted to the board prior to the issuance of a license as a respiratory care practitioner.

SEC. 11. Section 3735.5 of the Business and Professions Code is amended to read:

3735.5. The requirements to pass the written examination shall not apply to an applicant who at the time of his or her application has passed, to the satisfaction of the board, an examination that is, in the opinion of the board, equivalent to the examination given in this state.

SEC. 11.5. Section 3736 of the Business and Professions Code is amended to read:

3736. Examinations for a license as a respiratory care practitioner may be conducted by the board under a uniform examination

system, and for that purpose the board may make any arrangements with organizations furnishing examination material as may in its discretion be desirable.

SEC. 12. Section 3736.5 of the Business and Professions Code is amended to read:

3736.5. The board's examination contractor shall provide to the board all examination pass-fail statistics for each approved respiratory therapy school.

SEC. 13. Section 3737 of the Business and Professions Code is amended to read:

3737. Every applicant who is not otherwise disqualified as provided in this chapter and who receives a passing grade established by the board on the examination shall be granted a license.

SEC. 14. Section 3739 of the Business and Professions Code is amended to read:

3739. (a) (1) Except as otherwise provided in this section, every graduate of an approved respiratory care program who has filed an initial respiratory care practitioner application with the board may, between the dates specified by the board, perform as a respiratory care practitioner applicant under the direct supervision of a respiratory care practitioner licensed in this state.

(2) During this period the applicant shall identify himself or herself only as a "respiratory care practitioner applicant."

(3) If for any reason the license is not issued, all privileges under this subdivision shall automatically cease on the date specified by the board.

(b) If an applicant fails to take the next available examination without good cause or fails to pass the examination and receive a license, all privileges under this section shall automatically cease on the date specified by the board.

(c) Notwithstanding subdivision (a), an applicant for licensure who was previously licensed by the board, but who allowed his or her license to expire for more than three years, shall be allowed to practice as a respiratory care practitioner applicant under the direct supervision of a respiratory care practitioner licensed in this state between the dates specified by the board. During this period, the applicant shall identify himself or herself only as a "respiratory care practitioner applicant." If for any reason the license is not issued, all privileges under this subdivision shall cease on the date specified by the board.

(d) No applicant for a respiratory care practitioner license shall be authorized to perform as a respiratory care practitioner applicant if cause exists to deny the license.

SEC. 15. Section 3740 of the Business and Professions Code is amended to read:

3740. (a) Except as otherwise provided in this chapter, all applicants for licensure under this chapter shall have a high school diploma or equivalent education, and shall be a graduate of a

respiratory therapy school reviewed and approved by the board.

(b) An applicant whose application is based on a diploma issued to the applicant by a foreign respiratory therapy school or a certificate or license issued by another state, district, or territory of the United States, shall furnish documentary evidence, satisfactory to the board, that he or she has completed a respiratory therapy school or a course of professional instruction equivalent to that required in subdivision (a), for a respiratory care practitioner applicant.

(c) Education programs for respiratory care that are accredited programs in public or private postsecondary education institutions accredited by a regional accreditation agency or association recognized by the United States Department of Education may be considered approved programs by the board unless the board determines otherwise.

(d) A school shall give the director of a respiratory care program adequate release time to perform his or her administrative duties consistent with the established policies of the educational institution.

(e) Nothing contained in this section shall prohibit the board from disapproving any respiratory therapy school, nor from denying the applicant if the instruction received by the applicant or the courses were not equivalent to that required by the board.

SEC. 16. Section 3750 of the Business and Professions Code is amended to read:

3750. The board may order the suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

- (a) Advertising in violation of Section 651 or Section 17500.
- (b) Fraud in the procurement of any license under this chapter.
- (c) Knowingly employing unlicensed persons who present themselves as licensed respiratory care practitioners.
- (d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.
- (e) Impersonating or acting as a proxy for an applicant in any examination given under this chapter.
- (f) Negligence in his or her practice as a respiratory care practitioner.
- (g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500).
- (h) The aiding or abetting of any person to violate this chapter or any regulations duly adopted under this chapter.
- (i) The aiding or abetting of any person to engage in the unlawful practice of respiratory care.
- (j) The commission of any fraudulent, dishonest, or corrupt act

which is substantially related to the qualifications, functions, or duties of a respiratory care practitioner.

(k) Falsifying, or making grossly incorrect, grossly inconsistent, or unintelligible entries in any patient, hospital, or other record.

(l) Changing the prescription of a physician and surgeon, or falsifying verbal or written orders for treatment or a diagnostic regime received, whether or not that action resulted in actual patient harm.

(m) Denial, suspension, or revocation of any license to practice by another agency, state, or territory of the United States for any act or omission that would constitute grounds for the denial, suspension, or revocation of a license in this state.

(n) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, Hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the California Medical Board, the Board of Podiatric Medicine, the Board of Dental Examiners, the Board of Registered Nursing, and the Board of Vocational Nurse and Psychiatric Technician Examiners, to encourage appropriate consistency in the implementation of this subdivision.

The board shall seek to ensure that licensees are informed of the responsibility of licensees and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

SEC. 17. Section 3750.5 of the Business and Professions Code is amended to read:

3750.5. In addition to any other grounds specified in this chapter, the board may deny, suspend, or revoke the license of any applicant or license holder who has done any of the following:

(a) Obtained or possessed in violation of law, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administered to himself or herself, or furnished or administered to another, any controlled substances as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 7 (commencing with Section 4210) of Chapter 9 of this code.

(b) Used any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 7 (commencing with

Section 4210) of Chapter 9 of this code, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, or other person, or the public or to the extent that the use impaired his or her ability to conduct with absolute safety to the public the practice authorized by his or her license.

(c) Been convicted of a criminal offense involving the consumption or self-administration of any of the substances described in subdivisions (a) and (b), or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a), in which event the record of the conviction is conclusive evidence thereof.

(d) Been committed or confined by a court of competent jurisdiction for intemperate use of or addiction to the use of any of the substances described in subdivisions (a) and (b), in which event the court order of commitment or confinement is prima facie evidence of that commitment or confinement.

(e) Falsified, or made grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a).

SEC. 18. Section 3750.6 is added to the Business and Professions Code, to read:

3750.6. (a) Every holder of a pocket license shall have readily available for immediate inspection the original pocket license forwarded to him or her. A facsimile of the license may not be used.

(b) Every applicant issued a work permit shall have available for immediate inspection the original permit forwarded to him or her. A facsimile of the work permit may not be used. Failure to do so shall constitute unauthorized practice.

SEC. 19. Section 3751 of the Business and Professions Code is amended to read:

3751. (a) A person whose license has been revoked or suspended, or who has been placed on probation, may petition the board for reinstatement, modification, or termination of probation. The petition may be filed only after a period of time has elapsed, but not less than the following minimum periods from the effective date of the decision ordering that disciplinary action:

(1) At least three years for reinstatement of a license that has been revoked.

(2) At least two years for early termination of probation of three years or more.

(3) At least one year for modification of a condition, or reinstatement of a license revoked for mental or physical illness, or termination of probation of less than three years.

(b) The petition shall state any facts as may be required by the board. The petition shall be accompanied by at least two verified recommendations from licensed health care practitioners who have personal knowledge of the professional activities of the petitioner since the disciplinary penalty was imposed. The board may accept or reject the petition.

(c) The petition may be heard by the board, or the board may assign the petition to an administrative law judge for hearing.

(d) The board, or the administrative law judge hearing the petition, may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the license was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. The hearing may be continued from time to time as the board or administrative law judge finds necessary.

(e) The board may deny the petition for reinstatement, reinstate the license without terms and conditions, require an examination for the reinstatement, restoration, or modification of probation, or reinstate the license with terms and conditions as it deems necessary. Where a petition is heard by an administrative law judge, the administrative law judge shall render a proposed decision to the board denying the petition for reinstatement, reinstating the license without terms and conditions, requiring an examination for the reinstatement, or reinstating the license with terms and conditions as he or she deems necessary. The board may take any action with respect to the proposed decision and petition as it deems appropriate.

(f) No petition shall be considered while the petitioner is under sentence for any criminal offense including any period during which the petitioner is on court-imposed probation or parole. No petition shall be considered while there is an accusation or a petition to revoke probation pending against the person. The board may deny without a hearing or argument any petition filed pursuant to this section within a period of two years from the effective date of the prior decision following a hearing under this section.

(g) Nothing in this section shall be deemed to alter Sections 822 and 823.

SEC. 19.5. Section 3751.5 is added to the Business and Professions Code, to read:

3751.5. Notwithstanding Section 489, a person whose application for licensure has been denied for cause may reapply to the board for licensure only after a period of three years has elapsed from the date of the denial.

SEC. 19.7. Section 3752 of the Business and Professions Code is amended to read:

3752. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of any offense which substantially relates to the qualifications, functions, or duties of a respiratory care practitioner is deemed to be a conviction within the meaning of this article. The board shall order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under

Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

SEC. 20. Section 3752.7 is added to the Business and Professions Code, to read:

3752.7. Notwithstanding Section 3750, any proposed decision or decision issued under this chapter in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, as defined in Section 729, with a patient, or has committed an act or been convicted of a sex offense as defined in Section 44010 of the Education Code, shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge. For purposes of this section, the patient shall no longer be considered a patient of the respiratory care practitioner when the order for respiratory procedures is terminated, discontinued, or not renewed by the prescribing physician and surgeon.

SEC. 21. Section 3753.5 of the Business and Professions Code is amended to read:

3753.5. (a) In any order issued in resolution of a disciplinary proceeding before the board, the board or the administrative law judge may direct any practitioner or applicant found to have committed a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation and prosecution of the case. A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the official custodian of the record or his or her designated representative shall be prima facie evidence of the actual costs of the investigation and prosecution of the case.

(b) The costs shall be assessed by the administrative law judge and shall not be increased by the board; however, the costs may be imposed or increased by the board if it does not adopt the proposed decision of the case.

Where an order for recovery of costs is made and timely payment is not made as directed in the board's decision the board may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any practitioner directed to pay costs.

(c) In any action for recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(d) (1) The board shall not renew or reinstate the license of any licensee who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew, for a maximum of one year, the license of any licensee who demonstrates financial hardship, through

documentation satisfactory to the board, and who enters into a formal agreement with the board to reimburse the board within that one-year period for those unpaid costs.

SEC. 21.5. Section 3754 of the Business and Professions Code is amended to read:

3754. The board may deny an application for, or issue with terms and conditions, or suspend or revoke, or impose probationary conditions upon, a license in any decision made after a hearing, as provided in Section 3753.

SEC. 21.7. Section 3754.5 of the Business and Professions Code is amended to read:

3754.5. The board shall initiate action against any licensee who obtains a license by fraud or misrepresentation. The board shall take action against any licensee whose license was issued by mistake.

SEC. 22. Section 3755 of the Business and Professions Code is amended to read:

3755. The board may take action against any respiratory care practitioner who is charged with unprofessional conduct in administering, or attempting to administer, direct or indirect respiratory care. Unprofessional conduct includes, but is not limited to, repeated acts of clearly administering directly or indirectly inappropriate or unsafe respiratory care procedures, protocols, therapeutic regimens, or diagnostic testing or monitoring techniques, and violation of any provision of Section 3750. The board may determine unprofessional conduct involving any and all aspects of respiratory care performed by anyone licensed as a respiratory care practitioner. Any person who engages in repeated acts of unprofessional conduct shall be guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000), or by imprisonment for a term not to exceed six months, or by both that fine and imprisonment.

SEC. 23. Section 3756 of the Business and Professions Code is amended to read:

3756. (a) A respiratory care practitioner who provides respiratory care may be ordered to undergo a professional competency examination approved by the board if, after investigation and review by one or more respiratory care practitioner consultants of the board, there is reasonable cause to believe that the person providing respiratory care is unable or unwilling to practice respiratory care with reasonable skill and patient safety. Reasonable cause shall be determined by the board and may include, but shall not be limited to, the following:

(1) Negligence.

(2) A pattern of inappropriate direct or indirect administration of respiratory care protocols, procedures, therapeutic regimens, or diagnostic testing or monitoring techniques.

(3) An act of incompetence or negligence causing death or serious bodily injury.

(4) A pattern of substandard care.

(5) Violation of any provision of this chapter.

(b) The matter shall be presented by the board's executive officer or designee by way of a written petition detailing the reasonable cause. The petition shall contain all conclusions and facts upon which the presumption of reasonable cause is based. A copy of the petition shall be served on the person who shall have 45 days after receipt of the copy of the petition to file written opposition to the petition. Service of the petition and any order shall be in accordance with the methods of service authorized by subdivision (c) of Section 11505 of the Government Code.

(c) The board shall review the petition and any written opposition from the person who has charges brought against him or her, or the board may hold a hearing in accordance with the Administrative Procedure Act to determine if reasonable cause exists, as specified in subdivision (a). The person who has charges brought against him or her shall have the right to be represented at that hearing by a person of his or her choice. If the board is satisfied that reasonable cause exists that is considered by the board as unprofessional conduct, the board shall issue an order compelling the person who has charges brought against him or her to undergo an examination of professional competency, as measured by community standards. For purposes of this section, "community standards" means the statewide standards of the community of licensees. Failure to comply with the order duly served the person charged shall constitute unprofessional conduct for purposes of disciplinary proceedings and failure to pass the examination shall result in denial, suspension, or revocation of the license, or registration which shall be determined by the board in its discretion.

(d) If the board proceeds pursuant to Sections 3755 and 3756 and the person charged passes the professional competency examination administered, the board shall be precluded from filing an accusation of incompetency based solely on the circumstances giving rise to the reasonable cause for the examination.

(e) If the board determines there is insufficient cause to file an accusation based on the examination results, then all agency records of the proceedings, including the petition and order for the examination, investigative reports, if any, reports of staff or the board's consultants, and the reports of the examiners, shall be kept confidential and shall not be subject to discovery or subpoena.

(f) If no further proceedings are conducted to determine the person's fitness to practice during a period of five years from the date of the petition under Section 3756, then the agency shall purge and destroy all records pertaining to the proceeding.

SEC. 23.5. Section 3757 of the Business and Professions Code is amended to read:

3757. The board may refuse to issue a license or an authorization to work as a "respiratory care practitioner applicant" whenever it appears that the applicant may be unable to practice his or her profession safely due to mental illness or chemical dependency. The

procedures set forth in Article 12.5 (commencing with Section 820) of Chapter 1 shall apply to any denial of a license or authorization pursuant to this section.

SEC. 24. Section 3760 of the Business and Professions Code is amended to read:

3760. (a) Except as otherwise provided in this chapter, no person shall engage in the practice of respiratory care, respiratory therapy, or inhalation therapy. For purposes of this section, engaging in the practice of respiratory care includes, but is not limited to, representations by a person whether through verbal claim, sign, advertisement, letterhead, business card, or other representation that he or she is able to perform any respiratory care service, or performance of any respiratory care service.

(b) No person who is unlicensed or whose respiratory care practitioner license has been revoked or suspended shall engage in the practice of respiratory care during the period of suspension or revocation, even though the person may continue to hold a certificate or registration issued by a private certifying entity.

(c) Except as otherwise provided in this chapter, no person may represent himself or herself to be a respiratory care practitioner, a respiratory therapist, a respiratory care technician, or an inhalation therapist, or use the abbreviation or letters "R.C.P.," "R.P.," "R.T.," or "I.T.," or use any modifications or derivatives of those abbreviations or letters without a current and valid license issued under this chapter.

(d) No respiratory care practitioner applicant shall begin practice as a "respiratory care practitioner applicant" pursuant to Section 3739 until the applicant meets the applicable requirements of this chapter and obtains a valid work permit.

SEC. 24.5. Section 3761 of the Business and Professions Code is amended to read:

3761. (a) No person may represent himself or herself to be a respiratory care practitioner without a license granted under this chapter, except as otherwise provided in this chapter.

(b) No person or corporation shall knowingly employ a person who holds himself or herself out to be a respiratory care practitioner without a license granted under this chapter, except as otherwise provided in this chapter.

(c) At the discretion of the board, violation of subdivision (a) shall be punishable by issuance of an administrative citation and assessment of an administrative fine of one thousand dollars (\$1,000).

SEC. 25. Section 3762 of the Business and Professions Code is amended to read:

3762. Nothing in this chapter is intended to limit, preclude, or otherwise interfere with the practices of other licensed personnel in carrying out authorized and customary duties and functions.

SEC. 26. Section 3763 of the Business and Professions Code is amended to read:

3763. Any person who violates any of the provisions of this

chapter shall be guilty of a misdemeanor punishable by a fine not exceeding one thousand dollars (\$1,000) or imprisonment in a county jail not exceeding six months, or both, for each offense.

SEC. 27. Section 3764 of the Business and Professions Code is amended to read:

3764. Whenever any person has engaged or is about to engage in any acts or practices that constitute or will constitute an offense against this chapter, the superior court of any county, on application of the board, the Medical Board of California, or by 10 or more persons holding respiratory care practitioner licenses issued under this chapter, may issue an injunction or other appropriate order restraining that conduct. Proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that no undertaking shall be required in any action commenced by the board.

SEC. 28. Section 3771 of the Business and Professions Code is amended to read:

3771. Within 10 days after the beginning of each calendar month, the board shall report to the Controller the amount and source of all collections made from persons licensed or seeking to be licensed under this chapter, and all fines and forfeitures to which the board is entitled, and at the same time, pay all these sums into the State Treasury, where they shall be credited to the Respiratory Care Fund, which is hereby created and, notwithstanding Section 13340 of the Government Code, continuously appropriated for the purposes of this chapter.

SEC. 28.5. Section 3773 of the Business and Professions Code is amended to read:

3773. At the time of application for renewal of a respiratory care practitioner license, the licensee shall notify the board of all of the following:

- (a) Whether he or she has been convicted of any crime subsequent to the licensee's previous renewal.
- (b) The name and address of the licensee's current employer or employers.

SEC. 28.7. Section 3774 of the Business and Professions Code is amended to read:

3774. On or before the birthday of a licensed practitioner in every other year, following the initial licensure, the board shall mail to each practitioner licensed under this chapter, at the latest address furnished by the licensed practitioner to the executive officer of the board, a notice stating the amount of the renewal fee and the date on which it is due. The notice shall state that failure to pay the renewal fee on or before the due date and submit evidence of compliance with Section 3719 shall result in expiration of the license.

Each license not renewed in accordance with this section shall expire but may within a period of three years thereafter be reinstated upon payment of all accrued and unpaid renewal fees and penalty fees required by this chapter. The board may also require

submission of proof of the applicant's qualifications, except that during the three-year period no examination shall be required as a condition for the reinstatement of any expired license that has lapsed solely by reason of nonpayment of the renewal fee.

SEC. 29. Section 3775 of the Business and Professions Code is amended to read:

3775. The amount of fees provided in connection with licenses or approvals for the practice of respiratory care shall be as follows:

(a) The application fee shall be established by the board at not more than two hundred dollars (\$200). The application fee for the applicant under subdivision (b) of Section 3740 shall be established by the board at not more than two hundred fifty dollars (\$250).

(b) The examination and reexamination fees shall be the actual cost to the board for purchasing, grading, and administering each examination.

(c) The initial license fee for a respiratory care practitioner shall be two hundred dollars (\$200).

(d) The renewal fee shall be established by the board at not more than two hundred dollars (\$200). However, the renewal fee in effect on December 31, 1993, shall not be increased prior to January 1, 1995, and in no case shall the fee in any year be more than 10 percent greater than the amount of the fee in the preceding year.

(e) The delinquency fee shall be established by the board at not more than the following amounts:

(1) If the license is renewed not more than two years from the date of its expiration, the delinquency fee shall be 50 percent of the renewal fee in effect for the license term immediately following the date of expiration of the license.

(2) If the license is renewed after two years, but not more than three years, from the date of expiration of the license, the delinquency fee shall be the amount specified in paragraph (1) in addition to the amount of the renewal fee in effect at the time of renewal.

(f) The duplicate license fee shall be seventy-five dollars (\$75).

(g) The endorsement fee shall be fifty dollars (\$50).

(h) The fee for approval of providers of continued education shall be established by the board at not more than one hundred dollars (\$100). The biennial renewal fee for continuing education providers shall be established by the board at not more than one hundred dollars (\$100).

SEC. 30. Section 3775.1 is added to the Business and Professions Code, to read:

3775.1. (a) The fee for the approval of respiratory therapy schools shall be established by the board at no more than the actual cost to the board.

(b) The fee for the renewal or approval of respiratory therapy schools, who certify on forms provided by the board that no substantive changes have occurred, shall be established by the board at no more than the actual cost to the board, to be paid on a biennial

basis.

(c) The fee for the inspection or reinspection of a respiratory therapy school for the purposes of approval, reapproval, or the investigation of a complaint of noncompliance shall be established by the board at an amount to recover the actual costs incurred by the board.

(d) The review fee for the course work or official transcript of an applicant who has graduated from a respiratory therapy school that has not applied for approval shall be established by the board at no more than the actual cost to the board.

SEC. 31. Section 3775.5 of the Business and Professions Code is amended to read:

3775.5. The application and renewal fee for an inactive license shall be established by the board in an amount not to exceed one hundred fifty dollars (\$150).

SEC. 31.5. Section 3776 of the Business and Professions Code is amended to read:

3776. Any person who has submitted to the board a check for fees that was returned for insufficient funds, shall pay all subsequent required fees by cashier's check or money order. The board may make a written waiver of this requirement in appropriate cases.

SEC. 32. Section 4982.26 is added to the Business and Professions Code, to read:

4982.26. Notwithstanding Section 4982, any proposed decision or decision issued under this chapter in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, as defined in Section 729, when that act is with a patient, or with a former patient when the relationship was terminated primarily for the purpose of engaging in that act, shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge.

SEC. 33. Section 4986.71 is added to the Business and Professions Code, to read:

4986.71. The board shall revoke any license issued under this chapter upon a decision made in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact, as defined in Section 729, when that act is with a patient, or with a former patient when the relationship was terminated primarily for the purpose of engaging in that act, shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge.

SEC. 34. Section 4992.33 is added to the Business and Professions Code, to read:

4992.33. Notwithstanding Section 4992.3, any proposed decision or decision issued under this chapter in accordance with the

procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, as defined in Section 729, when that act is with a patient, or with a former patient when the relationship was terminated primarily for the purpose of engaging in that act, shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge.

SEC. 35. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1275

An act to amend Sections 101, 205, 494, 1632, 1633.5, 2489, 2530.5, 2701, 2707, 2750, 2760, 2761, 2848, 2873.5, 2960, 2960.6, 3145, 3145.5, 3147, 3147.6, 3717, 3904, 3910, 3928, 4801, 4938.1, 5020, 6735.3, 6735.4, 6796.3, 6980.17, 6980.34, 7552.3, 7552.5, 7553.2, 7553.3, 7599.54, 9830, 9830.5, 9832, 9832.5, 9862, 9862.5, and 18824 of, to add Sections 141, 1749.1, 2760.1, 3750.6, 4361, 4960.5, 9854, and 18868 to, to repeal Sections 2746.6, 2869, 3025.6, and 4411 of, to repeal Article 7 (commencing with Section 2896) of Chapter 6.5 of Division 2 of, and to repeal and add Section 2962 of, the Business and Professions Code, to amend Section 26509 of the Government Code, and to amend Sections 1327, 1422, and 1429.5 of the Health and Safety Code, relating to business and professions, and making an appropriation therefor.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 101 of the Business and Professions Code is amended to read:

101. The department is comprised of:
- (a) The Board of Dental Examiners of California.
 - (b) The Medical Board of California.
 - (c) The State Board of Optometry.
 - (d) The California State Board of Pharmacy.
 - (e) The Board of Examiners in Veterinary Medicine.

- (f) The Board of Accountancy.
- (g) The California State Board of Architectural Examiners.
- (h) The State Board of Barbering and Cosmetology.
- (i) The State Board of Registration for Professional Engineers and Land Surveyors.
- (j) The Contractors' State License Board.
- (k) The State Board of Funeral Directors and Embalmers.
- (l) The Structural Pest Control Board.
- (m) The Bureau of Home Furnishings and Thermal Insulation.
- (n) The Board of Registered Nursing.
- (o) The Board of Behavioral Science Examiners.
- (p) The State Athletic Commission.
- (q) The Cemetery Board.
- (r) The State Board of Guide Dogs for the Blind.
- (s) The Bureau of Security and Investigative Services.
- (t) The Court Reporters Board of California.
- (u) The Board of Vocational Nurse and Psychiatric Technician Examiners of the State of California.
- (v) The California State Board of Landscape Architects.
- (w) The Bureau of Electronic and Appliance Repair.
- (x) The Division of Investigation.
- (y) The Bureau of Automotive Repair.
- (z) The State Board of Registration for Geologists and Geophysicists.
- (aa) The State Board of Nursing Home Administrators.
- (ab) The Respiratory Care Examining Committee.
- (ac) The Acupuncture Examining Committee.
- (ad) The Board of Psychology.
- (ae) The California Board of Podiatric Medicine.
- (af) The Physical Therapy Examining Committee.
- (ag) The Arbitration Review Program.
- (ah) The Committee on Dental Auxiliaries.
- (ai) The Hearing Aid Dispensers Examining Committee.
- (aj) The Physician Assistant Examining Committee.
- (ak) The Speech-Language Pathology and Audiology Examining Committee.
- (al) The Tax Preparers Program.
- (am) Any other boards, offices, or officers subject to its jurisdiction by law.

SEC. 2. Section 141 is added to the Business and Professions Code, to read:

141. (a) For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or another

country shall be conclusive evidence of the events related therein.

(b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by that board that provides for discipline based upon a disciplinary action taken against the licensee by another state, an agency of the federal government, or another country.

SEC. 3. Section 205 of the Business and Professions Code is amended to read:

205. There is in the State Treasury the Professions and Vocations Fund. The fund shall consist of the following special funds:

- (a) Accountancy Fund.
- (b) California Board of Architectural Examiners' Fund.
- (c) Athletic Commission Fund.
- (d) Board of Barbering and Cosmetology Contingent Fund.
- (e) Cemetery Fund.
- (f) Contractors' License Fund.
- (g) State Dentistry Fund.
- (h) State Funeral Directors and Embalmers' Fund.
- (i) Guide Dogs for the Blind Fund.
- (j) Bureau of Home Furnishings and Thermal Insulation Fund.
- (k) State Board of Landscape Architects' Fund.
- (l) Contingent Fund of the Medical Board of California.
- (m) Optometry Fund.
- (n) Pharmacy Board Contingent Fund.
- (o) Physical Therapy Fund.
- (p) Private Investigator Fund.
- (q) Professional Engineers' and Land Surveyors' Fund.
- (r) Consumer Affairs Fund.
- (s) Behavioral Science Examiners Fund.
- (t) Licensed Midwifery Fund.
- (u) Court Reporters' Fund.
- (v) Structural Pest Control Fund.
- (w) Board of Veterinary Examiners' Contingent Fund.
- (x) Vocational Nurses Account of the Vocational Nurse and Psychiatric Technician Examiners Fund.
- (y) State Dental Auxiliary Fund.
- (z) Electronic and Appliance Repair Fund.
- (aa) Geology and Geophysics Fund.
- (ab) Dispensing Opticians Fund.
- (ac) Acupuncture Fund.
- (ad) Hearing Aid Dispensers Fund.
- (ae) Physician Assistant Fund.
- (af) Board of Podiatric Medicine Fund.
- (ag) Psychology Fund.
- (ah) Respiratory Care Fund.
- (ai) Speech-Language Pathology and Audiology Fund.
- (aj) Board of Registered Nursing Fund.
- (ak) Nursing Home Administrator's State License Examining Board Fund.

(al) Psychiatric Technician Examiners Account of the Vocational Nurse and Psychiatric Technician Examiners Fund.

(am) Animal Health Technician Examining Committee Fund.

(an) Tax Preparers Fund.

(ao) Structural Pest Control Education and Enforcement Fund.

(ap) Structural Pest Control Research Fund.

For accounting and recordkeeping purposes, the Professions and Vocations Fund shall be deemed to be a single special fund, and each of the several special funds therein shall constitute and be deemed to be a separate account in the Professions and Vocations Fund. Each account or fund shall be available for expenditure only for the purposes as are now or may hereafter be provided by law.

SEC. 4. Section 494 of the Business and Professions Code is amended to read:

494. (a) A board or an administrative law judge sitting alone, as provided in subdivision (h), may, upon petition, issue an interim order suspending any licentiate or imposing license restrictions, including, but not limited to, mandatory biological fluid testing, supervision, or remedial training. The petition shall include affidavits that demonstrate, to the satisfaction of the board, both of the following:

(1) The licentiate has engaged in acts or omissions constituting a violation of this code or has been convicted of a crime substantially related to the licensed activity.

(2) Permitting the licentiate to continue to engage in the licensed activity, or permitting the licentiate to continue in the licensed activity without restrictions, would endanger the public health, safety, or welfare.

(b) No interim order provided for in this section shall be issued without notice to the licentiate unless it appears from the petition and supporting documents that serious injury would result to the public before the matter could be heard on notice.

(c) Except as provided in subdivision (b), the licentiate shall be given at least 15 days' notice of the hearing on the petition for an interim order. The notice shall include documents submitted to the board in support of the petition. If the order was initially issued without notice as provided in subdivision (b), the licentiate shall be entitled to a hearing on the petition within 20 days of the issuance of the interim order without notice. The licentiate shall be given notice of the hearing within two days after issuance of the initial interim order, and shall receive all documents in support of the petition. The failure of the board to provide a hearing within 20 days following the issuance of the interim order without notice, unless the licentiate waives his or her right to the hearing, shall result in the dissolution of the interim order by operation of law.

(d) At the hearing on the petition for an interim order, the licentiate may:

(1) Be represented by counsel.

(2) Have a record made of the proceedings, copies of which shall

be available to the licentiate upon payment of costs computed in accordance with the provisions for transcript costs for judicial review contained in Section 11523 of the Government Code.

(3) Present affidavits and other documentary evidence.

(4) Present oral argument.

(e) The board, or an administrative law judge sitting alone as provided in subdivision (h), shall issue a decision on the petition for interim order within five business days following submission of the matter. The standard of proof required to obtain an interim order pursuant to this section shall be a preponderance of the evidence standard. If the interim order was previously issued without notice, the board shall determine whether the order shall remain in effect, be dissolved, or modified.

(f) The board shall file an accusation within 15 days of the issuance of an interim order. In the case of an interim order issued without notice, the time shall run from the date of the order issued after the noticed hearing. If the licentiate files a Notice of Defense, the hearing shall be held within 30 days of the agency's receipt of the Notice of Defense. A decision shall be rendered on the accusation no later than 30 days after submission of the matter. Failure to comply with any of the requirements in this subdivision shall dissolve the interim order by operation of law.

(g) Interim orders shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure and shall be heard only in the superior court in and for the Counties of Sacramento, San Francisco, Los Angeles, or San Diego. The review of an interim order shall be limited to a determination of whether the board abused its discretion in the issuance of the interim order. Abuse of discretion is established if the respondent board has not proceeded in the manner required by law, or if the court determines that the interim order is not supported by substantial evidence in light of the whole record.

(h) The board may, in its sole discretion, delegate the hearing on any petition for an interim order to an administrative law judge in the Office of Administrative Hearings. If the board hears the noticed petition itself, an administrative law judge shall preside at the hearing, rule on the admission and exclusion of evidence, and advise the board on matters of law. The board shall exercise all other powers relating to the conduct of the hearing but may delegate any or all of them to the administrative law judge. When the petition has been delegated to an administrative law judge, he or she shall sit alone and exercise all of the powers of the board relating to the conduct of the hearing. A decision issued by an administrative law judge sitting alone shall be final when it is filed with the board. If the administrative law judge issues an interim order without notice, he or she shall preside at the noticed hearing, unless unavailable, in which case another administrative law judge may hear the matter. The decision of the administrative law judge sitting alone on the petition for an interim order is final, subject only to judicial review

in accordance with subdivision (g).

(i) Failure to comply with an interim order issued pursuant to subdivision (a) or (b) shall constitute a separate cause for disciplinary action against any licentiate, and may be heard at, and as a part of, the noticed hearing provided for in subdivision (f). Allegations of noncompliance with the interim order may be filed at any time prior to the rendering of a decision on the accusation. Violation of the interim order is established upon proof that the licentiate was on notice of the interim order and its terms, and that the order was in effect at the time of the violation. The finding of a violation of an interim order made at the hearing on the accusation shall be reviewed as a part of any review of a final decision of the agency.

If the interim order issued by the agency provides for anything less than a complete suspension of the licentiate from his or her business or profession, and the licentiate violates the interim order prior to the hearing on the accusation provided for in subdivision (f), the agency may, upon notice to the licentiate and proof of violation, modify or expand the interim order.

(j) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section. A certified record of the conviction shall be conclusive evidence of the fact that the conviction occurred. A board may take action under this section notwithstanding the fact that an appeal of the conviction may be taken.

(k) The interim orders provided for by this section shall be in addition to, and not a limitation on, the authority to seek injunctive relief provided in any other provision of law.

(l) In the case of a board, a petition for an interim order may be filed by the executive officer. In the case of a bureau or program, a petition may be filed by the chief or program administrator, as the case may be.

(m) "Board," as used in this section, shall include any agency described in Section 22, and any allied health agency within the jurisdiction of the Medical Board of California. Board shall also include the Osteopathic Medical Board of California and the State Board of Chiropractic Examiners. The provisions of this section shall not be applicable to the Medical Board of California, the Board of Podiatric Medicine, or the State Athletic Commission.

SEC. 5. Section 1632 of the Business and Professions Code is amended to read:

1632. The applicant shall give demonstrations of his or her skill in operative dentistry, prosthetic dentistry, diagnosis and treatment of periodontics, and his or her judgment in diagnosis-treatment planning. The examination may include an examination in California law and ethics.

SEC. 6. Section 1633.5 of the Business and Professions Code is amended to read:

1633.5. Notwithstanding any other provision of this chapter, the

board may require each applicant to successfully complete the National Board of Dental Examiners' written examination administered by the National Board of Dental Examiners as evidenced by a receipt of a certificate from that board. Notwithstanding Section 1633, an applicant who successfully completed the examination shall be exempt from further written examination requirements; provided, however, that nothing in this section shall be construed to prevent the board from administering the oral diagnosis and treatment planning examination, or an examination in California law and ethics, in written form.

SEC. 7. Section 1749.1 is added to the Business and Professions Code, to read:

1749.1. In addition to any other examination required by this article, the board may require applicants for licensure under this article to successfully complete an examination in California law and ethics.

SEC. 8. Section 2489 of the Business and Professions Code is amended to read:

2489. The division or board shall not reject an application for a certificate to practice podiatric medicine by reciprocity solely on the basis that the podiatric licensing authority issuing the applicant's certificate or license permitted the applicant to take the basic science examination given by the National Board of Medical Examiners or the National Board of Podiatric Examiners, as a part of that state's qualifying examination.

SEC. 9. Section 2530.5 of the Business and Professions Code is amended to read:

2530.5. (a) Nothing in this chapter shall be construed as restricting hearing testing conducted by licensed physicians and surgeons or by persons conducting hearing tests under the direct supervision of a physician and surgeon.

(b) Nothing in this chapter shall be construed to prevent a licensed hearing aid dispenser from engaging in testing of hearing and other practices and procedures used solely for the fitting and selling of hearing aids nor does this chapter restrict persons practicing their licensed profession and operating within the scope of their licensed profession or employed by someone operating within the scope of their licensed professions, including persons fitting and selling hearing aids who are properly licensed or registered under the laws of the State of California.

(c) Nothing in this chapter shall be construed as restricting or preventing the practice of speech-language pathology or audiology by personnel holding the appropriate credential from the Commission on Teacher Credentialing as long as the practice is conducted within the confines of or under the jurisdiction of a public preschool, elementary or secondary school by which they are employed and those persons do not either offer to render or render speech-language pathology or audiology services to the public for compensation over and above the salary they receive from the public

preschool elementary or secondary school by which they are employed for the performance of their official duties.

(d) Nothing in this chapter shall be construed as restricting the activities in services of a student or speech-language pathology intern in speech-language pathology pursuing a course of study leading to a degree in speech-language pathology at an accredited or approved college or university or an approved clinical training facility, provided that these activities and services constitute a part of his or her supervised course of study and that those persons are designated by the title as "speech-language pathology intern," "speech-language pathology trainee," or other title clearly indicating the training status appropriate to his or her level of training.

(e) Nothing in this chapter shall be construed as restricting the activities in services of a student or audiology intern in audiology pursuing a course of study leading to a degree in audiology at an accredited or approved college or university or an approved clinical training facility, provided that these activities and services constitute a part of his or her supervised course of study and that those persons are designated by the title as "audiology intern," "audiology trainee," or other title clearly indicating the training status appropriate to his or her level of training.

(f) Nothing in this chapter shall be construed as restricting the practice of an applicant who is obtaining the required professional experience specified in subdivision (d) of Section 2532.2 and whose required professional experience application has been approved by the committee. The number of applicants who may be supervised by a licensed speech-language pathologist or a speech-language pathologist having qualifications deemed equivalent by the committee shall be determined by the committee. The supervising speech-language pathologist shall register with the committee the name of each applicant working under his or her supervision, and shall submit to the committee a description of the proposed professional responsibilities of the applicant working under his or her supervision. The number of applicants who may be supervised by a licensed audiologist or an audiologist having qualifications deemed equivalent by the committee shall be determined by the committee. The supervising audiologist shall register with the committee the name of each applicant working under his or her supervision, and shall submit to the committee a description of the proposed professional responsibilities of the applicant working under his or her supervision. The committee shall not give any credit for any required professional experience which is completed in violation of this section.

(g) Nothing in this chapter shall be construed as restricting hearing screening services in public or private elementary or secondary schools so long as these screening services are provided by persons registered as qualified school audiometrists pursuant to Sections 1685 and 1686 of the Health and Safety Code or hearing screening services supported by the State Department of Health

Services so long as these screening services are provided by appropriately trained or qualified personnel.

(h) Persons employed as speech-language pathologists or audiologists by a federal agency shall be exempt from this chapter.

(i) Nothing in this chapter shall be construed as restricting consultation or the instructional or supervisory activities of a faculty member of an approved or accredited college or university for the first 60 days following appointment after the effective date of this subdivision.

SEC. 10. Section 2701 of the Business and Professions Code is amended to read:

2701. There is in the Department of Consumer Affairs the Board of Registered Nursing consisting of nine members.

Within the meaning of this chapter, board, or the board, refers to the Board of Registered Nursing. Any reference in state law to the Board of Nurse Examiners of the State of California or California Board of Nursing Education and Nurse Registration shall be construed to refer to the Board of Registered Nursing.

SEC. 11. Section 2707 of the Business and Professions Code is amended to read:

2707. The board shall annually elect from its members a president, vice president, and any other officers as it may deem necessary. The officers of the board shall hold their respective positions during its pleasure.

SEC. 12. Section 2746.6 of the Business and Professions Code is repealed.

SEC. 13. Section 2750 of the Business and Professions Code is amended to read:

2750. Every certificate holder or licensee, including licensees holding temporary licenses, or licensees holding licenses placed in an inactive status, may be disciplined as provided in this article. As used in this article, "license" includes certificate, registration, or any other authorization to engage in practice regulated by this chapter. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

SEC. 14. Section 2760 of the Business and Professions Code is amended to read:

2760. If the holder of a license is suspended, he or she shall not be entitled to practice nursing during the term of suspension.

Upon the expiration of the term of suspension, he or she shall be reinstated by the board and shall be entitled to resume his or her practice of nursing unless it is established to the satisfaction of the board that he or she has practiced nursing in this state during the term of suspension. In this event, the board shall revoke his or her license.

SEC. 15. Section 2760.1 is added to the Business and Professions Code, to read:

2760.1. (a) A registered nurse whose license has been revoked, or suspended or who has been placed on probation may petition the board for reinstatement or modification of penalty, including reduction or termination of probation, after a period not less than the following minimum periods has elapsed from the effective date of the decision ordering that disciplinary action, or if the order of the board or any portion of it is stayed by the board itself or by the superior court, from the date the disciplinary action is actually implemented in its entirety:

(1) At least three years for reinstatement of a license that was revoked for unprofessional conduct, except that the board may, in its sole discretion, specify in its order a lesser period of time provided that the period shall be not less than one year.

(2) At least two years for early termination of a probation period of three years or more.

(3) At least one year for modification of a condition, or reinstatement of a license revoked for mental or physical illness, or termination of probation of less than three years.

(b) The board shall give notice to the Attorney General of the filing of the petition. The petitioner and the Attorney General shall be given timely notice by letter of the time and place of the hearing on the petition, and an opportunity to present both oral and documentary evidence and argument to the board. The petitioner shall at all times have the burden of proof to establish by clear and convincing evidence that he or she is entitled to the relief sought in the petition.

(c) The hearing may be continued from time to time as the board deems appropriate.

(d) The board itself shall hear the petition and the administrative law judge shall prepare a written decision setting forth the reasons supporting the decision.

(e) The board may grant or deny the petition, or may impose any terms and conditions that it reasonably deems appropriate as a condition of reinstatement or reduction of penalty.

(f) The petitioner shall provide a current set of fingerprints accompanied by the necessary fingerprinting fee.

(g) No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole, or subject to an order of registration as a mentally disordered sex offender pursuant to Section 290 of the Penal Code. No petition shall be considered while there is an accusation or petition to revoke probation pending against the petitioner.

(h) Except in those cases where the petitioner has been disciplined for violation of Section 822, the board may in its discretion deny without hearing or argument any petition that is filed pursuant to this section within a period of two years from the effective date of a prior decision following a hearing under this section.

SEC. 16. Section 2761 of the Business and Professions Code is

amended to read:

2761. The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

(2) A conviction of practicing medicine without a license in violation of Chapter 5 (commencing with Section 2000), in which event the record of conviction shall be conclusive evidence thereof.

(3) The use of advertising relating to nursing which violates Section 17500.

(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license or certificate by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action.

(b) Procuring his or her certificate or license by fraud, misrepresentation, or mistake.

(c) Procuring, or aiding, or abetting, or attempting, or agreeing, or offering to procure or assist at a criminal abortion.

(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter or regulations adopted pursuant to it.

(e) Making or giving any false statement or information in connection with the application for issuance of a certificate or license.

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

(g) Impersonating any applicant or acting as proxy for an applicant in any examination required under this chapter for the issuance of a certificate or license.

(h) Impersonating another certified or licensed practitioner, or permitting or allowing another person to use his or her certificate or license for the purpose of nursing the sick or afflicted.

(i) Aiding or assisting, or agreeing to aid or assist any person or persons, whether a licensed physician or not, in the performance of, or arranging for, a violation of any of the provisions of Article 12 (commencing with Section 2221) of Chapter 5.

(j) Holding oneself out to the public or to any practitioner of the healing arts as a "nurse practitioner" or as meeting the standards established by the board for a nurse practitioner unless meeting the standards established by the board pursuant to Article 8 (commencing with Section 2834) or holding oneself out to the public

as being certified by the board as a nurse anesthetist, nurse midwife, or public health nurse unless the person is at the time so certified by the board.

(k) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from licensed or certified nurse to patient, from patient to patient, and from patient to licensed or certified nurse. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, guidelines, and regulations pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300), Division 5, Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the Medical Board of California, the Board of Podiatric Medicine, the Board of Dental Examiners, and the Board of Vocational Nurse and Psychiatric Technician Examiners, to encourage appropriate consistency in the implementation of this subdivision.

The board shall seek to ensure that licentiates and others regulated by the board are informed of the responsibility of licentiates to minimize the risk of transmission of blood-borne infectious diseases from health care provider to patient, from patient to patient, and from patient to health care provider, and of the most recent scientifically recognized safeguards for minimizing the risks of transmission.

SEC. 17. Section 2848 of the Business and Professions Code is amended to read:

2848. The board for the purpose of transacting its business shall meet at least twice each year, at times and places it designates by resolution.

SEC. 18. Section 2869 of the Business and Professions Code is repealed.

SEC. 19. Section 2873.5 of the Business and Professions Code is amended to read:

2873.5. Any person who has served on active duty in the medical corps of any of the armed forces, in which no less than an aggregate of 12 months was spent in rendering bedside patient care, and who has completed the basic course of instruction in nursing required by his or her particular branch of the armed forces, and whose service in the armed forces has been under honorable conditions, or whose general discharge has been under honorable conditions, shall be granted a license upon proof that he or she possesses the necessary qualifications of this section, as set forth in his or her service records, and upon his or her passing an examination.

SEC. 20. Article 7 (commencing with Section 2896) of Chapter 6.5 of Division 2 of the Business and Professions Code is repealed.

SEC. 21. Section 2960 of the Business and Professions Code is amended to read:

2960. The board may refuse to issue any registration or license, or may issue a registration or license with terms and conditions, or may suspend or revoke the registration or license of any registrant or licensee if the applicant, registrant, or licensee has been guilty of unprofessional conduct. Unprofessional conduct shall include, but not be limited to:

(a) Conviction of a crime substantially related to the qualifications, functions or duties of a psychologist or psychological assistant.

(b) Use of any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or dangerous drug, or any alcoholic beverage to an extent or in a manner dangerous to himself or herself, any other person, or the public, or to an extent that this use impairs his or her ability to perform the work of a psychologist with safety to the public.

(c) Fraudulently or neglectfully misrepresenting the type or status of license or registration actually held.

(d) Impersonating another person holding a psychology license or allowing another person to use his or her license or registration.

(e) Using fraud or deception in applying for a license or registration or in passing the examination provided for in this chapter.

(f) Paying, or offering to pay, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of clients.

(g) Violating Section 17500.

(h) Willful, unauthorized communication of information received in professional confidence.

(i) Violating any rule of professional conduct promulgated by the board and set forth in regulations duly adopted under this chapter.

(j) Being grossly negligent in the practice of his or her profession.

(k) Violating any of the provisions of this chapter or regulations duly adopted thereunder.

(l) The aiding or abetting of any person to engage in the unlawful practice of psychology.

(m) The suspension, revocation or imposition of probationary conditions by another state or country of a license or certificate to practice psychology or as a psychological assistant issued by that state or country to a person also holding a license or registration issued under this chapter if the act for which the disciplinary action was taken constitutes a violation of this section.

(n) The commission of any dishonest, corrupt, or fraudulent act.

(o) Any act of sexual abuse, or sexual relations with a patient, or sexual misconduct which is substantially related to the qualifications, functions or duties of a psychologist or psychological assistant.

(p) Functioning outside of his or her particular field or fields of competence as established by his or her education, training, and

experience.

(q) Willful failure to submit, on behalf of an applicant for licensure, verification of supervised experience to the board.

(r) Repeated acts of negligence.

SEC. 22. Section 2960.6 of the Business and Professions Code is amended to read:

2960.6. The board may deny any application for, or may suspend or revoke a license or registration issued under this chapter for, any of the following:

(a) The revocation, suspension, or other disciplinary action imposed by another state or country on a license, certificate, or registration issued by that state or country to practice psychology shall constitute grounds for disciplinary action for unprofessional conduct against that licensee or registrant in this state. A certified copy of the decision or judgment of the other state or country shall be conclusive evidence of that action.

(b) The revocation, suspension, or other disciplinary action by any board established in this division, or the equivalent action of another state's or country's licensing agency, of the license of a healing arts practitioner shall constitute grounds for disciplinary action against that licensee or registrant under this chapter. The grounds for the action shall be substantially related to the qualifications, functions, or duties of a psychologist or psychological assistant. A certified copy of the decision or judgment shall be conclusive evidence of that action.

SEC. 23. Section 2962 of the Business and Professions Code is repealed.

SEC. 24. Section 2962 is added to the Business and Professions Code, to read:

2962. (a) A person whose license or registration has been revoked, suspended, or surrendered, or who has been placed on probation, may petition the board for reinstatement or modification of the penalty, including modification or termination of probation, after a period of not less than the following minimum periods has elapsed from the effective date of the decision ordering that disciplinary action:

(1) At least three years for reinstatement of a license revoked or surrendered.

(2) At least two years for early termination of probation of three years or more.

(3) At least two years for modification of a condition of probation.

(4) At least one year for early termination or probation of less than three years.

(b) The board may require an examination for that reinstatement.

(c) Notwithstanding Section 489, a person whose application for a license or registration has been denied by the board, for violations of Division 1.5 (commencing with Section 475) of this chapter, may reapply to the board for a license or registration only after a period of three years has elapsed from the date of the denial.

SEC. 25. Section 3025.6 of the Business and Professions Code is

repealed.

SEC. 26. Section 3145 of the Business and Professions Code is amended to read:

3145. There is the Optometry Fund in the State Treasury. Unless otherwise provided, all money collected under the authority of this chapter shall be paid into this fund. The board shall not maintain a reserve balance in the fund that is greater than six months of the appropriated operating expenses of the board in any fiscal year.

SEC. 27. Section 3145.5 of the Business and Professions Code is amended to read:

3145.5. Administrative fines collected pursuant to Section 3135 shall be deposited in the Optometry Fund. It is the legislative intent that moneys collected as fines and deposited in the fund be used by the board primarily for enforcement purposes.

SEC. 27.5. Section 3147 of the Business and Professions Code is amended to read:

3147. Except as otherwise provided by Section 114 of this code, an expired certificate may be renewed at any time within three years after its expiration on filing of application for renewal on a form prescribed by the board, and payment of 150 percent of the renewal fee, but not more than twenty-five dollars (\$25) in excess of the renewal fee. If the certificate is renewed more than 30 days after its expiration, the certificate holder as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this chapter. Renewal under this section shall be effective on the date on which the application is filed, on the date on which the accrued renewal fees are paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the certificate shall continue in effect through the date provided in Section 3146 which next occurs after the effective date of the renewal, when it shall expire if it is not renewed.

A certificate which, under the law in effect before October 1, 1961, became suspended because of the failure of its holder to renew it, shall, for the purposes of this article, be considered to have expired on the date that it became suspended.

SEC. 28. Section 3147.6 of the Business and Professions Code is amended to read:

3147.6. Except as otherwise provided by Section 114 of this code, a certificate that is not renewed within three years after its expiration may be restored thereafter, if no fact, circumstance, or condition exists that, if the certificate were restored, would justify its revocation or suspension, provided all of the following conditions are met:

(a) The holder of the expired certificate is not subject to denial of a certificate under Section 480.

(b) The holder of the expired certificate applies in writing for its restoration on a form prescribed by the board.

(c) He or she pays the fee or fees as would be required of him or her if he or she were then applying for a certificate of registration

for the first time and had not previously taken the examination for a certificate.

(d) He or she takes and satisfactorily passes the clinical portion of the regular examination of applicants, or other clinical examination approved by the board, and takes and satisfactorily passes the California law and regulations examination administered by the board.

(e) After having taken and satisfactorily passed the clinical portion of the regular examination of applicants, or other clinical examination approved by the board, he or she pays a restoration fee equal to the renewal fee in effect on the last regular renewal date for certificates of registration.

SEC. 29. Section 3717 of the Business and Professions Code is amended to read:

3717. Each member of the examining committee, or any licensed respiratory care practitioner or investigative unit appointed by the examining committee, may inspect, or require reports from, a general or specialized hospital or any other facility or corporation providing respiratory care, treatment, or services and the respiratory care staff thereof, with respect to the respiratory care, treatment, services, or facilities provided therein, and may inspect respiratory care patient records with respect to that care, treatment, services, or facilities. The authority to make inspections and to require reports as provided by this section shall be subject to the restrictions against disclosure described in Section 2225.

SEC. 30. Section 3750.6 is added to the Business and Professions Code, to read:

3750.6. Upon request, every holder of a pocket license shall produce for inspection the original pocket license issued by the examining committee. A facsimile of the license is not sufficient for that purpose.

Upon request, every applicant issued a work permit shall produce for inspection the original permit issued by the examining committee. A facsimile of the work permit is not sufficient for that purpose. Failure to produce an original work permit shall constitute unauthorized practice.

SEC. 31. Section 3904 of the Business and Professions Code is amended to read:

3904. "Board" means the State Board of Nursing Home Administrators of the State of California.

SEC. 32. Section 3910 of the Business and Professions Code is amended to read:

3910. There is hereby created in the Department of Consumer Affairs a State Board of Nursing Home Administrators which shall consist of nine members, all of whom shall be citizens of the United States and residents of this state.

SEC. 33. Section 3928 of the Business and Professions Code is amended to read:

3928. (a) The board shall maintain a record of enforcement

actions reported to the board by the State Department of Health Services pursuant to Section 1429.5 of the Health and Safety Code.

Following receipt of reports on temporary suspension orders, service of an accusation for facility license revocations, and final decertification of a facility from participation in the Medi-Cal or Medicare program due to failure to meet certification standards, the board shall make a determination as to whether the facts of the case warrant remedial or disciplinary action against the administrator or constitute grounds for suspension or revocation pursuant to Section 3930.

If the board determines that action against the administrator is not warranted, the board shall make a notation in the file of the specific circumstances that make remedial or disciplinary action unwarranted.

Whenever possible, actions initiated by the board shall coincide with actions of the State Department of Health Services against facilities.

Any accusation to suspend or revoke an administrator's license under this subdivision shall be served on the administrator no later than 24 calendar months after the issuance of the temporary suspension order, service of an accusation to revoke a facility's license, or final decertification from the Medi-Cal or Medicare program.

(b) The board shall continuously review the files of administrators where citation reports have been received to determine if remedial or disciplinary action is warranted. The board shall initiate disciplinary action against an administrator if the record establishes evidence of a pattern of poor performance.

The board shall consider all of the following in making any determination to initiate disciplinary action:

(1) Any information provided to the board by the administrator pursuant to subdivision (c).

(2) Whether the facts or reports received occurred during the time the administrator was serving in the capacity of administrator in the facility that received the citation.

(3) Whether the administrator could have or should have prevented the circumstances that resulted in citations.

(c) The board shall develop and make available a form that may be utilized at the administrator's option to provide the board with relevant information and background on any actions reported to the board pursuant to Section 1429.5 of the Health and Safety Code.

(d) Reports received pursuant to Section 1429.5 of the Health and Safety Code shall remain in the administrator's file for five years, unless the board is notified that the action has been overturned. Any modification of an action through appeals shall be noted.

(e) Prior to making a final determination to initiate action against an administrator, the board shall notify the administrator that the board is considering action and provide the administrator with an opportunity to show just cause why remedial or disciplinary action

should not be initiated.

SEC. 34. Section 4361 is added to the Business and Professions Code, to read:

4361. (a) Any pharmacist registration that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period.

(b) (1) A pharmacist whose registration is canceled by operation of this section may obtain a new registration if he or she takes and passes the examination that is required for initial registration with the board.

(2) The board may impose conditions on any license issued pursuant to this section, as it deems necessary.

(c) A registration that has been revoked by the board under former Section 4411 shall be deemed canceled three years after the board's revocation action, unless the board has acted to reinstate the license in the interim.

(d) This section shall not affect the authority of the board to proceed with any accusation that has been filed prior to the expiration of the three-year period.

SEC. 35. Section 4411 of the Business and Professions Code is repealed.

SEC. 35.5. Section 4801 of the Business and Professions Code is amended to read:

4801. Each member, except the public members, shall be a graduate of some veterinary college authorized by law to confer degrees, a bona fide resident of this state for a period of at least five years immediately preceding his or her appointment, and shall have been actually engaged in the practice of his or her profession in this state during this period. The public members shall have been residents of this state for a period of at least five years last past before their appointment and shall not be licentiates of the board or of any other board under this division or of any board referred to in Sections 1000 and 3600.

No person shall serve as a member of the board for more than two consecutive terms.

SEC. 36. Section 4938.1 of the Business and Professions Code is amended to read:

4938.1. Notwithstanding subdivision (c) of Section 4938, on and after July 1, 1990, the examination specified in that subdivision shall be administered by independent consultants with technical advice and assistance from the members of the committee. In selecting an independent consultant, the committee shall utilize the advisory services of the central testing unit of the department.

This section shall be operative until January 1, 2000, and, on that date is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2000, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 37. Section 4960.5 is added to the Business and Professions

Code, to read:

4960.5. (a) A person whose license or registration has been revoked, suspended, or surrendered, or who has been placed on probation, may petition the committee for reinstatement or modification of penalty, including modification or termination of probation, after a period of not less than the following minimum periods has elapsed from the effective date of the decision ordering that disciplinary action:

(1) At least three years for reinstatement of a license revoked or surrendered.

(2) At least two years for early termination of probation of three years or more.

(3) At least two years for modification of a condition of probation.

(4) At least one year for early termination or probation of less than three years.

(b) The committee may require an examination for that reinstatement.

(c) Notwithstanding Section 489, a person whose application for a license or registration has been denied by the committee, for violations of Division 1.5 (commencing with Section 475) of this chapter, may reapply to the committee for a license or registration only after a period of three years has elapsed from the date of the denial.

SEC. 38. Section 5020 of the Business and Professions Code is amended to read:

5020. The board shall appoint an administrative committee of not less than 13 nor more than 17 licensees, at least one of whom shall be a public accountant, to perform any of the following duties, and the committee shall be vested with the full powers of the board for those purposes:

(a) To receive and investigate complaints and to initiate and conduct investigations or hearings, with or without the filing of any complaint, and to obtain information and evidence relating to any matter involving the conduct of public accountants and certified public accountants.

(b) To receive and investigate complaints and to initiate and conduct investigations or hearings, with or without the filing of any complaint, and to obtain information and evidence relating to any matter involving any violation or alleged violation of this chapter by public accountants and certified public accountants.

SEC. 38.3. Section 6735.3 of the Business and Professions Code is amended to read:

6735.3. All electrical engineering plans, specifications, reports, or documents prepared by a registered electrical engineer or by a subordinate under his or her direction shall be signed by the engineer to indicate his or her responsibility for them. In addition to his or her signature, the engineering plans, specifications, reports, or documents shall bear the seal or stamp of the registrant, and the expiration date of the registration. If the final electrical engineering

plans, specifications, or reports have multiple pages or sheets, the signature, seal or stamp, and the expiration date of the certificate of registration need only appear on the originals of the plans and on the original title sheet of the specifications and reports.

SEC. 38.5. Section 6735.4 of the Business and Professions Code is amended to read:

6735.4. All mechanical engineering plans, specifications, reports, or documents prepared by a registered mechanical engineer or by a subordinate under his or her direction shall be signed by the engineer to indicate his or her responsibility for them. In addition to his or her signature, the engineering plans, specifications, reports, or documents shall bear the seal or stamp of the registrant, and the expiration date of the registration. If the final mechanical engineering plans, specifications, or reports have multiple pages or sheets, the signature, seal or stamp, and the expiration date of the certificate of registration need only appear on the originals of the plans and on the original title sheet of the specifications and reports.

SEC. 39. Section 6796.3 of the Business and Professions Code is amended to read:

6796.3. Certificates of registration as a professional engineer, and certificates of authority to use the title "structural engineer," "soil engineer," or "consulting engineer" that are not renewed within three years after expiration may not be renewed, restored, reinstated, or reissued unless all of the following apply:

(a) The registrant or certificate holder has not committed any acts or crimes constituting grounds for denial of registration or of a certificate under Section 480.

(b) The registrant or certificate holder takes and passes the examination that would be required of him or her if he or she were then applying for the certificate for the first time, or otherwise establishes to the satisfaction of the board that, with due regard for the public interest, he or she is qualified to practice the branch of engineering in which he or she seeks renewal or reinstatement.

(c) The registrant or certificate holder pays all of the fees that would be required of him or her if he or she were then applying for the certificate for the first time. If the registrant or certificate holder has been practicing in this state with an expired or delinquent license and receives a waiver from taking the examination as specified in subdivision (b) then he or she shall pay all accrued and unpaid renewal fees.

The board may, by regulation, provide for the waiver or refund of all or any part of the application fee in those cases in which a certificate is issued without an examination pursuant to this section.

SEC. 40. Section 6980.17 of the Business and Professions Code is amended to read:

6980.17. (a) An application for a locksmith license shall be made in writing to, and filed with, the chief in the form as may be required by the director, and shall be accompanied by the application fee prescribed by this chapter. The chief may require the submission of

any other relevant information, evidence, statements, or documents.

(b) Every application for a locksmith license shall state, among other things that may be required, the name of the applicant, the name under which the applicant will do business, and the location by street, number, and city of the office of the business for which the license is sought.

(c) No license shall be issued in any fictitious name that may be confused with, or that is similar to, any federal, state, county, or municipal governmental function or agency, or to any law enforcement agency, or in any name that may tend to describe any business function or enterprise not actually engaged in by the applicant.

(d) No license shall be issued in any fictitious name that is misleading or would constitute false advertising.

SEC. 41. Section 6980.34 of the Business and Professions Code is amended to read:

6980.34. (a) Every application for a locksmith license in which the person applying desires to have the license issued under a fictitious business name shall include a certified copy of the fictitious business name statement filed with the county clerk pursuant to Chapter 5 (commencing with Section 17900) of Part 3 of Division 7.

(b) A licensee desiring to operate a locksmith business under one or more fictitious business names shall apply and qualify for an initial license for each fictitious business name.

(c) No licensee shall indicate, or cause to be indicated, in any printed matter, or in any directory or listing, that he or she conducts a locksmith business under any name, other than the name for which he or she is licensed.

(d) An application for a license for an additional fictitious business name shall be in the same form, and the applicant shall meet the same requirements, as for an initial license.

SEC. 42. Section 7552.3 of the Business and Professions Code is amended to read:

7552.3. (a) No institution, firm, or individual shall offer the certified firearms course of the bureau unless the institution, firm, or individual has received a Firearm Training Facility Certificate. The application for the certificate shall be in a form prescribed by the chief and shall include, but not be limited to, the following information:

(1) The name, business address, and telephone number of the institution, firm, or individual.

(2) A detailed description of the places, days, and times the course will be offered.

(3) An estimate of the minimum and maximum class size.

(4) The location and description of the range facilities.

(5) The name or names of the firearms training instructors who will teach the course who have been certified by the bureau, and their certificate numbers, if available.

(6) A copy of the approval received from the Council for Private

Postsecondary and Vocational Education.

(b) The application shall be accompanied by the fee prescribed in this chapter.

SEC. 43. Section 7552.5 of the Business and Professions Code is amended to read:

7552.5. (a) No person shall instruct a bureau-approved firearms course unless that person has received a Firearms Training Instructor Certificate issued by the bureau. An application shall be made on a form provided by the bureau.

(b) An applicant for a firearms training instructor certificate shall meet the following minimum qualifications:

(1) Possess an associate of arts degree in the administration of justice or one year of teaching or training experience in firearms or the equivalent thereof.

(2) Possess a police or security firearms instructor training certificate issued by the National Rifle Association or a firearms instructor training certificate issued by a federal, state, or local agency.

(c) The application shall be accompanied by the fee prescribed in this chapter.

(d) Upon approval by the bureau of an applicant for certification as a firearms training instructor, the chief shall issue to the applicant a "Firearms Training Instructor Certificate." The certificate shall be posted at the training site.

SEC. 44. Section 7553.2 of the Business and Professions Code is amended to read:

7553.2. (a) No institution, firm, or individual shall offer the certified baton course of the bureau unless that institution, firm, or individual has received a Baton Training Facility Certificate. The application for the certificate shall be in a form prescribed by the chief and shall include, but not be limited to, all of the following information:

(1) The name, business address, and telephone number of the institution, firm or individual.

(2) A detailed description of the places, days, and times the course will be offered.

(3) An estimate of the minimum and maximum class size.

(4) Location and description of the facilities.

(5) The name or names of the baton instructors who will teach the course who have been certified by the bureau, and their certificate numbers if available.

(6) A copy of the approval received from the Council for Private Postsecondary and Vocation Education.

(b) The application shall be accompanied by the fee prescribed in this chapter.

(c) No approval shall be given, and no certification shall be issued, to a baton training facility until a baton training instructor who has been certified by the bureau has been approved to teach the course.

(d) Upon approval by the bureau of a baton training facility, the

chief shall issue to the facility a "Baton Training Facility Certificate." The certificate is valid only when the baton training facility has in its employ a baton training instructor who has been certified by the bureau. The certificate shall be posted in a conspicuous place at the facility.

SEC. 45. Section 7553.3 of the Business and Professions Code is amended to read:

7553.3. No person shall instruct a bureau-approved baton course unless that person has received a Baton Training Instructor Certificate issued by the bureau. An application shall be made on a form provided by the bureau.

An applicant for a baton training instructor certificate shall meet the following minimum qualifications:

(a) Possess an associate of arts degree in the administration of justice or the equivalent thereof.

(b) Possess a baton instructor certificate issued by a federal, state, or local agency or one year of verifiable baton teaching or training experience or the equivalent thereof to be determined by the chief.

(c) The application shall be accompanied by the fee prescribed in this chapter.

(d) Upon approval by the bureau of an applicant for certification as a baton training instructor, the chief shall issue to the applicant a "Baton Training Instructor Certificate." The certificate shall be posted at the baton training site.

SEC. 46. Section 7599.54 of the Business and Professions Code is amended to read:

7599.54. Every agreement, including, but not limited to, lease agreements, monitoring agreements, and service agreements, including all labor, services, and materials to be provided for the installation of an alarm system, shall be in writing. All amendments subject to the provisions of this section to an initial agreement shall be in writing. Each initial agreement shall contain, but not be limited to, the following:

(a) The name, business address, business telephone number, and license number of the licensed alarm company operator and the registration number of any alarm agent who solicited or negotiated the agreement.

(b) The approximate dates when the work will begin and be substantially completed.

(c) A description of the work to be done, a description of the materials to be used, and the agreed consideration for the work.

(d) A disclosure that alarm company operators are licensed and regulated by the Bureau of Security and Investigative Services, Department of Consumer Affairs, Sacramento, CA, 95814.

(e) A description of the alarm system including the major components thereof and services to be provided to the purchaser once the alarm is installed, including response or monitoring services, if any.

(f) Other matters agreed to by the parties of the contract. The

agreement shall be legible and shall be in a form as to clearly describe any other document which is to be incorporated into the contract, and, before any work is done, the client shall be furnished with a copy of the written agreement signed by the licensee.

(g) A statement setting forth that upon completion of the installation of the alarm system, the alarm company shall thoroughly instruct the purchaser in the proper use of the alarm system.

(h) In the event a mechanic's lien is to be utilized, a notice-to-owner statement which shall describe, in nontechnical language and in a clear and coherent manner using words with common and everyday meaning, the pertinent provisions of this state's mechanics' lien laws and the rights and responsibilities of an owner of property and a contractor thereunder, including the provisions relating to the filing of a contract concerning a work of improvement with the county recorder and the recording in the office of a contractor's payment bond for private work.

(i) In addition to the above, every initial residential sales and lease agreement, the total cost which over the time period fixed by the agreement exceeds two hundred fifty dollars (\$250), including the cost of all labor, service, or material to be provided by the licensee for the installation, shall include, but not be limited to, the following:

(1) A schedule of payments showing the amount of each payment as a sum in dollars and cents. This schedule of payments shall be referenced to the amount of work for services to be performed or to any materials or equipment to be supplied.

(2) If the payment schedule contained in the agreement provides for a down payment to be paid to the licensee by the owner or the tenant before commencement of the work, that down payment shall not exceed one thousand dollars (\$1,000) or 10 percent of the contract price, excluding finance charges, whichever is the lesser.

(3) In no event shall the payment schedule provide that the licensee receive, nor shall the licensee actually receive, payment in excess of 100 percent of the value of the work performed on the project at any time, excluding finance charges, except that the licensee may receive an initial down payment authorized by paragraph (2). A failure by the licensee, without legal excuse, to substantially commence work within 20 days of the approximate date specified in the contract when work is to commence, shall postpone the next succeeding payment to the licensee for that period of time equivalent to the time between when substantial commencement was to have occurred and when it did occur.

(4) A notice-to-owner statement which shall describe, in nontechnical language and in a clear and coherent manner using words with common and everyday meaning, the pertinent provisions of this state's mechanics' lien laws and the rights and responsibilities of an owner of property and a contractor thereunder, including the provisions relating to the filing of a contract concerning a work of improvement with the county recorder and the recording in the office of a contractor's payment bond for private

work.

(5) A description of what constitutes substantial commencement of work pursuant to the contract.

(6) A disclosure that failure by the licensee, without legal excuse, to substantially commence work within 20 days from the approximate date specified in the agreement when the work will begin is a violation of the Alarm Company Act.

(7) A disclosure informing the buyer of any potential permit fees which may be required by local jurisdictions concerning the monitoring of an existing alarm system.

(8) This section shall not be construed to prohibit the parties to a residential alarm system sale contract from agreeing to a contract or account subject to Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of the Civil Code.

A violation of this section or failure to commence work pursuant to paragraph (6) of subdivision (h) may result in a fine of one hundred dollars (\$100) for the first violation and a five hundred dollar (\$500) fine for each subsequent violation.

SEC. 47. Section 9830 of the Business and Professions Code is amended to read:

9830. Each service dealer shall pay the fee required by this chapter for each place of business and each drop-off location, as defined by bureau regulations, operated by him or her in this state and shall register with the bureau upon forms prescribed by the director. The forms shall contain sufficient information to identify the service dealer, including name, address, retail seller's permit number, if a permit is required under the Sales and Use Tax Law (Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code), a copy of the certificate of qualification as filed with the Secretary of State if the service dealer is a foreign corporation, and other identifying data to be prescribed by the bureau. If the business is to be carried on under a fictitious name, that fictitious name shall be stated. If the service dealer is a partnership, identifying data shall be stated for each partner. If the service dealer is a private company that does not file an annual report on Form 10-K with the Securities and Exchange Commission, data shall be included for each of the officers and directors of the company as well as for the individual in charge of each place of the service dealer's business in the State of California, subject to any regulations the director may adopt. If the service dealer is a publicly held corporation or a private company that files an annual report on Form 10-K with the Securities and Exchange Commission, it shall be sufficient for purposes of providing data for each of the officers and directors of the corporation or company to file with the director the most recent annual report on Form 10-K that is filed with the Securities and Exchange Commission.

A service dealer who does not operate a place of business in this state, but who engages in the electronic repair industry or the appliance repair industry in this state, shall hold a valid registration

issued by the bureau and shall pay the registration fee required by this chapter as if he or she had a place of business in this state.

SEC. 48. Section 9830.5 of the Business and Professions Code is amended to read:

9830.5. Each service contractor shall pay the fee required by this chapter for each place of business operated by him or her in this state and shall register with the bureau upon forms prescribed by the director. The forms shall contain sufficient information to identify the service contractor, including name, address, retail seller's permit number, if a permit is required under the Sales and Use Tax Law (Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code), a copy of the certificate of qualification as filed with the Secretary of State if the service contractor is a foreign corporation, and other identifying data to be prescribed by the bureau. If the business is to be carried on under a fictitious name, that fictitious name shall be stated. If the service contractor is a partnership, identifying data shall be stated for each partner. If the service contractor is a private company that does not file an annual report on Form 10-K with the Securities and Exchange Commission, data shall be included for each of the officers and directors of the company as well as for the individual in charge of each place of the service contractor's business in the State of California, subject to any regulations the director may adopt. If the service contractor is a publicly held corporation or a private company that files an annual report on Form 10-K with the Securities and Exchange Commission, it shall be sufficient for purposes of providing data for each of the officers and directors of the corporation or company to file with the director the most recent annual report on Form 10-K that is filed with the Securities and Exchange Commission.

A service contractor who does not operate a place of business in this state but who sells, issues, or administers service contracts in this state, shall hold a valid registration issued by the bureau and shall pay the registration fee required by this chapter as if he or she had a place of business in this state.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 49. Section 9832 of the Business and Professions Code is amended to read:

9832. (a) Registrations issued under this chapter shall expire no more than 12 months after the issue date. The expiration date of registrations shall be set by the director in a manner to best distribute renewal procedures throughout the year.

(b) To renew an unexpired registration, the service dealer shall, on or before the expiration date of the registration, apply for renewal on a form prescribed by the director, and pay the renewal fee prescribed by this chapter.

(c) To renew an expired registration, the service dealer shall

apply for renewal on a form prescribed by the director, pay the renewal fee in effect on the last regular renewal date, and pay all accrued and unpaid delinquency and renewal fees.

(d) A registration that is delinquent more than two years may not be renewed. A service dealer with a delinquent registration is required to reapply for registration. Renewal is effective on the date on which the application is filed and the renewal fee is paid. If there is a delinquency fee, renewal shall be effective upon payment of that fee.

(e) For purposes of implementing the distribution of the renewal of registrations throughout the year, the director may extend by not more than six months, the date fixed by law for renewal of a registration, except that in that event any renewal fee that may be involved shall be prorated in a manner that no person shall be required to pay a greater or lesser fee than would have been required had the change in renewal dates not occurred.

SEC. 50. Section 9832.5 of the Business and Professions Code is amended to read:

9832.5. (a) Registrations issued under this chapter shall expire no more than 12 months after the issue date. The expiration date of registrations shall be set by the director in a manner to best distribute renewal procedures throughout the year.

(b) To renew an unexpired registration, the service contractor shall, on or before the expiration date of the registration, apply for renewal on a form prescribed by the director, and pay the renewal fee prescribed by this chapter.

(c) To renew an expired registration, the service contractor shall apply for renewal on a form prescribed by the director, pay the renewal fee in effect on the last regular renewal date, and pay all accrued and unpaid delinquency and renewal fees.

(d) A registration that is delinquent more than two years may not be renewed. A service contractor with a delinquent registration is required to reapply for registration. Renewal is effective on the date on which the application is filed and the renewal fee is paid. If there is a delinquency fee, renewal shall be effective upon payment of that fee.

(e) For purposes of implementing the distribution of the renewal of registrations throughout the year, the director may extend, by not more than six months, the date fixed by law for renewal of a registration, except that, in that event, any renewal fee that may be involved shall be prorated in such a manner that no person shall be required to pay a greater or lesser fee than would have been required had the change in renewal dates not occurred.

(f) This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 51. Section 9854 is added to the Business and Professions Code, to read:

9854. The bureau shall design and approve a sign that shall be

placed in all electronic and appliance repair locations operated by a service dealer in a place and manner conspicuous to the public. The sign shall give notice that inquiries concerning service may be made to the bureau and shall contain the telephone number of the bureau. The sign shall also indicate that the customer is entitled to a return of replaced parts and of the customer's right, pursuant to Section 1793.2 of the Civil Code, to have his or her equipment serviced or repaired within 30 days of receipt by the service dealer if the equipment is serviced or repaired pursuant to a manufacturer's express warranty.

SEC. 52. Section 9862 of the Business and Professions Code is amended to read:

9862. If a complaint indicates a possible violation of this chapter or of the regulations adopted pursuant to this chapter, the director may advise the service dealer of the contents of the complaint and, if the service dealer is so advised, the director shall make a summary investigation of the facts after the service dealer has had reasonable opportunity to reply thereto.

SEC. 53. Section 9862.5 of the Business and Professions Code is amended to read:

9862.5. If a complaint indicates a possible violation of this chapter or of the regulations adopted pursuant to this chapter, the director may advise the service contractor of the contents of the complaint and, if the service contractor is so advised, the director shall make a summary investigation of the facts after the service dealer has had reasonable opportunity to reply thereto.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 53.5. Section 18824 of the Business and Professions Code is amended to read:

18824. Except as provided in Section 18646 and Section 18832, every person who conducts a contest or wrestling exhibition shall, within 72 hours after the determination of every contest or wrestling exhibition for which admission is charged and received, furnish to the commission a written report executed under penalty of perjury by one of the officers, showing the number of tickets issued or sold for the contest or wrestling exhibition, the amount of the gross receipts or value thereof, and the gross price charged directly or indirectly and no matter by whom received, for the sale, lease, or other exploitation of broadcasting and television rights of the contest or wrestling exhibition, and without any deductions, except for expenses incurred for one broadcast announcer, telephone line connection, and transmission mobile equipment facility, which may be deducted from the gross taxable base when those expenses are approved by the commission. The person shall also, within the same time, pay to the commission a 5-percent fee, exclusive of any federal taxes paid thereon, of the amount paid for admission to the contest or wrestling exhibition, and up to 5 percent of the gross price as

described above for the sale, lease, or other exploitation of broadcasting or television rights thereof, except that in no case shall the fee be less than one thousand dollars (\$1,000). The minimum fee for an amateur contest or exhibition shall not be less than five hundred dollars (\$500). The amount of the gross receipts upon which the fee provided for in this section is calculated shall not include any assessments levied by the commission under Section 18711.

The fee on admission shall apply to the amount actually paid for admission and not to the regular established price.

No fee is due in the case of a person admitted free of charge; provided, however, if the total number of persons admitted free of charge to a boxing, kickboxing, or martial arts contest or wrestling exhibition exceeds 25 percent of the total number of spectators, then a fee of one dollar (\$1) per complimentary ticket or pass used to gain admission to the contest shall be paid to the commission for each complimentary ticket or pass that exceeds the numerical total of 25 percent of the total number of spectators.

As used in this section, "person" includes a promoter, club, individual, corporation, partnership, association or other organization, and "wrestling exhibition" means a performance of wrestling skills and techniques by two or more individuals, to which admission is charged or which is broadcast or televised, in which the participating individuals are not required to use their best efforts in order to win, and for which the winner may have been selected before the performance commences.

SEC. 54. Section 18868 is added to the Business and Professions Code, to read:

18868. (a) The commission shall have the authority to obtain and review criminal history information to determine whether an applicant or licensee has been convicted of any offense or has been arrested for any offense for which disposition is still pending. A conviction, or a plea of guilty or nolo contendere to an offense, may be cause to deny an application or take disciplinary action against a licensee dependent on the relevancy of the offense to the licensed activity.

(b) The commission may require applicants to submit two sets of fingerprints which shall be furnished to the Department of Justice. Upon the request of the commission, the Department of Justice shall submit one set of the fingerprints to the Federal Bureau of Investigation to obtain a copy of the Federal Bureau of Investigation's record and shall retain one set to search the California criminal history system.

SEC. 55. Section 26509 of the Government Code is amended to read:

26509. (a) Notwithstanding any other provision of law, including any provision making records confidential, and including Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code, the district attorney shall be given access to, and may make copies of, any complaint against a person subject to regulation by a

consumer-oriented state agency and any investigation of the person made by the agency, where that person is being investigated by the district attorney regarding possible consumer fraud.

(b) Where the district attorney does not take action with respect to the complaint or investigation, the material shall remain confidential.

(c) Where the release of the material would jeopardize an investigation or other duties of a consumer-oriented state agency, the agency shall have discretion to delay the release of the information.

(d) As used in this section, a consumer-oriented state agency is any state agency which regulates the licensure, certification, or qualification of persons to practice a profession or business within the state, where the regulation is for the protection of consumers who deal with the professionals or businesses. It includes, but is not limited to, all of the following:

- (1) The Board of Dental Examiners of California.
- (2) The Medical Board of California.
- (3) The State Board of Optometry.
- (4) The California State Board of Pharmacy.
- (5) The Board of Examiners in Veterinary Medicine.
- (6) The State Board of Accountancy.
- (7) The California State Board of Architectural Examiners.
- (8) The State Board of Barbering and Cosmetology.
- (9) The State Board of Registration for Professional Engineers.
- (10) The Contractors' State License Board.
- (11) The State Board of Funeral Directors and Embalmers.
- (12) The Structural Pest Control Board.
- (13) The Bureau of Home Furnishings and Thermal Insulation.
- (14) The Board of Registered Nursing.
- (15) The State Board of Fabric Care.
- (16) The Board of Chiropractic Examiners.
- (17) The Board of Behavioral Science Examiners.
- (18) The State Athletic Commission.
- (19) The Cemetery Board.
- (20) The State Board of Guide Dogs for the Blind.
- (21) The Bureau of Collection and Investigative Services.
- (22) The Court Reporters Board of California.
- (23) The Board of Vocational Nurse and Psychiatric Technician Examiners of the State of California.
- (24) The California State Board of Landscape Architects.
- (25) The Osteopathic Medical Board of California.
- (26) The Division of Investigation.
- (27) The Bureau of Automotive Repair.
- (28) The State Board of Registration for Geologists and Geophysicists.
- (29) The State Board of Nursing Home Administrators.
- (30) The Department of Alcoholic Beverage Control.
- (31) The Department of Insurance.

- (32) The Public Utilities Commission.
- (33) The State Department of Health Services.
- (34) The New Motor Vehicle Board.

SEC. 56. Section 1327 of the Health and Safety Code is amended to read:

1327. (a) Whenever circumstances exist indicating that continued management of a long-term health care facility by the current licensee would present a substantial probability or imminent danger of serious physical harm or death to the patients, or there exists in the facility a condition in substantial violation of this chapter or the rules and regulations adopted pursuant to this chapter, or the facility exhibits a pattern or practice of habitual violation of this chapter or the rules and regulations adopted pursuant thereto, or the facility is closing or intends to terminate operation as a licensed long-term health care facility and adequate arrangements for relocation of residents have not been made at least 30 days prior to the closing or termination, the director may petition the superior court for the county in which the long-term health care facility is located for an order appointing a receiver to temporarily operate the long-term health care facility in accordance with this article.

The petition shall allege the facts upon which the action is based and shall be supported by an affidavit of the director. A copy of the petition and affidavits, together with an order to appear and show cause why temporary authority to operate the long-term health care facility should not be vested in a receiver pursuant to this article, shall be delivered to the licensee, administrator, or a responsible person at the facility to the attention of the licensee and administrator. The order shall specify a hearing date, which shall be not less than five, nor more than 10, days following delivery of the petition and order upon the licensee, except that the court may shorten or lengthen the time upon a showing of just cause.

(b) If the director files a petition pursuant to subdivision (a) for appointment of a receiver to operate a long-term health care facility, in accordance with Section 564 of the Code of Civil Procedure, the director may also petition the court, in accordance with Section 527 of the Code of Civil Procedure, for an order appointing a temporary receiver. A temporary receiver appointed by the court pursuant to this subdivision shall serve until the court has made a final determination on the petition for appointment of a receiver filed pursuant to subdivision (a). A receiver appointed pursuant to this subdivision shall have the same powers and duties as a receiver would have if appointed pursuant to subdivision (a).

At the time of the hearing, the state department shall advise the licensee of the name of the proposed receiver. The receiver shall be a licensed nursing home administrator or other responsible person or entity, as determined by the court, from a list of qualified receivers established by the state department, with input from providers of long-term care and consumer representatives. The department shall consult with the Board of Nursing Home Administrators, in order to

screen potential receivers who are licensed by the board, and to determine if they are administrators in good standing. Persons appearing on the list shall have experience in the delivery of health care services, and, if feasible, shall have experience with the operation of a long-term health care facility. The receivers shall have sufficient background and experience in management and finances to ensure compliance with orders issued by the court. The owner, licensee, or administrator shall not be appointed as the receiver unless authorized by the court.

If at the conclusion of the hearing, which may include oral testimony and cross-examination at the option of any party, the court determines that adequate grounds exist for the appointment of a receiver and that there is no other reasonably available remedy to protect the patients, the court may issue an order appointing a receiver to temporarily operate the long-term health care facility and enjoining the licensee from interfering with the receiver in the conduct of his or her duties. The court shall in any such proceedings make written findings of fact and conclusions of law, and shall require an appropriate bond to be filed by the receiver and paid for by the licensee. The bond shall be in an amount necessary to protect the licensee in the event of any failure on the part of the receiver to act in a reasonable manner. The bond requirement may be waived by the licensee.

The court may permit the licensee to participate in the continued operation of the facility during the pendency of any receivership ordered pursuant to this section and shall issue an order detailing the nature and scope of participation.

Failure of the licensee to appear at the hearing on the petition shall constitute an admission of all factual allegations contained in the petition for purposes of these proceedings only.

The licensee shall receive notice and a copy of the application each time the receiver applies to the court or the state department for instructions regarding his or her duties under the provisions of this article, when an accounting pursuant to Section 1330 is submitted, and when a report pursuant to Section 1332 or other report is submitted. The licensee shall have an opportunity to present objections or otherwise participate in any such proceeding.

(c) (1) The director may petition the superior court pursuant to this section for the county in which any health facility, as defined in subdivision (e), (g), or (h) of Section 1250, providing long-term care for persons with developmental disabilities is located, for an order appointing a temporary receiver to operate the facility for a maximum of 120 days in accordance with this article.

(2) The state department may provide onsite technical assistance to the receiver appointed pursuant to this subdivision, if requested by the receiver, to continue operation of the facility. The technical assistance may include, but need not be limited to, technical assistance regarding any of the following:

(A) Staff training and personnel management.

- (B) Rate adjustment applications and appeals.
- (C) Administrative practices and procedures.
- (D) Fiscal management.
- (E) Licensing regulations and review procedures.

(3) The state department shall notify the State Department of Developmental Services and the appropriate regional center, or centers, of the receivership action.

(4) When the director has determined that the facility specified in paragraph (1) presents a risk of abruptly closing, but the director determines that the situation does not require the filing of a petition with the court for an order appointing a receiver, the director may provide onsite technical assistance as specified in paragraph (2) to the operator of the facility if the operator requests the assistance.

SEC. 57. Section 1422 of the Health and Safety Code is amended to read:

1422. (a) The Legislature finds and declares that it is the public policy of this state to assure that long-term health care facilities provide the highest level of care possible. The Legislature further finds that inspections are the most effective means of furthering this policy. It is not the intent of the Legislature by the amendment of subdivision (b) enacted by Chapter 1595 of the Statutes of 1982 to reduce in any way the resources available to the state department for inspections, but rather to provide the state department with the greatest flexibility to concentrate its resources where they can be most effective.

(b) Without providing notice of these inspections, the state department shall, in addition to any inspections conducted pursuant to complaints filed pursuant to Section 1419, conduct inspections annually, except with regard to those facilities which have no class "AA", class "A", or class "B" violations in the past twelve months. The state department shall also conduct inspections as may be necessary to assure the health, safety, and security of patients in long-term health care facilities. Every facility shall be inspected at least once every two years.

The state department shall submit to the federal Department of Health and Human Services on or before July 1, 1985, for review and approval, a request to implement a three-year pilot program designed to lessen the predictability of the long-term health care facility inspection process. Two components of the pilot program shall be (1) the elimination of the present practice of entering into a one-year certification agreement, and (2) the conduct of segmented inspections of a sample of facilities with poor inspection records, as defined by the state department. At the conclusion of the pilot project, an analysis of both components shall be conducted by the state department to determine effectiveness in reducing inspection predictability and the respective cost benefits. Implementation of this pilot project is contingent upon federal approval. The state department shall report annually to the Legislature on progress of the pilot project with a final report at the

end of the third year.

(c) Except as otherwise provided in subdivision (b), the state department shall conduct unannounced direct patient care inspections at least annually to inspect physician and surgeon services, nursing services, pharmacy services, dietary services, and activity programs of all the long-term health care facilities. Facilities evidencing repeated serious problems in complying with this chapter or a history of poor performance, or both, shall be subject to periodic unannounced direct patient care inspections during the inspection year. The direct patient care inspections shall assist the state department in the prioritization of its efforts to correct facility deficiencies.

(d) All long-term health care facilities shall report to the state department any changes in the nursing home administrator or the director of nursing services within 10 calendar days of the changes.

(e) Within 90 days after the receipt of notice of a change in the nursing home administrator or the director of nursing services, the state department may conduct an abbreviated inspection of the long-term health care facilities.

(f) If a change in a nursing home administrator occurs and the Board of Nursing Home Administrators notifies the state department that the new administrator is on probation or has had his or her license suspended within the previous three years, the state department shall conduct an abbreviated survey of the long-term health care facility employing that administrator within 90 days of notification.

SEC. 58. Section 1429.5 of the Health and Safety Code is amended to read:

1429.5. (a) The state department shall report enforcement actions taken against a facility, and the name of the licensed administrator of the facility, to the State Board of Nursing Home Administrators.

(b) The following actions shall be reported to the State Board of Nursing Home Administrators:

- (1) Temporary suspension orders.
- (2) Final decertification from the Medi-Cal or Medicare programs based on failure to meet certification requirements.
- (3) Service of an accusation to revoke a facility's license.
- (4) Any class "AA" citations and three class "A" citations within the same facility with the same administrator within a one calendar year period. The State Department of Health Services shall notify the board in the event that citations are overturned or modified in citation review conference, through binding arbitration, or on appeal.

SEC. 59. The Legislature finds and declares that the enactment of Chapter 21 of the Statutes of 1992 of the First Extraordinary Session of the Legislature satisfied the condition set forth in Section 30 of Chapter 1135 of the Statutes of 1992, and therefore, Section 7517 of the Business and Professions Code as amended by Section 6.5 of,

and Section 7591.17 of the Business and Professions Code as amended by Section 10.4 of, Chapter 1135 of the Statutes of 1992, became operative on January 1, 1993.

SEC. 60. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1276

An act to add Article 11.5 (commencing with Section 2215) to Chapter 5 of Division 2 of the Business and Professions Code, and to add Chapter 1.3 (commencing with Section 1248) to Division 2 of the Health and Safety Code, relating to health, and making an appropriation therefor.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Article 11.5 (commencing with Section 2215) is added to Chapter 5 of Division 2 of the Business and Professions Code, to read:

Article 11.5. Surgery in Certain Outpatient Settings

2215. The Legislature finds and declares that in this state, significant surgeries are being performed in unregulated out-of-hospital settings. The Legislature further finds and declares that without appropriate oversight, some of these settings may be operating in a manner which is injurious to the public health, welfare, and safety. Although the health professionals delivering health care services in these settings are licensed, further quality assurance is needed to ensure that health care services are safely and effectively performed in these settings. The Legislature further recognizes that there is a wide range of surgical procedures safely performed in a myriad of outpatient settings, and the degree of patient risk varies greatly. It is the intent of the Legislature to create regulations that directly impact patient safety. It is not the intent of the Legislature to require standards in excess of those requirements in Section 1248.15, or to require physical modifications to facilities

unless the modifications or standards directly impact patient safety and are cost-effective. The cost effectiveness of any modifications shall be taken into consideration by the Division of Licensing of the Medical Board of California, and shall ensure that the least costly and effective method of achieving patient safety is required.

2216. On or after July 1, 1996, no physician and surgeon shall perform procedures in an outpatient setting using anesthesia, except local anesthesia or peripheral nerve blocks, or both, complying with the community standard of practice, in doses that, when administered, have the probability of placing a patient at risk for loss of the patient's life-preserving protective reflexes, unless the setting is specified in Section 1248.1. Outpatient settings where anxiolytics and analgesics are administered are excluded when administered, in compliance with the community standard of practice, in doses that do not have the probability of placing the patient at risk for loss of the patient's life-preserving protective reflexes.

The definition of "outpatient settings" contained in subdivision (c) of Section 1248 shall apply to this section.

2217. The Division of Licensing of the Medical Board of California may adopt regulations to implement this article and Chapter 1.3 (commencing with Section 1248) of Division 2 of the Health and Safety Code.

SEC. 2. Chapter 1.3 (commencing with Section 1248) is added to Division 2 of the Health and Safety Code, to read:

CHAPTER 1.3. OUTPATIENT SETTINGS

1248. For purposes of this chapter, the following definitions shall apply:

(a) "Division" means the Division of Licensing of the Medical Board of California.

(b) "Division of Medical Quality" means the Division of Medical Quality of the Medical Board of California.

(c) "Outpatient setting" means any facility, clinic, unlicensed clinic, center, office, or other setting that is not part of a general acute care facility, as defined in Section 1250, and where anesthesia, except local anesthesia or peripheral nerve blocks, or both, is used in compliance with the community standard of practice, in doses that, when administered have the probability of placing a patient at risk for loss of the patient's life-preserving protective reflexes.

"Outpatient setting" does not include, among other settings, any setting where anxiolytics and analgesics are administered, when done so in compliance with the community standard of practice, in doses that do not have the probability of placing the patient at risk for loss of the patient's life-preserving protective reflexes.

(d) "Accreditation agency" means a public or private organization that is approved to issue certificates of accreditation to outpatient settings by the division pursuant to Sections 1248.15 and 1248.4.

1248.1. No association, corporation, firm, partnership, or person shall operate, manage, conduct, or maintain an outpatient setting in this state, unless the setting is one of the following:

(a) An ambulatory surgical center that is certified to participate in the Medicare program under Title XVIII (42 U.S.C. Sec. 1395 et seq.) of the federal Social Security Act.

(b) Any clinic conducted, maintained, or operated by a federally recognized Indian tribe or tribal organization, as defined in Section 450 or 1601 of Title 25 of the United States Code, and located on land recognized as tribal land by the federal government.

(c) Any clinic directly conducted, maintained, or operated by the United States or by any of its departments, officers, or agencies.

(d) Any primary care clinic licensed under subdivision (a) and any surgical clinic licensed under subdivision (b) of Section 1204.

(e) Any health facility licensed as a general acute care hospital under Chapter 2 (commencing with Section 1250).

(f) Any outpatient setting to the extent that it is used by a dentist or physician and surgeon in compliance with Article 2.7 (commencing with Section 1646) or Article 2.8 (commencing with Section 1647) of Chapter 4 of Division 2 of the Business and Professions Code.

(g) An outpatient setting accredited by an accreditation agency approved by the division pursuant to this chapter.

(h) A setting, including, but not limited to, a mobile van, in which equipment is used to treat patients admitted to a facility described in subdivision (a), (d), or (e), and in which the procedures performed are staffed by the medical staff of, or other healthcare practitioners with clinical privileges at, the facility and are subject to the peer review process of the facility but which setting is not a part of a facility described in subdivision (a), (d), or (e).

Nothing in this section shall relieve an association, corporation, firm, partnership, or person from complying with all other provisions of law that are otherwise applicable.

1248.15. (a) The division shall adopt standards for accreditation and, in approving accreditation agencies to perform accreditation of outpatient settings, shall ensure that the certification program shall, at a minimum, include standards for the following aspects of the settings' operations:

(1) Outpatient setting allied health staff shall be licensed or certified to the extent required by state or federal law.

(2) (A) Outpatient settings shall have a system for facility safety and emergency training requirements.

(B) There shall be onsite equipment, medication, and trained personnel to facilitate handling of services sought or provided and to facilitate handling of any medical emergency that may arise in connection with services sought or provided.

(C) In order for procedures to be performed in an outpatient setting as defined in Section 1248, the outpatient setting shall do one of the following:

(i) Have a written transfer agreement with a local accredited or licensed acute care hospital, approved by the facility's medical staff.

(ii) Permit surgery only by a licensee who has admitting privileges at a local accredited or licensed acute care hospital, with the exception that licensees who may be precluded from having admitting privileges by their professional classification or other administrative limitations, shall have a written transfer agreement with licensees who have admitting privileges at local accredited or licensed acute care hospitals.

(iii) Submit for approval by an accrediting agency, a detailed procedural plan for handling medical emergencies that shall be reviewed at the time of accreditation. No reasonable plan shall be disapproved by the accrediting agency.

(D) All physicians and surgeons transferring patients from an outpatient setting shall agree to cooperate with the medical staff peer review process on the transferred case, the results of which shall be referred back to the outpatient setting, if deemed appropriate by the medical staff peer review committee. If the medical staff of the acute care facility determines that inappropriate care was delivered at the outpatient setting, the acute care facility's peer review outcome shall be reported, as appropriate, to the accrediting body, the Health Care Financing Administration, the State Department of Health Services, and the appropriate licensing authority.

(3) The outpatient setting shall permit surgery by a dentist acting within his or her scope of practice under Chapter 4 (commencing with Section 1600) of the Business and Professions Code or physician and surgeon, osteopathic physician and surgeon, or podiatrist acting within his or her scope of practice under Chapter 5 (commencing with Section 2000) of the Business and Professions Code or the Osteopathic Initiative Act. The outpatient setting may, in its discretion, permit anesthesia service by a certified registered nurse anesthetist acting within his or her scope of practice under Article 7 (commencing with Section 2825) of Chapter 6 of the Business and Professions Code.

(4) Outpatient settings shall have a system for maintaining clinical records.

(5) Outpatient settings shall have a system for patient care and monitoring procedures.

(6) (A) Outpatient settings shall have a system for quality assessment and improvement.

(B) Members of the medical staff and other practitioners who are granted clinical privileges shall be professionally qualified and appropriately credentialed for the performance of privileges granted. The outpatient setting shall grant privileges in accordance with recommendations from qualified health professionals, and credentialing standards established by the outpatient setting.

(C) Clinical privileges shall be periodically reappraised by the outpatient setting. The scope of procedures performed in the outpatient setting shall be periodically reviewed and amended as

appropriate.

(7) Outpatient settings regulated by this chapter that have multiple service locations governed by the same standards may elect to have all service sites surveyed on any accreditation survey. Organizations that do not elect to have all sites surveyed shall have a sample, not to exceed 20 percent of all service sites, surveyed. The actual sample size shall be determined by the division. The accreditation agency shall determine the location of the sites to be surveyed. Outpatient settings that have five or fewer sites shall have at least one site surveyed. When an organization that elects to have a sample of sites surveyed is approved for accreditation, all of the organizations' sites shall be automatically accredited.

(b) An accreditation agency may include additional standards in its determination to accredit outpatient settings if these are approved by the division to protect the public health and safety.

(c) No accreditation standard adopted or approved by the division, and no standard included in any certification program of any accreditation agency approved by the division, shall serve to limit the ability of any allied healthcare practitioner to provide services within his or her full scope of practice. Notwithstanding this or any other provision of law, each outpatient setting may limit the privileges, or determine the privileges, within the appropriate scope of practice, that will be afforded to physicians and allied health care practitioners who practice at the facility, in accordance with credentialing standards established by the outpatient setting in compliance with this chapter. Privileges may not be arbitrarily restricted based on category of licensure.

1248.2. (a) Any outpatient setting may apply to an accreditation agency for a certificate of accreditation. Accreditation shall be issued by the accreditation agency solely on the basis of compliance with its standards as approved by the division under this chapter.

(b) The division shall obtain and maintain a list of all accredited, certified, and licensed outpatient settings from the information provided by the accreditation, certification, and licensing agencies approved by the division, and shall notify the public, upon inquiry, whether a setting is accredited, certified, or licensed, or whether the setting's accreditation, certification, or license has been revoked.

1248.25. If an outpatient setting does not meet the standards approved by the division, accreditation shall be denied by the accreditation agency, which shall provide the outpatient setting notification of the reasons for the denial. An outpatient setting may reapply for accreditation at any time after receiving notification of the denial.

1248.3. (a) Certificates of accreditation issued to outpatient settings by an accreditation agency shall be valid for not more than three years.

(b) The outpatient setting shall notify the accreditation agency within 30 days of any significant change in ownership, including, but not limited to, a merger, change in majority interest, consolidation,

name change, change in scope of services, additional services, or change in locations.

(c) Except for disclosures to the division or to the Division of Medical Quality under this chapter, an accreditation agency shall not disclose information obtained in the performance of accreditation activities under this chapter that individually identifies patients, individual medical practitioners, or outpatient settings. Neither the proceedings nor the records of an accreditation agency or the proceedings and records of an outpatient setting related to performance of quality assurance or accreditation activities under this chapter shall be subject to discovery, nor shall the records or proceedings be admissible in a court of law. The prohibition relating to discovery and admissibility of records and proceedings does not apply to any outpatient setting requesting accreditation in the event that denial or revocation of that outpatient setting's accreditation is being contested. Nothing in this section shall prohibit the accreditation agency from making discretionary disclosures of information to an outpatient setting pertaining to the accreditation of that outpatient setting.

1248.35. (a) The Division of Medical Quality or an accreditation agency may, upon reasonable prior notice and presentation of proper identification, enter and inspect any outpatient setting that is accredited by an accreditation agency at any reasonable time to ensure compliance with, or investigate an alleged violation of, any standard of the accreditation agency or any provision of this chapter.

(b) If an accreditation agency determines, as a result of its inspection, that an outpatient setting is not in compliance with the standards under which it was approved, the accreditation agency may do any of the following:

(1) Issue a reprimand.

(2) Place the outpatient setting on probation, during which time the setting shall successfully institute and complete a plan of correction, approved by the division or the accreditation agency, to correct the deficiencies.

(3) Suspend or revoke the outpatient setting's certification of accreditation.

(c) Except as is otherwise provided in this subdivision, before suspending or revoking a certificate of accreditation under this chapter, the accreditation agency shall provide the outpatient setting with notice of any deficiencies and reasonable time to supply information demonstrating compliance with the standards of the accreditation agency in compliance with this chapter, as well as the opportunity for a hearing on the matter upon the request of the outpatient center. The accreditation agency may immediately suspend the certificate of accreditation before providing notice and an opportunity to be heard, but only when failure to take the action may result in imminent danger to the health of an individual. In such cases, the accreditation agency shall provide subsequent notice and an opportunity to be heard.

(d) If the division determines that deficiencies found during an inspection suggests that the accreditation agency does not comply with the standards approved by the division, the division may conduct inspections, as described in this section, of other settings accredited by the accreditation agency to determine if the agency is accrediting settings in accordance with Section 1248.15.

1248.4. (a) It is the intent of the Legislature that an accreditation agency operating on or before January 1, 1995, and meeting the standards set forth in this chapter, as determined by the division, not be required to go through the entire application process with the division. Therefore, the division may grant a temporary certificate of approval to such an accreditation agency. The temporary approval issued to an accreditation agency under this subdivision shall expire on January 1, 1998. In order to continue its status as an accreditation agency, an accreditation agency approved by the division under this subdivision shall apply for renewal of approval by the division on or before January 1, 1998, and shall establish that it is in compliance with the standards set forth in this chapter and any regulations adopted pursuant thereto.

(b) Each accreditation agency approved by the division shall, on and after January 1, 1995, promptly forward to the division a list of each outpatient setting to which it has granted a certificate of accreditation, as well as settings that have lost accreditation or were denied accreditation.

(c) The division shall approve an accreditation agency that applies for approval on a form prescribed by the division, accompanied by payment of the fee prescribed by this chapter and evidence that the accreditation agency meets the following criteria:

(1) Includes within its accreditation program, at a minimum, the standards for accreditation of outpatient settings approved by the division as well as standards for patient care and safety at the setting.

(2) Submits its current accreditation standards to the division every three years, or upon request for continuing approval by the division.

(3) Maintains internal quality management programs to ensure quality of the accreditation process.

(4) Has a process by which accreditation standards can be reviewed and revised no less than every three years.

(5) Maintains an available pool of allied health care practitioners to serve on accreditation review teams as appropriate.

(6) Has accreditation review teams that shall do all of the following:

(A) Consist of at least one physician and surgeon who practices in an outpatient setting; any other members shall be practicing actively in these settings.

(B) Participate in formal educational training programs provided by the accreditation agency in evaluation of the certification standards at least every three years.

(7) The accreditation agency shall demonstrate that professional

members of its review team have experience in conducting review activities of freestanding outpatient settings.

(8) Standards for accreditation shall be developed with the input of the medical community and the ambulatory surgery industry.

(9) Accreditation reviewers shall be credentialed and screened by the accreditation agency.

(10) The accreditation agency shall not have an ownership interest in nor be involved in the operation of a freestanding outpatient setting, nor in the delivery of health care services to patients.

(d) Accreditation agencies approved by the division shall forward to the division copies of all certificates of accreditation and shall notify the division promptly whenever the agency denies or revokes a certificate of accreditation.

(e) A certification of an accreditation agency by the division shall expire at midnight on the last day of a three-year term if not renewed. The division shall establish by regulation the procedure for renewal. To renew an unexpired approval, the accreditation agency shall, on or before the date upon which the certification would otherwise expire, apply for renewal on a form, and pay the renewal fee, as prescribed by the division.

1248.5. The division may evaluate the performance of an approved accreditation agency no less than every three years, or in response to complaints against an agency, or complaints against one or more outpatient settings accredited by an agency that indicates noncompliance by the agency with the standards approved by the division.

1248.55. (a) If the accreditation agency is not meeting the criteria set by the division, the division may terminate approval of the agency.

(b) Before terminating approval of an accreditation agency, the division shall provide the accreditation agency with notice of any deficiencies and reasonable time to supply information demonstrating compliance with the requirements of this chapter, as well as the opportunity for a hearing on the matter in compliance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) (1) If approval of the accreditation agency is terminated by the division, outpatient settings accredited by that agency shall be notified by the division and, except as provided in paragraph (2), shall be authorized to continue to operate for a period of 12 months in order to seek accreditation through an approved accreditation agency, unless the time is extended by the division for good cause.

(2) The division may require that an outpatient setting, that has been accredited by an accreditation agency whose approval has been terminated by the division, cease operations immediately in the event that the division is in possession of information indicating that continued operation poses an imminent risk of harm to the health of an individual. In such cases, the division shall provide the outpatient

setting with notice of its action, the reason underlying it, and a subsequent opportunity for a hearing on the matter. An outpatient setting that is ordered to cease operations under this paragraph may reapply for a certificate of accreditation after six months and shall notify the division promptly of its reapplication.

1248.6. (a) The Division of Licensing shall establish by regulation a reasonable fee for an application for approval as an accreditation agency in an amount that is reasonably necessary to recover the cost of implementing and administering this chapter, and not to exceed five thousand dollars (\$5,000). The division shall establish by regulation a reasonable fee for a temporary certificate of approval, as outlined in subdivision (a) of Section 1248.4, not to exceed two thousand dollars (\$2,000). The division shall also establish a reasonable fee for renewal. The renewal fee shall be proportionate to the number of outpatient settings accredited by the approved accrediting body seeking renewal, and shall not exceed one hundred dollars (\$100) per outpatient setting accreditation reviewed.

(b) All fees paid to and received by the division or the Medical Board of California under this chapter shall be paid into the State Treasury and shall be credited to a special fund that is hereby created as the Outpatient Setting Fund of the Medical Board of California. Funds in the Outpatient Setting Fund of the Medical Board of California shall be expended by the board for the purpose of implementing and administering this chapter upon appropriation by the Legislature. No surplus in the fund shall be deposited in or transferred to the General Fund or any other fund.

1248.65. It shall constitute unprofessional conduct for a physician and surgeon to willfully and knowingly violate this chapter.

1248.7. The Division of Medical Quality or the local district attorney may bring an action to enjoin a violation or threatened violation of this chapter in the superior court in and for the county in which the violation occurred or is about to occur. Any proceeding under this section shall conform to the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the Division of Medical Quality shall not be required to allege facts necessary to show or tending to show lack of adequate remedy at law or irreparable damage or loss.

With respect to any and all actions brought pursuant to this section alleging an actual or threatened violation of any requirement of this chapter, the court shall, if it finds the allegations to be true, issue an order enjoining the person or facility from continuing the violation.

1248.75. (a) Except as may otherwise be provided in this section, before the Division of Medical Quality may seek an injunction as provided under Section 1248.7, the Division of Medical Quality shall notify the outpatient setting of all deficiencies in its compliance with this chapter, and any rules and regulations adopted pursuant to this chapter, and the Division of Medical Quality and the outpatient setting shall reach an agreement upon a plan of correction that shall give the outpatient setting reasonable time to correct the

deficiencies. The Division of Medical Quality shall also inform the outpatient setting that failure to reach an agreement or to correct deficiencies may lead to corrective action by the Division of Medical Quality, which may include imposition of fines under Section 1248.8. If at the end of the allotted time the division and the outpatient setting have failed to reach an agreement or the outpatient setting has failed to correct the deficiencies, as revealed by inspection, the Division of Medical Quality may take corrective action to include, as appropriate, seeking an injunction under Section 1248.7, revoking or requesting that the accreditation agency revoke accreditation, or communicating with any agency that has oversight authority over the outpatient setting, such as the Department of Health Services or other appropriate licensing authority, to request that the agency take corrective action against the outpatient setting.

(b) For purposes of this section, and at the sole discretion of the Division of Medical Quality, any notifications, inspections, and corrective action plans of the Division of Medical Quality relating to outpatient settings that have been accredited by an accreditation agency may be performed or coordinated by the accreditation agency rather than by the Division of Medical Quality.

(c) If the Division of Medical Quality determines that an outpatient setting poses an immediate and substantial hazard to the health or safety of the patient, that may not reasonably be corrected through a plan of correction, the Division of Medical Quality may immediately institute injunction proceedings pursuant to Section 1248.7.

1248.8. (a) Any person or entity that willfully violates this chapter or any rule or regulation adopted under this chapter shall be guilty of a misdemeanor and subject to a fine not to exceed one thousand dollars (\$1,000) per day of violation.

(b) In determining the punishment to be imposed under this section, the court shall consider all relevant facts, including, but not limited to, the following:

(1) Whether the violation exposed a patient or other individual to the risk of death or serious physical harm.

(2) Whether the violation had a direct or immediate relationship to health, safety, or security of a patient or other individual.

(3) Evidence, if any, of willfulness in the violation.

(4) The presence or absence of good faith efforts by the outpatient setting to prevent the violation.

(c) For purposes of this section, “willfully” or “willful” means that the person doing an act or omitting to do an act intends the act or omission, and knows the relevant circumstances connected with the act or omission.

(d) The district attorney of every county shall, upon application by the Division of Medical Quality or its authorized representative, institute and conduct the prosecution of any action or violation within the county of any provisions of this chapter.

1248.85. Nothing in this chapter shall preclude an approved

accreditation agency from adopting additional standards consistent with Section 1248.15, establishing procedures for the conduct of surveys, selecting surveyors to perform accreditation surveys, or establishing and collecting reasonable fees for the conduct of accreditation surveys.

SEC. 3. The sum of one hundred fifty thousand dollars (\$150,000) is transferred from the Contingent Fund of the Medical Board of California to the Outpatient Setting Fund of the Medical Board of California, and is hereby appropriated to the board for the purposes of this act, which sum shall be a loan to be repaid to the Contingent Fund of the Medical Board of California with interest at the rate earned by moneys invested in the Pooled Money Investment Account. The entire sum, plus interest, shall be repaid by January 1, 2003.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1277

An act to add Article 8 (commencing with Section 20040.5) to, and to add an article heading immediately preceding Section 20041, of Chapter 5.5 of Division 8 of, the Business and Professions Code, relating to franchises.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Article 8 (commencing with Section 20040.5) is added to Chapter 5.5 of Division 8 of the Business and Professions Code, to read:

Article 8. Venue of Disputes

20040.5. A provision in a franchise agreement restricting venue to a forum outside this state is void with respect to any claim arising under or relating to a franchise agreement involving a franchise business operating within this state.

SEC. 2. An article heading is added immediately preceding Section 20041 as Article 9 (commencing with Section 20041) of Chapter 5.5 of Division 8 of the Business and Professions Code, to read:

Article 9. Miscellaneous Provisions

SEC. 3. This act shall apply to any new franchise that is operated in this state and to any existing franchise agreement renewed after the effective date of this act.

CHAPTER 1278

An act to amend Sections 5023, 5080, 5081, 5082, 5083, 5086, 5087, and 5088 of, to amend and renumber Sections 5081.3, 5089, and 5090 of, to amend and repeal Section 5081.2 of, to add Sections 5033.1 and 5082.3 to, and to repeal Sections 5082.1 and 5135 of, the Business and Professions Code, relating to accountancy.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 5023 of the Business and Professions Code is amended to read:

5023. The board may establish a committee of its own certified public accountant members or other certified public accountants of the state in good standing, to which it may delegate the authority:

(a) To examine all applicants for the license of certified public accountant.

(b) To recommend to the board applicants for the certified public accountant license who fulfill the requirements of this chapter.

The committee shall follow the rules and regulations adopted by the board for the purpose of making effective the qualifications prescribed in Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080).

SEC. 1.5. Section 5033.1 is added to the Business and Professions Code, to read:

5033.1. For purposes of this chapter, "license" shall also include "certificate."

SEC. 2. Section 5080 of the Business and Professions Code is

amended to read:

5080. The "certified public accountant" license shall be granted by the board to any person who meets the requirements of this article, has not committed acts or crimes constituting grounds for denial of a license under Section 480, and files an application for licensure on a form provided by the board.

SEC. 3. Section 5081 of the Business and Professions Code is amended to read:

5081. An applicant for admission to the examination for a certified public accountant license shall:

(a) Not have committed acts or crimes constituting grounds for denial of a license under Section 480.

(b) File the application for the examination. An application for the examination shall not be considered filed unless all required supporting documents, fees, and the fully completed board-approved application form are received in the board office or filed by mail in accordance with Section 11003 of the Government Code on or before the specified final filing date.

(c) Meet one of the requirements specified in Section 5081.1.

SEC. 4. Section 5081.2 of the Business and Professions Code is amended to read:

5081.2. (a) The board may admit to the examination any person who will complete his or her college study within 120 days after the date of the examination. An applicant admitted to the examination pursuant to this section who is found to have willfully misrepresented his or her status shall be denied credit for any passing grades received on the examination.

(b) This section shall remain operative until January 1, 1997, and as of that date is repealed unless a later enacted statute deletes or extends that date.

SEC. 5. Section 5081.3 of the Business and Professions Code is amended and renumbered to read:

5080.1. The board may require an applicant for a certified public accountant license to appear in person to determine if the applicant's qualifications are as prescribed in this chapter and in rules adopted by the board.

SEC. 6. Section 5082 of the Business and Professions Code is amended to read:

5082. An applicant for a certified public accountant license shall be over the age of 18 years and shall have successfully passed written examinations in such subjects as the board deems appropriate.

SEC. 7. Section 5082.1 of the Business and Professions Code is repealed.

SEC. 7.5. Section 5082.3 is added to the Business and Professions Code, to read:

5082.3. A Canadian Chartered Accountant in good standing shall be deemed to have met the examination requirements of Section 5082 upon successfully passing the Canadian Chartered Accountant Uniform Certified Public Accountant Qualification Examination of

the American Institute of Certified Public Accountants.

SEC. 7.7. Section 5083 of the Business and Professions Code is amended to read:

5083. (a) An individual applying for licensure shall meet, to the satisfaction of the board, one of the following requirements:

(1) Four years of experience if the applicant qualified to sit for the exam by meeting the requirements of subdivision (b) or (c) of Section 5081.1.

(2) Three years of experience if the applicant qualified to sit for the exam by meeting the requirements of subdivision (a) or (d) of Section 5081.1 or meets the requirements of Section 5082.3.

(b) In order to be qualifying under this section, experience shall have been performed in accordance with applicable professional standards. Experience in public accounting may be qualifying if completed by, or in the employ of, a person licensed or otherwise having comparable authority under the laws of any state or country to engage in the practice of public accountancy. Experience in private or governmental accounting or auditing employment may be qualifying provided that this work was performed under the direct supervision of an individual licensed by a state to engage in the practice of public accountancy.

(c) The board shall prescribe rules establishing the character and variety of experience necessary to fulfill the experience requirements set forth in this section, including a requirement that each applicant demonstrate to the board satisfactory experience in the attest function as it relates to financial statements. For purposes of this subdivision, the attest function includes audit and review of financial statements.

SEC. 8. Section 5086 of the Business and Professions Code is amended to read:

5086. Individuals who, at the time of the enactment of this act, hold certified public accountant licenses heretofore issued under the laws of this state shall not be required to secure additional licenses under this chapter, but shall otherwise be subject to all the provisions of this act; and such licenses heretofore issued shall, for all purposes, be considered licenses under this chapter and subject to the provisions hereof.

SEC. 9. Section 5087 of the Business and Professions Code is amended to read:

5087. (a) The board may issue a certified public accountant license to any applicant who is a holder of a valid and unrevoked certified public accountant license issued under the laws of any state, if the board determines that the standards under which the applicant received the license are substantially equivalent to the standards of education, examination, and experience established under this chapter and the applicant is over the age of 18 years, and has not committed acts or crimes constituting grounds for denial under Section 480.

(b) The board may in particular cases waive any of the

requirements regarding the circumstances in which the various parts of the examination were to be passed for an applicant from another state.

SEC. 10. Section 5088 of the Business and Professions Code is amended to read:

5088. Any person who is the holder of a valid and unrevoked license as a certified public accountant issued under the laws of any state and who applies to the board for a license as a certified public accountant under the provisions of Section 5087 may, after application for licensure and after providing evidence of qualifying continuing education, engage in the practice of public accountancy in this state as a certified public accountant until such time as his or her application for a license may be granted or rejected.

SEC. 11. Section 5089 of the Business and Professions Code is amended and renumbered to read:

5082.1. All examinations provided for herein shall be held by the board at such places as circumstances may warrant, and as often as may be necessary in the opinion of the board. The board may contract with any organization, governmental or private, for examination material or services. Within 90 days after the examination the board shall notify each candidate of his or her grade. All examination papers shall be preserved for a period of at least six months after the notification of grading and any candidate shall upon request to the board have access to his or her papers.

SEC. 12. Section 5090 of the Business and Professions Code is amended and renumbered to read:

5082.2. A candidate who fails an examination provided for herein shall have the right to any number of reexaminations at subsequent examinations held by the board. A candidate who passes an examination in two or more subjects shall have the right to be reexamined in the remaining subject or subjects only, at subsequent examinations held by the board, and if he or she passes in the remaining subject or subjects within a period of time specified in the rules of the board, he or she shall be considered to have passed the examination.

The board may give credit to a candidate who has passed all or part of the examination in another state or territory, if the members of the board determine that the standards under which the examination was held are as high as the standards established for the examination in this chapter.

SEC. 13. Section 5135 of the Business and Professions Code is repealed.

CHAPTER 1279

An act to add Section 17510.87 to the Business and Professions Code, relating to charitable solicitations.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 17510.87 is added to the Business and Professions Code, to read:

17510.87. Any individual, corporation, or other legal entity who, for compensation, solicits funds or other property in this state for charitable purposes is prohibited from retaining more than 50 percent of the net proceeds collected as a fee for fundraising services. For purposes of this section only, a fee does not include a flat fee agreed upon prior to the initiation of direct solicitation that is associated with the development of a solicitation or marketing campaign for charitable purposes.

A violation of this section shall not be a crime. However, it is subject to all applicable civil remedies. In addition, any person who collects any fee in excess of the limits imposed by this section shall be subject to a penalty in the amount of the excess fee, which penalty may be collected in an action by any person authorized to bring an enforcement action under Chapter 5 (commencing with Section 17200) and distributed as provided in that chapter.

This section shall only apply to contracts entered into or renewed on or after January 1, 1995.

CHAPTER 1280

An act to add Section 2446 to the Civil Code, and to add Chapter 4 (commencing with Section 4800) to Part 4 of Division 4.5 of the Probate Code, relating to powers of attorney.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 2446 is added to the Civil Code, to read:

2446. (a) The Secretary of State shall establish a registry system by which any person who has executed a durable power of attorney for health care may register in a central information center information regarding the durable power of attorney for health care, making that information available upon request to any health care provider, the public guardian, or other person authorized by the

registrant. Information that may be received and released is limited to the registrant's name, social security or driver's license or other individual identifying number established by law, if any, address, date and place of birth, the intended place of deposit or safekeeping of the durable power of attorney for health care, and the name and telephone number of the attorney in fact and any alternative attorney in fact. The Secretary of State, at the request of the registrant, may transmit the information it receives regarding the durable power of attorney for health care to the registry system of another jurisdiction as identified by the registrant. The Secretary of State may charge a fee to each registrant in an amount such that, when all fees charged to registrants are aggregated, the aggregated fees do not exceed the actual cost of establishing and maintaining the registry.

(b) The Secretary of State shall establish procedures to verify the identities of health care providers, the public guardian, and other authorized persons requesting information pursuant to subdivision (a). No fee shall be charged to any health care provider, the public guardian, or other authorized person requesting information pursuant to subdivision (a).

(c) The Secretary of State shall establish procedures to advise each registrant of the following:

(1) A health care provider may not honor a durable power of attorney for health care until it receives a copy from the registrant.

(2) Each registrant must notify the registry upon revocation of the durable power of attorney for health care.

(3) Each registrant must reregister upon execution of a subsequent durable power of attorney for health care.

(d) Failure to register with the Secretary of State shall not invalidate any durable power of attorney for health care.

(e) Registration with the Secretary of State shall not affect the ability of the registrant to revoke that durable power of attorney or a later executed power, nor shall registration raise any presumption of validity or superiority among any competing powers or revocations.

(f) Nothing in this section shall be construed to require a health care provider to request from the registry information about whether a patient has executed a durable power of attorney for health care. Nothing in this section shall be construed to affect the duty of a health care provider to provide information to a patient regarding advance health care directives pursuant to any provision of federal law.

SEC. 2. Chapter 4 (commencing with Section 4800) is added to Part 4 of Division 4.5 of the Probate Code, to read:

CHAPTER 4. REGISTRATION OF THE DURABLE POWERS OF ATTORNEY FOR HEALTH CARE WITH SECRETARY OF STATE

4800. The Secretary of State shall establish a registry system by

which any person who has executed a durable power of attorney for health care may register in a central information center information regarding the durable power of attorney for health care, making that information available upon request to any health care provider, the public guardian, or other person authorized by the registrant. Information that may be received and released is limited to the registrant's name, social security or driver's license or other individual identifying number established by law, if any, address, date and place of birth, the intended place of deposit or safekeeping of durable power of attorney for health care, and the name and telephone number of the attorney in fact and any alternative attorney in fact. The Secretary of State, at the request of the registrant, may transmit the information it receives regarding the durable power of attorney for health care to the registry system of another jurisdiction as identified by the registrant. The Secretary of State may charge a fee to each registrant in an amount such that, when all fees charged to registrants are aggregated, the aggregated fees do not exceed the actual cost of establishing and maintaining the registry.

4801. The Secretary of State shall establish procedures to verify the identities of health care providers, the public guardian, and other authorized persons requesting information pursuant to Section 4800. No fee shall be charged to any health care provider, the public guardian, or other authorized person requesting information pursuant to Section 4800.

4802. The Secretary of State shall establish procedures to advise each registrant of the following:

(a) A health care provider may not honor a durable power of attorney for health care until it receives a copy from the registrant.

(b) Each registrant must notify the registry upon revocation of the durable power of attorney for health care.

(c) Each registrant must reregister upon execution of a subsequent durable power of attorney for health care.

4804. Failure to register with the Secretary of State shall not invalidate any durable power of attorney for health care.

4805. Registration with the Secretary of State shall not affect the ability of the registrant to revoke that durable power of attorney or a later executed power, nor shall registration raise any presumption of validity or superiority among any competing powers or revocations.

4806. Nothing in this section shall be construed to require a health care provider to request from the registry information about whether a patient has executed a durable power of attorney for health care. Nothing in this section shall be construed to affect the duty of a health care provider to provide information to a patient regarding advance health care directives pursuant to any provision of federal law.

SEC. 3. Section 2 of this bill shall become operative only if (1) both this bill and Senate Bill 1907 are enacted and become effective

on January 1, 1995, and (2) this bill is enacted after Senate Bill 1907, in which case Section 1 of this bill shall not become operative.

CHAPTER 1281

An act to amend Section 7510 of the Government Code, relating to property taxation, to take effect immediately, tax levy.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 7510 of the Government Code is amended to read:

7510. (a) (1) Except as provided in subdivision (b), a public retirement system, which has invested assets in real property and improvements thereon for business or residential purposes for the production of income, shall pay annually to the city or county, in whose jurisdiction the real property is located and has been removed from the secured roll, a fee for general governmental services equal to the difference between the amount that would have accrued as real property secured taxes and the amount of possessory interest unsecured taxes paid for that property. The governing bodies of local entities may adopt ordinances and regulations authorizing retirement systems to invest assets in real property subject to the foregoing requirements.

(2) This subdivision shall not apply to any retirement system which is established by a local governmental entity if that entity is presently authorized by statute or ordinance to invest retirement assets in real property.

(3) This subdivision shall not apply to property owned by any state public retirement system.

(b) (1) Whenever a state public retirement system, which has invested assets in real property and improvements thereon for business or residential purposes for the production of income, leases the property, the lease shall provide, pursuant to Section 107.6 of the Revenue and Taxation Code, that the lessee's possessory interest may be subject to property taxation and that the party in whom the possessory interest is vested may be subject to the payment of property taxes levied on that interest. The lease shall also provide that the full cash value, as defined in Sections 110 and 110.1 of the Revenue and Taxation Code, of the possessory interest upon which property taxes will be based shall equal the greater of (A) the full cash value of the possessory interest, or (B), if the lessee has leased less than all of the property, the lessee's allocable share of the full cash value of the property that would have been enrolled if the property had been subject to property tax upon acquisition by the

state public retirement system. The full cash value as provided for pursuant to either (A) or (B) of the preceding sentence shall reflect the anticipated term of possession if, on the lien date described in Section 2192 of the Revenue and Taxation Code, that term is expected to terminate prior to the end of the next succeeding fiscal year. The lessee's allocable share shall, subject to the preceding sentence, be the lessee's leasable square feet divided by the total leasable square feet of the property.

(2) Except as provided in this subdivision, the property shall be assessed and its taxes computed and collected in the same manner as privately owned property. The lessee's possessory interest shall be placed on the unsecured roll and the tax on the possessory interest shall be subject to the collection procedures for unsecured property taxes.

(3) An investment by a state public retirement system in a legal entity that invests assets in real property and improvements thereon shall not constitute an investment by the state public retirement system of assets in real property and improvements thereon. For purposes of this paragraph, "legal entity" includes, but is not limited to, partnership, joint venture, corporation, trust, or association. When a state public retirement system invests in a legal entity, the state public retirement system shall be deemed to be a person for the purpose of determining a change in ownership under Section 64 of the Revenue and Taxation Code.

(4) Notwithstanding any other provision of law, fees charged pursuant to this section and collected prior to July 1, 1992, shall be deemed valid and not refundable under any circumstance. Notwithstanding any other provision of law, fees, interest and penalties, if any, asserted to be due pursuant to this section that were not charged or collected prior to July 1, 1992, shall be deemed invalid and not collectable under any circumstance.

(5) This subdivision shall apply to the assessment, computation, and collection of taxes for the fiscal year beginning on July 1, 1992, and each fiscal year thereafter. For the 1992-93 and 1993-94 fiscal years, in the case where a lessee's possessory interest existed for less than the full fiscal year for which the tax was levied, the amount of tax shall be prorated in accordance with the number of months for which the lessee's interest existed.

SEC. 2. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 1282

An act to add Section 1367.68 to the Health and Safety Code, and to add Sections 10123.21 and 11512.156 to the Insurance Code, relating to health insurance.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 1367.68 is added to the Health and Safety Code, to read:

1367.68. (a) Any provision in a health care service plan contract entered into, amended, or renewed in this state on or after July 1, 1995, that excludes coverage for any surgical procedure for any condition directly affecting the upper or lower jawbone, or associated bone joints, shall have no force or effect as to any enrollee if that provision results in any failure to provide medically-necessary basic health care services to the enrollee pursuant to the plan's definition of medical necessity.

(b) For purposes of this section, "plan contract" means every plan contract, except a specialized health care service plan contract, that covers hospital, medical, or surgical expenses.

(c) Nothing in this section shall be construed to prohibit a plan from excluding coverage for dental services provided that any exclusion does not result in any failure to provide medically-necessary basic health care services.

SEC. 2. Section 10123.21 is added to the Insurance Code, to read:

10123.21. On or after July 1, 1995, every individual or group policy of disability insurance that provides hospital, medical, or surgical coverage entered into, amended, or renewed in this state shall, subject to other terms and conditions as may be agreed upon between the group or individual policyholder and the insurer, provide coverage for the surgical procedure for those covered conditions directly affecting the upper or lower jawbone, or associated bone joints, if each procedure being considered for reimbursement is deemed medically-necessary by the insurer pursuant to the policy's definition of medical necessity. Nothing in this section shall be construed to require the provision of dental services if dental services are specifically excluded from coverage under the terms and conditions of the contract between the group or individual policyholder and insurer.

SEC. 3. Section 11512.156 is added to the Insurance Code, to read:

11512.156. On or after July 1, 1995, every individual or group nonprofit hospital service plan contract that provides hospital, medical, or surgical benefits entered into, amended, or renewed in this state shall, subject to other terms and conditions as may be agreed upon between the group or individual subscriber and the

plan, provide coverage for the surgical procedure for those covered conditions directly affecting the upper or lower jawbone, or associated bone joints, if each procedure being considered for reimbursement is deemed medically-necessary by the plan pursuant to the plan's definition of medical necessity. Nothing in this section shall be construed to require the provision of dental services if dental services are specifically excluded from coverage under the terms and conditions of the contract between the group or individual subscriber and the plan.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1283

An act to add Section 14085.55 to the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 14085.55 is added to the Welfare and Institutions Code, to read:

14085.55. Notwithstanding subparagraph (C) of paragraph (1) of subdivision (b) of Section 14085.5, eligible projects shall include those new capital projects funded by new debt for which final plans for the foundation, frame, and building shell, commonly known as the shell and core, have been submitted to the Office of the State Architect and the Office of Statewide Health Planning and Development after September 1, 1988, and prior to June 30, 1994, and for which final plans for tenant improvements have been submitted to the Office of the State Architect and the Office of Statewide Health Planning and Development after September 1, 1988, and prior to January 1, 1995.

CHAPTER 1284

An act to amend Section 709 of the Public Utilities Code, relating to public utilities.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 709 of the Public Utilities Code is amended to read:

709. The Legislature hereby finds and declares that the policies for telecommunications in California are as follows:

(a) To continue our universal service commitment by assuring the continued affordability and widespread availability of high-quality telecommunications service to all Californians.

(b) To encourage the development and deployment of new technologies and the equitable provision of services in a way which efficiently meets consumer need and encourages the ubiquitous availability of a wide choice of state-of-the-art services.

(c) To promote economic growth, job creation, and the substantial social benefits that will result from the rapid implementation of advanced information and communications technologies by adequate long-term investment in the necessary infrastructure.

(d) To promote lower prices, broader consumer choice, and avoidance of anticompetitive conduct.

(e) To remove the barriers to open and competitive markets and promote fair product and price competition in a way that encourages greater efficiency, lower prices, and more consumer choice.

CHAPTER 1285

An act to amend Sections 6980.81, 7511, and 7599.72 of, to add Chapter 11.3 (commencing with Section 7512) and Chapter 11.5 (commencing with Section 7580) to Division 3 of, to repeal Chapter 11.5 (commencing with Section 7512) of Division 3 of, and to repeal and add Sections 7570 and 7588 of, the Business and Professions Code, relating to security services.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 6980.81 of the Business and Professions Code is amended to read:

6980.81. (a) The bureau shall report each month to the Controller the amount and source of all revenue received pursuant to this chapter and shall pay the entire amount thereof into the State Treasury for credit to the Private Security Services Fund.

(b) All moneys paid into the Private Security Services Fund pursuant to subdivision (a) are hereby continuously appropriated to the bureau for the purposes of this chapter.

SEC. 2. Section 7511 of the Business and Professions Code, as added by Section 2 of Chapter 1266 of the Statutes of 1993, is amended to read:

7511. Effective January 1, 1995, the bureau shall establish and assess fees and penalties for licensure and registration as displayed in this section. The fees prescribed by this chapter are as follows:

(a) The application fee for an original repossession agency license is eight hundred twenty-five dollars (\$825).

(b) The application fee for an original qualification certificate is three hundred twenty-five dollars (\$325).

(c) The renewal fee for a repossession agency license is four hundred seventy-five dollars (\$475) annually.

(d) The renewal fee for a license as a qualified certificate holder is two hundred twenty-five dollars (\$225) annually.

(e) Notwithstanding Section 163.5, the reinstatement fee for a repossession agency license required pursuant to Sections 7503.11 and 7505.3 is the amount equal to the renewal fee plus a penalty of 50 percent thereof.

(f) Notwithstanding Section 163.5, the reinstatement fee for a license as a qualified certificate holder required pursuant to Sections 7504.7 and 7503.11 is the amount equal to the renewal fee plus a penalty of 50 percent thereof.

(g) A fee for reexamination of an applicant for a qualified manager is thirty dollars (\$30).

(h) An initial repossessor employee registration fee is seventy-five dollars (\$75), a repossessor employee reregistration fee is thirty dollars (\$30), and a repossessor employee annual renewal fee is thirty dollars (\$30) per registration. Notwithstanding Section 163.5 and this subdivision, the reregistration fee for a repossessor employee whose registration expired more than one year prior to the filing of the application for reregistration shall be seventy-five dollars (\$75).

(i) The delinquency fee is 50 percent of the renewal fee in effect on the date of expiration, but not less than twenty-five dollars (\$25).

(j) The fingerprint processing fee is that amount charged the bureau by the Department of Justice.

(k) The director shall furnish one copy of any issue or edition of the licensing law and rules and regulations to any applicant or licensee without charge. The director shall charge and collect a fee of ten dollars (\$10) plus sales tax for each additional copy which may be furnished on request to any applicant or licensee, and for each copy furnished on request to any other person.

All fees, except any sales tax, received pursuant to this chapter shall

be deposited in the Private Security Services Fund.

This section shall become operative January 1, 1995 and shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 3. Section 7511 of the Business and Professions Code, as added by Section 2.3 of Chapter 1266 of the Statutes of 1993, is amended to read:

7511. The fees prescribed by this chapter are as follows:

(a) The application fee for an original repossession agency license is seven hundred fifty dollars (\$750).

(b) The application fee for an original qualification certificate is two hundred fifty dollars (\$250).

(c) The renewal fee for a repossession agency license is four hundred fifty dollars (\$450) annually.

(d) The renewal fee for a license as a qualified certificate holder is two hundred dollars (\$200) annually.

(e) Notwithstanding Section 163.5, the reinstatement fee for a repossession agency license required pursuant to Sections 7503.11 and 7505.3 is the amount equal to the renewal fee plus a penalty of 50 percent.

(f) Notwithstanding Section 163.5, the reinstatement fee for a license as a qualified certificate holder required pursuant to Sections 7504.7 and 7503.11 is the amount equal to the renewal fee plus a penalty of 50 percent.

(g) The fee for reexamination of an applicant or the applicant's qualified certificate holder is ten dollars (\$10).

(h) An initial reposessor employee registration fee is fifty-five dollars (\$55), a reposessor employee reregistration fee is thirty dollars (\$30), and a reposessor employee annual renewal fee is thirty dollars (\$30) per registration. Notwithstanding Section 163.5 and this subdivision, the reregistration fee for a reposessor employee whose registration expired more than one year prior to the filing of the application for reregistration shall be fifty-five dollars (\$55).

(i) The fingerprint processing fee is that amount charged the bureau by the Department of Justice.

(j) The director shall furnish one copy of any issue or edition of the licensing law and rules and regulations to any applicant or licensee without charge. The director shall charge and collect a fee of three dollars (\$3) plus sales tax for each additional copy which may be furnished on request to any applicant or licensee, and for each copy furnished on request to any other person.

All fees, except any sales tax, received pursuant to this chapter shall be deposited in the Private Security Services Fund.

This section shall become operative January 1, 1998.

SEC. 4. Chapter 11.3 (commencing with Section 7512) is added to Division 3 of the Business and Professions Code, to read:

CHAPTER 11.3. PRIVATE INVESTIGATORS

Article 1. General

7512. This chapter may be cited as the Private Investigator Act.

7512.1. As used in this chapter, "director" means the Director of Consumer Affairs, unless the context indicates otherwise.

7512.2. The director shall administer and enforce the provisions of this chapter.

7512.3. As used in this chapter, "person" includes any individual, firm, company, association, organization, partnership, and corporation.

7512.4. As used in this chapter, "bureau" means the Bureau of Security and Investigative Services.

7512.5. As used in this chapter, "chief" means the Chief of the Bureau of Security and Investigative Services.

7512.6. As used in this chapter, "licensee" means a person licensed under this chapter.

7512.7. As used in this chapter, "manager" means the individual under whose direction, control, charge, or management the business of a licensee is operated.

7512.10. As used in this chapter, "employer" means a person who employs an individual for wages or salary, lists the individual on the employer's payroll records, and withholds all legally required deductions and contributions.

7512.11. As used in this chapter, "employee" means an individual who works for an employer, is listed on the employer's payroll records, and is under the employer's direction and control.

7512.12. As used in this chapter, "employer-employee" relationship means a relationship in which an individual works for another, the individual's name appears on the payroll records of the employer, and the employee is under the direction and control of the employer.

7512.13. As used in this chapter, "firearm permit" includes "firearms permit," "firearms qualification card," "firearms qualification," and "firearms qualification permit."

7513. Every power and duty granted to or imposed upon the director may be exercised by any other officer or employee of the Department of Consumer Affairs authorized by the director, but the director shall have the supervision of and the responsibility for all powers and duties exercised by these officers and employees.

7513.5. The director may, in accordance with the State Civil Service Act and subject to the provisions of Section 159.5, appoint and fix the compensation of inspectors, investigators, and other personnel as may be necessary for the enforcement of this chapter.

7514. Nothing in this chapter shall be construed as entitling any person to practice law in this state unless he or she is an active member of the State Bar of California.

Article 2. Administration

7515. The director may adopt and enforce reasonable rules, as follows:

(a) Fixing the qualifications of licensees and managers, in addition to those prescribed in this chapter, necessary to promote and protect the public welfare.

(b) Carrying out generally the provisions of this chapter, including regulation of the conduct of licensees.

7518. Where a hearing is held under this chapter to determine whether an application for a license should be granted or to determine the qualifications of a licensee's manager, the proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director shall have all of the powers granted therein.

7519. The director shall furnish, at least once every two years, one copy of the current licensing law, rules, and regulations to every licensed business governed under this chapter, without charge. The director may charge and collect a fee equivalent to the cost of producing these documents for each additional copy which may be furnished upon request to any licensee or any applicant for licensure and for each copy furnished on request to any other person.

Article 3. Regulation, Licensing, and Registration

7520. No person shall engage in a business regulated by this chapter; act or assume to act as, or represent himself or herself to be, a licensee unless he or she is licensed under this chapter; and no person shall falsely represent that he or she is employed by a licensee.

7520.1. (a) Notwithstanding any other provision of law, any person engaging in a business as a private investigator who violates Section 7520 is guilty of an infraction subject to the procedures described in Sections 19.6 and 19.7 of the Penal Code under either of the following circumstances:

(1) A complaint or a written notice to appear in court pursuant to Chapter 5c (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code is filed in court charging the offense as an infraction unless the defendant, at the time he or she is arraigned, after being advised of his or her rights, elects to have the case proceed as a misdemeanor.

(2) The court, with the consent of the defendant and the prosecution, determines that the offense is an infraction in which event the case shall proceed as if the defendant has been arraigned on an infraction complaint.

(b) This section does not apply to a violation of Section 7520 if the defendant has had his or her license previously revoked or suspended.

(c) Notwithstanding any other provision of law, a violation of Section 7520, which is an infraction, is punishable by a fine of one

thousand dollars (\$1,000). No portion of the fine may be suspended by the court unless as a condition of that suspension the defendant is required to submit proof of a current valid license for the profession of private investigator which was the basis for his or her conviction.

7520.5. A provisional private investigator license may be issued by the director for a period not to exceed 90 days upon proof that the applicant is currently licensed in another state, as a private investigator, which state has similar qualification requirements for licensure and provides reciprocal provisional licensing for California's licensees. The proof required by the director shall be accompanied by payment of fifty dollars (\$50.00) plus a set of valid fingerprints. The applicant shall be subject to all provisions of this chapter. The license may be renewed by the director.

7521. A private investigator within the meaning of this chapter is a person, other than an insurance adjuster subject to the provisions of Chapter 1 (commencing with Section 14000) of Division 5 of the Insurance Code, who, for any consideration whatsoever engages in business or accepts employment to furnish or agrees to furnish any person to protect persons pursuant to Section 7521.5, or engages in business or accepts employment to furnish, or agrees to make, or makes, any investigation for the purpose of obtaining, information with reference to:

(a) Crime or wrongs done or threatened against the United States of America or any state or territory of the United States of America.

(b) The identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of any person.

(c) The location, disposition, or recovery of lost or stolen property.

(d) The cause or responsibility for fires, libels, losses, accidents, or damage or injury to persons or to property.

(e) Securing evidence to be used before any court, board, officer, or investigating committee.

For the purposes of this section, a private investigator is any person, firm, company, association, partnership, or corporation acting for the purpose of investigating, obtaining, and reporting to any employer, its agent, supervisor, or manager, information concerning the employer's employees involving questions of integrity, honesty, breach of rules, or other standards of performance of job duties.

This section shall not apply to a public utility regulated by the State Public Utilities Commission, or its employees.

7521.5. (a) A private investigator may provide services to protect a person, but not property, which is incidental to an investigation for which the private investigator has been previously hired to perform.

(b) If the private investigator provides those services, he or she shall comply with the requirements of Article 4 (commencing with

Section 7540), as those provisions relate to the carrying of firearms and the receipt of a valid firearms qualification card from the bureau.

(c) If the private investigator provides those services, he or she shall comply with the requirements of Sections 7583.39, 7583.40, and 7583.41, as those provisions relate to the maintenance of an insurance policy.

(d) If the private investigator provides those services, he or she shall be subject to the jurisdiction of the disciplinary review committee, pursuant to Section 7581.2, only with respect to violation of the law or regulations relating to firearms.

(e) If a person acts for, or on behalf of a private investigator in providing those services, that person shall be an employee of the private investigator, as defined by Section 7512.11, and there shall be an employer-employee relationship, as defined in Section 7512.12, and that person shall comply with the requirements of this section with the exception of the maintenance of an insurance policy.

7522. This chapter does not apply to:

(a) A person employed exclusively and regularly by any employer who does not provide contract security services for other entities or persons, in connection with the affairs of such employer only and where there exists an employer-employee relationship, provided that such person at no time carries or uses any deadly weapon in the performance of his or her duties. For purposes of this subdivision, "deadly weapon" is defined to include any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a blade longer than five inches, any razor with an unguarded blade and any metal pipe or bar used or intended to be used as a club.

(b) An officer or employee of the United States of America, or of this state or a political subdivision thereof, while the officer or employee is engaged in the performance of his or her official duties, including uniformed peace officers employed part time by a public agency pursuant to a written agreement between a chief of police or sheriff and the public agency, provided the part-time employment does not exceed 50 hours in any calendar month.

(c) A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons.

(d) A charitable philanthropic society or association duly incorporated under the laws of this state which is organized and maintained for the public good and not for private profit.

(e) An attorney at law in performing his or her duties as an attorney at law.

(f) Admitted insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them.

(g) Any bank subject to the jurisdiction of the Superintendent of Banks of the State of California or the Comptroller of Currency of the United States.

(h) A person engaged solely in the business of securing information about persons or property from public records.

(i) A peace officer of this state or a political subdivision thereof while the peace officer is employed by a private employer to engage in off-duty employment in accordance with the provisions of Section 1126 of the Government Code. However, nothing herein shall exempt such peace officer who contracts for his or her services or the services of others as a private investigator.

(j) A licensed insurance adjuster in performing his or her duties within the scope of his or her license as an insurance adjuster.

(k) Any savings and loan association subject to the jurisdiction of the Savings and Loan Commissioner or the Federal Home Loan Bank Board.

(l) Any secured creditor engaged in the repossession of the creditor's collateral and any lessor engaged in the repossession of leased property in which it claims an interest.

7523. (a) Unless specifically exempted by Section 7522, no person shall engage in the business of private investigator, as defined in Section 7521, unless that person has applied for and received a license to engage in that business pursuant to this chapter.

(b) Any person who violates any provision of this chapter or who conspires with another person to violate any provision of this chapter, relating to private investigator licensure, or who knowingly engages an unlicensed private investigator after being notified in writing by the bureau of the private investigator's unlicensed status with the bureau, is guilty of a misdemeanor punishable by fine not to exceed one thousand dollars (\$1,000) or by imprisonment in the county jail not to exceed one year, or by both such fine and imprisonment.

(c) Any person who engages in any business regulated by this chapter, who acts as or represents himself or herself to be a licensee under this chapter, who falsely represents that he or she is employed by a licensee, or who carries a badge, identification card, or business card, or uses a letterhead or advertises that he or she is a licensee under this chapter, unless the person is licensed under this chapter, is guilty of a misdemeanor and is punishable by a fine of one thousand dollars (\$1,000), or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

(d) Any person who is convicted of a violation of the provisions of this section shall not be issued a license under this chapter, within one year following that conviction.

(e) The chief shall gather evidence of violations of this chapter and of any rule or regulation established pursuant to this chapter by persons engaged in the business of private investigator who fail to obtain a license and shall gather evidence of violations and furnish that evidence to prosecuting officers of any county or city for the purpose of prosecuting all violations occurring within their jurisdiction.

(f) The prosecuting officer of any county or city shall prosecute

all violations of this chapter occurring within his or her jurisdiction.

7523.5. (a) The superior court for the county in which any person has engaged or is about to engage in any act which constitutes a violation of Section 7523 may, upon a petition filed by the bureau with the approval of the director, issue an injunction or other appropriate order restraining this conduct. The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that no undertaking shall be required.

(b) The superior court for the county in which any person has engaged in any act which constitutes a violation of Section 7523 may, upon a petition filed by the bureau with the approval of the director, order this person to make restitution to persons injured as a result of the violation.

(c) The court may order a person subject to an injunction or restraining order, provided for in subdivision (a), or subject to an order requiring restitution pursuant to subdivision (b), to reimburse the bureau for expenses incurred by the bureau in its investigation related to its petition.

(d) The remedy provided for by this section shall be in addition to any other remedy provided for in this chapter.

7525. An application for a license under this chapter shall be on a form prescribed by the director and accompanied by the application fee provided by this chapter.

7525.1. An application shall be verified and shall include:

(a) The full name and business address of the applicant.
(b) The name under which the applicant intends to do business.
(c) A statement as to the general nature of the business in which the applicant intends to engage.

(d) A verified statement of his or her experience qualifications.

(e) If the applicant is an individual, a qualified manager, partner of a partnership or officer of a corporation designated in subdivision (h), one personal identification form provided by the bureau upon which shall appear a photograph taken within one year immediately preceding the date of the filing of the application together with two legible sets of fingerprints, on a form approved by the Department of Justice, and a personal description of each such person, respectively. The identification form shall include residence addresses and employment history for the previous five years and be signed under penalty of perjury.

(f) In addition, if the applicant for a license is an individual, the application shall list all other names known as or used during the past 10 years and shall state that the applicant is to be personally and actively in charge of the business for which the license is sought, or if any other qualified manager is to be actively in charge of the business, the application shall be subscribed, verified, and signed by the applicant, under penalty of perjury, and if any other person is to be actively in charge of the business, the application shall also be subscribed, verified, and signed by that person under penalty of

perjury.

(g) If the applicants for license are copartners, the application shall state the true names and addresses of all partners and the name of the partner to be actively in charge of the business for which the license is sought; and list all other names known as or used during the past 10 years, or if a qualified manager other than a partner is to be actively in charge of the business, then the application shall be subscribed, verified, and signed by all of the partners under penalty of perjury, and if any other person is to be actively in charge of the business, the application shall also be subscribed, verified, and signed by that person, under penalty of perjury, under penalty of perjury by all of the partners and qualified manager, or by all of the partners or the qualified manager.

(h) If the applicant for license is a corporation, the application shall state the true names, and complete residence addresses of the chief executive officer, secretary, chief financial officer, and any other corporate officer who will be active in the business to be licensed. The application shall also state the name and address of the designated person to be actively in charge of the business for which the license is sought. The application shall be subscribed, verified, and signed by a duly authorized officer of the applicant and by the qualified manager thereof, under penalty of perjury.

(i) Any other information, evidence, statements, or documents as may be required by the director.

7526. Before an application for a license is granted, the applicant for a license or his or her manager shall meet all of the following:

(a) Be at least 18 years of age.

(b) Not have committed acts or crimes constituting grounds for denial of a license under Section 480.

(c) Comply with the requirements specified in this chapter for the particular license for which an application is made.

(d) Comply with other qualifications as the director may fix by rule.

7527. The director may require an applicant or his or her manager, to demonstrate his or her qualifications by a written or oral examination, or a combination of both.

7527.5. Payment of the application fee prescribed by this chapter entitles an applicant or his or her manager to one examination without further charge. If the person fails to pass the examination, he or she shall not be eligible for any subsequent examination except upon payment of the reexamination fee prescribed by this chapter for each subsequent examination.

7528. The chief shall issue a license, the form and content of which shall be determined by the chief in accordance with Section 164. In addition, the chief shall issue a "Certificate of Licensure" to any licensee, upon request and upon the payment of a fee of fifty dollars (\$50).

7528.5. The license shall at all times be posted in a conspicuous place in the principal place of business of the licensee.

7529. Upon the issuance of a license, a pocket card of the size, design, and content as may be determined by the director shall be issued without charge to each licensee, if an individual, or if the licensee is a person other than an individual, to its manager and to each of its officers and partners, which card shall be evidence that the licensee is duly licensed pursuant to this chapter. The card shall contain the signature of the licensee, signature of the chief, and a photograph of the licensee, or bearer of the card, if the licensee is other than an individual, and clearly state that the person is licensed as a private investigator or is the manager or officer of the licensee. When any person to whom a card is issued terminates his or her position, office, or association with the licensee, the card shall be surrendered to the licensee and within five days thereafter shall be mailed or delivered by the licensee to the bureau for cancellation.

7530. A license issued under this chapter is not assignable.

7531. A licensee shall at all times be legally responsible for the good conduct in the business of each of his or her employees or agents, including his or her manager.

7531.5. Each licensee shall maintain a record containing information relative to his or her employees as may be prescribed by the director.

7532. No licensee shall conduct a business under a fictitious or other business name unless and until he or she has obtained the written authorization of the bureau to do so.

The bureau shall not authorize the use of a fictitious or other business name which is so similar to that of a public officer or agency or of that used by another licensee that the public may be confused or misled thereby.

The authorization shall require, as a condition precedent to the use of any fictitious name, that the licensee comply with Chapter 5 (commencing with Section 17900) of Part 3 of Division 7.

A licensee desiring to conduct his or her business under more than one fictitious business name shall obtain the authorization of the bureau in the manner prescribed in this section for the use of each name.

The licensee shall pay a fee of twenty-five dollars (\$25) for each authorization to use an additional fictitious business name and for each change in the use of a fictitious business name. If the original license is issued in a nonfictitious name and authorization is requested to have the license reissued in a fictitious business name the licensee shall pay a fee of twenty-five dollars (\$25) for the authorization.

7533. Each licensee shall file with the bureau the complete address of his or her principal place of business including the name and number of the street, or, if the street where the business is located is not numbered, the number of the post office box. The director may require the filing of other information for the purpose of identifying the principal place of business.

7533.5. A licensee shall, within 30 days after such change, notify

the bureau of any change in its corporate officers.

Applications, on forms prescribed by the director, shall be submitted by all new officers. The director may suspend or revoke a license issued under this chapter if he or she determines that at the time the person became an officer of a licensee, any of the facts stated in Section 7538 or 7538.5 existed as to such person.

7534. Every advertisement by a licensee soliciting or advertising business shall contain his or her business name, business address or telephone number, and license number as they appear in the records of the bureau. For the purposes of this section, "advertisement" shall include any business card, stationery, brochure, flyer, circular, newsletter, fax form, printed or published paid advertisement in any media form, or telephone book listing. Every advertisement by a licensee soliciting or advertising their business shall contain his or her business name, business address or telephone number, and license number, as they appear in the records of the bureau.

7535. A licensee shall not advertise or conduct business from any location other than that shown on the records of the bureau as his or her principal place of business unless he or she has received a branch office certificate for the location after compliance with the provisions of this chapter and any additional requirements necessary for the protection of the public as the director may by regulation prescribe. A licensee shall notify the bureau in writing within 30 days after closing or changing the location of a branch office.

7536. (a) The business of each licensee shall be operated under the active direction, control, charge, or management, in this state, of the licensee, if he or she is qualified, or the person who is qualified to act as the licensee's manager, if the licensee is not qualified.

(b) No person shall act as a qualified manager of a licensee until he or she has complied with each of the following:

(1) Demonstrated his or her qualifications by a written or oral examination, or a combination of both, if required by the director.

(2) Made a satisfactory showing to the director that he or she has the qualifications prescribed in Section 7526 and that none of the facts stated in Section 7538 or 7538.5 exist as to him or her.

7537. (a) In case of the death of a person licensed as an individual, a member of the immediate family of the deceased licensee shall be entitled to continue the business under the same license for 120 days following the death of the licensee, provided that written application for permission is made to the bureau within 30 days following the death of the licensee. At the end of the 120-day period, the license shall be automatically canceled. If no request is received within the 30-day period, the license shall be automatically canceled at the end of that period.

(b) If the manager, who has qualified as provided in Section 7536, ceases for any reason whatsoever to be connected with the licensee to whom the license is issued, the licensee shall notify the bureau in writing 30 days from this cessation. If the notice of cessation is filed timely, the license shall remain in force for a period of 90 days after

cessation or for an additional period, not to exceed one year, as approved by the director, pending the qualification of another manager as provided in this chapter. After the 90-day period or additional period, as approved by the director, the license shall be automatically suspended, unless the bureau receives written notification that the license is under the active charge of a qualified manager. If the licensee fails to notify the bureau within the 30-day period, his or her license shall be automatically suspended and may be reinstated only upon the filing of an application for reinstatement, payment of the reinstatement fee, and the qualification of a manager as provided in this chapter.

(c) In the case of the death or disassociation of a partner of an entity licensed as a partnership, the licensee shall notify the bureau, in writing, within 30 days from the death or disassociation of the individual. If notice is given, the license shall remain in force for 90 days following the death or disassociation. At the end of this period the license shall be automatically canceled. If the licensee fails to notify the bureau within the 30-day period, the license shall be automatically canceled.

(d) A license extended under this section is subject to all other provisions of this chapter.

7538. After a hearing the director may deny a license unless the applicant makes a showing satisfactory to the director that the applicant, if an individual, has not, or if the applicant is a person other than an individual, that its manager and each of its officers have not:

(a) Committed any act, which, if committed by a licensee, would be a ground for the suspension or revocation of a license under this chapter.

(b) Committed any act constituting dishonesty or fraud.

(c) Committed any act or crime constituting grounds for denial of licensure under Section 480, including illegally using, carrying, or possessing a deadly weapon.

(d) Been refused a license under this chapter or had a license revoked.

(e) Been an officer, partner, or manager of any person who has been refused a license under this chapter or whose license has been revoked.

(f) While unlicensed committed, or aided and abetted the commission of, any act for which a license is required by this chapter.

(g) Knowingly made any false statement in his or her application.

7538.5. The director may refuse to issue any license provided for in this chapter to any person:

(a) Who has had any license revoked, or whose license is under suspension, or has failed to renew his or her license while it was under suspension.

(b) If any member of any partnership, or any officer or director of any corporation, or any officer or person acting in a managerial capacity of any firm or association has had any license issued to him or her revoked, or whose license is under suspension, or who has

failed to renew his or her license while it was under suspension.

(c) If any member of the partnership, or any officer or director of the corporation, or any officer or person acting in a managerial capacity of the firm or association, was either a member of any partnership, or an officer or director of any corporation, or an officer or person acting in a managerial capacity of any firm or association, whose license has been revoked, or whose license is under suspension, or who failed to renew a license while it was under suspension, and while acting as such member, officer, director, or person acting in a managerial capacity participated in any of the prohibited acts for which any such license was revoked or suspended.

7539. (a) Any licensee or officer, director, partner, or manager of a licensee may divulge to any law enforcement officer or district attorney, or his or her representative, any information he or she may acquire as to any criminal offense, but he or she shall not divulge to any other person, except as he or she may be required by law so to do, any information acquired by him or her except at the direction of the employer or client for whom the information was obtained.

(b) No licensee or officer, director, partner, manager, or employee of a licensee shall knowingly make any false report to his or her employer or client for whom information was being obtained.

(c) No written report shall be submitted to a client except by the licensee, qualifying manager, or a person authorized by one or either of them, and the person submitting the report shall exercise diligence in ascertaining whether or not the facts and information in the report are true and correct.

(d) No licensee, or officer, director, partner, manager, or employee of a licensee shall use a badge in connection with the official activities of the licensee's business.

(e) No licensee, or officer, director, partner, manager, or employee of a licensee, shall use a title, or wear a uniform, or use an insignia, or use an identification card, or make any statement with the intent to give an impression that he or she is connected in any way with the federal government, a state government, or any political subdivision of a state government.

(f) No licensee, or officer, partner, qualified manager, or employee of a licensee shall use any identification to indicate that he or she is licensed as a private investigator other than the official identification card issued by the bureau or the business card regularly used by the business. However, a licensee may issue an employer identification card.

(g) No licensee, or officer, director, partner, manager, or employee of a licensee, shall enter any private building or portion thereof, except premises commonly accessible to the public, without the consent of the owner or of the person in legal possession thereof.

(h) No licensee shall permit an employee or agent in his or her own name to advertise, engage clients, furnish reports or present bills to clients, or in any manner whatever conduct business for which a license is required under this chapter. All business of the

licensee shall be conducted in the name of and under the control of the licensee.

(i) No licensee, officer, director, partner, manager, or employee of a licensee shall knowingly and directly solicit employment from any person who has directly sustained bodily injury or from that person's spouse or other family member to obtain authorization on behalf of the injured person as an investigator to investigate the accident or act which resulted in injury or death to that person or damage to the property of that person. Nothing in this subdivision shall prohibit the soliciting of employment from that injured person's attorney, insurance company, self-insured administrator, insurance adjuster, employer, or any other person having an indirect interest in the investigation of the injury. This subdivision shall not apply to any business agent or attorney employed by a labor organization. No licensee, officer, director, partner, or manager of a licensee shall pay or compensate any of his or her employees or agents on the basis of a bonus, bounty, or quota system whereby a premium is placed on the number of employer or client rule violations or infractions purportedly discovered as a result of any investigation made by a licensee.

(j) No licensee shall use a fictitious business name in connection with the official activities of the licensee's business, except as provided by the bureau.

Article 4. Application of Chapter

7540. For purposes of this article, "licensee" means a licensed private investigator.

7541. Except as otherwise provided by this section, an applicant, or his or her manager, for a license as a private investigator shall have had at least three years' experience in investigation work.

A year's experience shall consist of not less than 2,000 hours of actual compensated work performed by each applicant preceding the filing of an application.

An applicant who holds a law degree or who has completed a four-year course in police science, criminal justice, criminal law, or the equivalent thereof shall be required to have had two years' experience in investigation work.

An applicant shall substantiate the claimed years of qualifying experience and the exact details as to the character and nature thereof by written certifications from the employer, subject to independent verification by the director as he or she may determine.

Notwithstanding any other provision of law, only an employer or his or her designated agent may certify experience for purposes of this section. For purposes of this section, the term "employer" shall mean only those persons, corporations, partnerships, proprietorships, or other associations which, in the employ of the designated individual, regularly and routinely withheld income taxes and other payroll deductions for direct forwarding to governmental

taxing authorities.

An employer who is a licensee shall respond in writing within 30 days to an applicant's written request for certifications of the applicant's work experience as an employee and either provide the certifications or the reasons for denial. If the applicant notifies the director in writing, under penalty of perjury, that the applicant is unable to obtain the required written response from a licensee or provides the licensee's written denial and states, under penalty of perjury, that the licensee's reasons for denial are invalid or insufficient and the director concurs, the director may require the licensee to provide the bureau with all relevant employment records maintained pursuant to Section 7531.5 regarding the applicant for evaluation in substantiating the applicant's employment experience.

7541.1. (a) Notwithstanding any other provision of law, experience for purposes of taking the examination for licensure as a private investigator shall be limited to those activities actually performed in connection with investigations, as defined in Section 7521, and only if those activities are performed by persons who are employed in the following capacities:

(1) Sworn law enforcement officers possessing powers of arrest and employed by agencies in the federal, state, or local government.

(2) Military police of the armed forces of the United States or the national guard.

(3) An insurance adjuster or their employees subject to Chapter 1 (commencing with Section 14000) of Division 5 of the Insurance Code.

(4) Persons employed by a private investigator who are duly licensed in accordance with this chapter.

(5) Persons employed by reposseors duly licensed in accordance with Chapter 11 (commencing with Section 7500), only to the extent that those persons are routinely and regularly engaged in the location of debtors or the location of personal property utilizing methods commonly known as "skip tracing." For purposes of this section, only that experience acquired in that skip tracing shall be credited toward qualification to take the examination.

(6) Persons duly trained and certified as an arson investigator and employed by a public agency engaged in fire suppression.

(b) For purposes of Section 7541, persons possessing an associate of arts degree in police science, criminal law or justice from an accredited college shall be credited with 1,000 hours of experience in investigative activities.

(c) The following activities shall not be deemed to constitute acts of investigation for purposes of experience toward licensure:

(1) The serving of legal process or other documents.

(2) Activities relating to the search for heirs or similar searches which involve only a search of public records or other reference sources in the public domain.

(3) The transportation or custodial attendance of persons in the physical custody of a law enforcement agency.

(4) The provision of bailiff or other security services to a court of law.

(5) The collection or attempted collection of debts by telephone or written solicitation after the debtor has been located.

(6) The repossession or attempted repossession of personal property after that property has been located and identified.

(d) Where the activities of employment of an applicant include those which qualify as bona fide experience as stated in this section as well as those which do not qualify, the director may, by delegation to the bureau, determine and apportion that percentage of experience for which any applicant is entitled to credit.

7542. Every licensee and qualified manager who in the course of his or her employment or business carries a deadly weapon shall complete a course of training in the exercise of the powers to arrest as specified in Section 7583.7 and a course of training in the carrying and use of firearms as specified in Article 4 (commencing with Section 7583) of Chapter 11.5. No licensee or qualified manager shall carry or use a firearm unless he or she has met the requirements of Sections 7583.23, 7583.28, and 7583.29 and has in his or her possession a valid firearms qualification card as provided in Section 7583.30. A licensee or qualified manager who possesses a valid firearms qualification card shall comply with and be subject to the provisions of Sections 7583.31, 7583.32, and 7583.37.

7542.1. Every licensee and any person employed and compensated by a licensee who in the course of such employment or business carries tear gas or any other nonlethal chemical agent shall complete the required course pursuant to Section 12403.5 of the Penal Code.

Article 5. Expiration and Renewal of License

7558. Every private investigator license, branch office certificate, and pocket card issued under this chapter which expires on or after January 1, 1985, shall be placed on a cyclical renewal and shall expire two years following the date of issuance or assigned renewal date. In order to implement this cyclical renewal, the population of licensees shall be divided into 24 equal groups, the licenses of those in each group to expire on the last day of each successive month. Notwithstanding any other provision of law, the bureau shall have authority to extend or shorten the first term of licensure following January 1, 1985, and to prorate the required license fee in order to implement this cyclical renewal.

7558.1. (a) To renew an unexpired license or certificate, the licensee shall, on or before the date on which it would otherwise expire, apply for renewal on a form prescribed by the director, and pay the renewal fee prescribed by this chapter. On renewal, such evidence of renewal of the license or certificate as the director may prescribe, and renewal pocket cards for the persons mentioned in Section 7529, shall be issued to the licensee.

(b) A license or certificate shall not be renewed until any and all fines assessed pursuant to Section 7564 and not resolved in accordance with the provisions of that section have been paid.

7558.5. Except as otherwise provided in this article, an expired license or branch office certificate may be renewed at any time within one year after its expiration on filing of application for renewal on a form prescribed by the director, and payment of the renewal fee in effect on the last preceding regular renewal date. If the license or certificate is renewed more than 30 days after its expiration, the licensee, as a condition precedent to renewal, shall also pay the delinquency fee prescribed in this chapter. Renewal under this section shall be effective on the date on which the application is filed, on the date on which the renewal fee is paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the license or certificate shall continue in effect through the date provided in Section 7558 which next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

Renewal of a license or certificate shall not prohibit the bringing of disciplinary proceedings for an act committed before the effective date of the renewal.

7559. A suspended license or branch office certificate is subject to expiration and shall be renewed as provided in this article, but renewal of the license does not entitle the licensee, while the license remains suspended and until it is reinstated, to engage in the licensed activity, or in any other activity, or in any other activity or conduct in violation of the order or judgment by which the license was suspended, and renewal of the branch office certificate does not entitle the licensee, while the certificate remains suspended, and until it is reinstated, to engage in the licensed activity at the location for which the certificate was issued, or to engage in any other activity or conduct in violation of the order or judgment by which the certificate was suspended.

7559.5. A revoked license or branch office certificate is subject to expiration as provided in this article, but it may not be renewed. If it is reinstated after its expiration, the licensee, as a condition precedent to its reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last regular renewal date before the date on which it is reinstated, plus the delinquency fee, if any, accrued at the time of its revocation.

7560. A license or branch office certificate which is not renewed within one year after its expiration may not be renewed, restored, reinstated, or reissued thereafter.

The holder of the license or certificate may obtain a new license or certificate only on compliance with all of the provisions of this chapter relating to the issuance of an original license or certificate.

Article 6. Disciplinary Proceedings

7561. Except as otherwise required to comply with the provisions of Article 5 (commencing with Section 7558), the proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director shall have all the powers granted therein.

7561.1. The director may deny, suspend, or revoke a license issued under this chapter if he or she determines that the licensee or his or her manager, if an individual, or if the licensee is a person other than an individual, that any of its officers, directors, partners, or its manager, has:

(a) Made any false statement or given any false information in connection with an application for a license or a renewal or reinstatement of a license.

(b) Violated any provisions of this chapter.

(c) Violated any rule of the director adopted pursuant to the authority contained in this chapter.

(d) Been convicted of any act or crime constituting grounds for denial of licensure under Section 480, including illegally using, carrying, or possessing a deadly weapon.

(e) Impersonated, or permitted or aided and abetted an employee to impersonate a law enforcement officer or employee of the United States of America, or of any state or political subdivision thereof.

(f) Committed or permitted any employee to commit any act, while the license was expired which would be cause for the suspension or revocation of a license, or grounds for the denial of an application for a license.

(g) Willfully failed or refused to render to a client services or a report as agreed between the parties and for which compensation has been paid or tendered in accordance with the agreement of the parties.

(h) Committed assault, battery, or kidnapping, or using force or violence on any person, without proper justification.

(i) Knowingly violated, or advised, encouraged, or assisted the violation of any court order or injunction in the course of business as a licensee.

(j) Acted as a runner or capper for any attorney.

(k) Been convicted of a violation of Section 148 of the Penal Code.

(l) Committed any act which is a ground for denial of an application for a license under this chapter.

(m) Committed any act prohibited by Chapter 1.5 (commencing with Section 630) of Title 15 of Part 1 of the Penal Code.

(n) Purchased, possessed, or transported any tear gas weapon except as authorized by law. A violation of this subdivision may be punished by the suspension of a license for a period to be determined by the director.

(o) Been convicted of a violation of Section 95.3 of the Penal Code.

7561.3. The director may suspend or revoke a license issued under this chapter if he or she determines that the licensee or his or her manager, if an individual, or if the licensee is a person other than an individual, that any of its officers, directors, partners, or its manager, has:

(a) Used any letterhead, advertisement, or other printed matter, or in any manner whatever represented that he or she is an instrumentality of the federal government, a state, or any political subdivision thereof.

(b) Used a name different from that under which he or she is currently licensed in any advertisement, solicitation, or contract for business.

7561.4. The director may suspend or revoke a license issued under this chapter if he or she determines that the licensee or his or her manager, if an individual, or if the licensee is a person other than an individual, that any of its officers, directors, partners, or its manager, has committed any act in the course of the licensee's business constituting dishonesty or fraud.

"Dishonesty or fraud" as used in this section, includes, in addition to other acts not specifically enumerated herein:

(a) Knowingly making a false statement relating to evidence or information obtained in the course of employment, or knowingly publishing a slander or a libel in the course of business.

(b) Using illegal means in the collection or attempted collection of a debt or obligation.

(c) Manufacture of evidence.

(d) Acceptance of employment adverse to a client or former client relating to a matter with respect to which the licensee has obtained confidential information by reason of or in the course of his or her employment by the client or former client.

7562. The record of conviction, or a certified copy thereof, shall be conclusive evidence of the conviction as that term is used in this article, Section 7538, or Section 480.

A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this article, Section 7538, or Section 480. The director may order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

7563. The director, in lieu of suspending or revoking a license issued under this chapter for violations of Sections 7561.1, 7561.3, and 7561.4, may impose a civil penalty not to exceed five hundred dollars (\$500) upon a licensee, if the director determines that this action

better serves the purposes of this chapter.

7564. If, upon investigation, the director determines a licensee, including a corporation, or registrant is in violation of Section 7566, the director may issue a citation to the licensee or registrant. The citation shall be in writing and shall describe with particularity the nature of the violation, including specific reference to the provision of law determined to have been violated. If the director deems it appropriate, the citation may contain an order of abatement fixing a reasonable time for abatement of the violation and may contain an assessment of an administrative fine. The amount of the fine shall in no event exceed one thousand dollars (\$1,000) or as otherwise provided in this chapter, whichever is less.

A citation or fine assessment shall inform the licensee or registrant that if he or she contests the finding of a violation, they may request a hearing in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code if he or she wishes to contest the findings of a violation and if a hearing is not requested, payment of any fines shall not constitute an admission of the violation charged.

If the licensee or registrant neither requests a hearing, nor pays the assessed fine within 30 days of the assessment, the license or registration of the person shall not be renewed pursuant to the provisions of this chapter until the assessed fine is paid.

Administrative fines collected pursuant to this article shall be deposited in the Private Investigator Fund.

7565. Any person who knowingly falsifies the fingerprints or photographs submitted pursuant to any provision of this chapter is guilty of a felony. Any person who violates any of the other provisions of this chapter is guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment in the county jail not to exceed one year, or by both such fine and imprisonment.

7566. The director may assess administrative fines against any licensee, registrant, or firearms qualification cardholder for failure to notify the bureau within 30 days of any change of residence or business address. The principal place of business may be at a home or at a business address, but it shall be the place at which the licensee maintains a permanent office.

(a) The fine shall be twenty-five dollars (\$25) for each violation by a licensee.

(b) The fine shall be fifteen dollars (\$15) for each violation by a registrant or a firearms qualification cardholder.

Article 7. Revenue

7570. The fees prescribed by this chapter are as follows:

(a) The application and examination fee for an original license is fifty dollars (\$50).

(b) The application fee for an original branch office certificate is

thirty dollars (\$30).

(c) The fee for an original license for a private investigator is one hundred seventy-five dollars (\$175).

(d) The renewal fee is as follows:

(1) For a license as a private investigator, one hundred twenty-five dollars (\$125).

(2) For a combination license as a private investigator and private patrol operator under Chapter 11.5 (commencing with Section 7580), AC or DC prefix, six hundred dollars (\$600).

(3) For a branch office certificate for a private investigator, thirty dollars (\$30), and for a combination private investigator and private patrol operator under Chapter 11.5 (commencing with Section 7580), forty dollars (\$40).

(e) The delinquency fee is 50 percent of the renewal fee in effect on the date of expiration.

(f) A reinstatement fee is equal to the amount of the renewal fee plus the regular delinquency fee.

(g) The fee for reexamination of an applicant or his or her manager is fifteen dollars (\$15).

(h) This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

7570. The fees prescribed by this chapter are as follows:

(a) The application and examination fee for an original license is twenty-five dollars (\$25).

(b) The application fee for an original branch office certificate is fifteen dollars (\$15).

(c) The fee for an original license for a private investigator is one hundred dollars (\$100).

(d) The renewal fee is as follows:

(1) For a license as a private investigator, one hundred dollars (\$100).

(2) For a combination license as a private investigator and private patrol operator under Chapter 11.5 (commencing with Section 7580), AC or DC prefix, four hundred dollars (\$400).

(3) For a branch office certificate for a private investigator and for a combination private investigator and private patrol operator under Chapter 11.5 (commencing with Section 7580), twenty dollars (\$20).

(e) The delinquency fee is 50 percent of the renewal fee in effect on the date of expiration.

(f) A reinstatement fee is equal to the amount of the renewal fee plus the regular delinquency fee.

(g) The fee for reexamination of an applicant or his or her manager is ten dollars (\$10).

(h) This section shall become operative January 1, 1998.

7570.1. The fee for processing fingerprints for all registrations and licenses is that amount charged the bureau by the Department of Justice.

7571. The Department of Consumer Affairs shall receive and

account for all money derived from the operation of this chapter and, at the end of each month, shall report such money to the Controller and shall pay it to the Treasurer, who shall keep the money in a separate fund known as the Private Investigator Fund. All money in the Private Investigator Fund shall be expended in accordance with law by the bureau for the purpose of carrying out the provisions of this chapter when appropriated by the Legislature. Effective July 1, 1995, the department shall propose a separate budget and expenditure statement and a separate revenue statement outlining all money derived from and expended for the licensing and regulation of private investigators in accordance with this chapter.

7572. All money derived from the licensing and regulation of private investigators shall be expended exclusively on the licensing and regulation of private investigators. If, at the end of any fiscal year, the money derived from the licensing of private investigators and not expended pursuant to this section is an amount which equals or is more than the money necessary for the regulation of private investigators for the next two fiscal years, license or other fees shall be reduced during the following fiscal year in an amount which will reduce any surplus money derived from the licensing of private investigators to an amount less than the money expended for the regulation of private investigators for the next two fiscal years.

7573. Application or license fees shall not be refunded except in accordance with Section 158.

SEC. 5. Chapter 11.5 (commencing with Section 7512) of Division 3 of the Business and Professions Code is repealed.

SEC. 6. Chapter 11.5 (commencing with Section 7580) is added to Division 3 of the Business and Professions Code, to read:

CHAPTER 11.5. PRIVATE SECURITY SERVICES

Article 1. General

7580. This chapter may be cited as the Private Security Services Act.

7580.1. As used in this chapter, "director" means the Director of Consumer Affairs, unless the context indicates otherwise.

7580.2. The director shall administer and enforce the provisions of this chapter.

7580.3. As used in this chapter, "person" includes any individual, firm, company, association, organization, partnership, and corporation.

7580.4. As used in this chapter, "bureau" means the Bureau of Security and Investigative Services.

7580.5. As used in this chapter, "chief" means the Chief of the Bureau of Security and Investigative Services.

7580.6. As used in this chapter, "licensee" means a person licensed under this chapter and includes, but is not limited to, private patrol operator and armored contract carrier.

7580.7. As used in this chapter, “manager” means the individual under whose direction, control, charge, or management the business of a licensee is operated.

7580.8. As used in this chapter, “employer” means a person who employs an individual for wages or salary, lists the individual on the employer’s payroll records, and withholds all legally required deductions and contributions.

7580.9. As used in this chapter, “employee” means an individual who works for an employer, is listed on the employer’s payroll records, and is under the employer’s direction and control.

7580.10. As used in this chapter, “employer-employee” relationship means a relationship in which an individual works for another, the individual’s name appears on the payroll records of the employer, and the employee is under the direction and control of the employer.

7580.11. As used in this chapter, “firearm permit” includes “firearms permit,” “firearms qualification card,” “firearms qualification,” and “firearms qualification permit.”

7580.12. Every power and duty granted to or imposed upon the director may be exercised by any other officer or employee of the Department of Consumer Affairs authorized by the director, but the director shall have the supervision of and the responsibility for all powers and duties exercised by these officers and employees.

7580.13. The director may, in accordance with the State Civil Service Act and subject to the provisions of Section 159.5, appoint and fix the compensation of inspectors, investigators, and other personnel as may be necessary for the enforcement of this chapter.

7580.14. Nothing in this chapter shall be construed as entitling any person to practice law in this state unless he or she is an active member of the State Bar of California.

Article 2. Administration

7581. The director may adopt and enforce reasonable rules, as follows:

(a) Classifying licensees according to the type of business regulated by this chapter in which they are engaged, including, but not limited to, persons employed by any lawful business as security guards or patrolpersons, and armored contract carriers and limiting the field and scope of the operations of a licensee to those in which he or she is classified and qualified to engage.

(b) Fixing the qualifications of licensees and managers, in addition to those prescribed in this chapter, necessary to promote and protect the public welfare.

(c) Carrying out generally the provisions of this chapter, including regulation of the conduct of licensees.

(d) Establishing the qualifications which any person employed by a private patrol operator or any lawful business as a security guard or patrolperson, or employed by an armored contract carrier, must

meet as a condition of becoming eligible to carry firearms pursuant to subdivision (d) of Section 12031 of the Penal Code.

(e) Requiring each uniformed employee of a private patrol operator and each armored vehicle guard, as defined in this chapter, and any other person employed and compensated by a private patrol operator or any lawful business as a security guard or patrolperson and who in the course of this employment carries a deadly weapon to be registered with the bureau upon application on a form prescribed by the director accompanied by the registration fee and by two classifiable sets of fingerprints of the applicant or its equivalent as determined by the director and approved by the Department of Justice; establishing the term of the registration for a period of not less than two nor more than four years; and providing for the renewal thereof upon proper application and payment of the renewal fee. The director may, after opportunity for hearing, refuse this registration to any person who lacks good moral character, and may impose reasonable additional requirements as are necessary to meet local needs and are not inconsistent with the provisions of this chapter.

(f) Establishing procedures whereby the local authorities of any city, county, or city and county may file charges with the director alleging that any registered security guard or patrolperson, or anyone who is an applicant for registration, with the bureau fails to meet standards for registration, and providing further for the investigation of the charges.

(g) Requiring private patrol operators and any lawful business to maintain detailed records identifying all firearms in their possession or under their control, and the employees or persons authorized to carry or have access to such firearms.

(h) Establishing the qualifications which a uniformed employee of a licensee who operates as a private patrol operator must meet as a condition of handling guard dogs.

7581.1. The Governor shall appoint two private security disciplinary review committees, and may remove any member of a disciplinary review committee for misconduct, incompetency, or neglect of duty. One committee shall meet in the southern portion of the state and the other committee shall meet in the northern portion of the state.

Each disciplinary review committee shall consist of five members. Of the five members, one member shall be actively engaged in the business of a licensed private patrol operator, one member shall be actively engaged in the business of a firearm training facility, one member shall be actively engaged in the business of a registered security guard, and two members shall be public members. None of the public members shall be licensees or registrants or engaged in any business or profession in which any part of the fees, compensation, or revenue thereof, is derived from any licensee.

Each committee shall meet every 60 days or more or less frequently as may be required. The members shall be paid per diem

pursuant to Section 103 and shall be reimbursed for actual travel expenses. The members shall be appointed for a term of four years.

7581.2. Each disciplinary review committee shall perform the following functions as they pertain to private patrol operators, security guards, firearm qualification cardholders, firearm training facilities, firearm training instructors, baton training facilities, and baton training instructors:

(a) Affirm, rescind, or modify all appealed decisions which concern administrative fines assessed by the director.

(b) Affirm, rescind, or modify all appealed decisions which concern denials, revocations, or suspensions of a license, certificate, or registration except denials, revocations, or suspensions ordered by the director in accordance with Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code.

7581.3. A private patrol operator, qualified manager of a private patrol operator, security guard, firearm qualification cardholder, firearm training facility, firearm training instructor, baton training facility, or baton training instructor may request a review by a disciplinary review committee to contest the assessment of an administrative fine or to appeal a denial, revocation, or suspension of a license, certificate, or registration unless the denial, revocation, or suspension is ordered by the director in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

A request for a review shall be by written notice to the bureau within 30 days of the issuance of the citation and assessment, denial, revocation, or suspension.

Following a review by a disciplinary review committee, the appellant shall be notified within 30 days, in writing, by regular mail, of the committee's decision.

If the appellant disagrees with the decision made by a disciplinary review committee, he or she may request a hearing in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. A request for a hearing following a decision by a disciplinary review committee shall be by written notice to the bureau within 30 days following notice of the committee's decision.

If the appellant does not request a hearing within 30 days, the review committee's decision shall become final.

7581.4. Except in cases where licensees are required to comply with the provisions of Section 7581.3, where a hearing is held under this chapter to determine whether an application for a license should be granted or to determine the qualifications of a licensee's manager, the proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director shall have all of the powers granted therein.

7581.5. The director shall furnish, at least once every two years, one copy of the current licensing law, rules, and regulations to every

licensed business governed under this chapter, without charge. The director may charge and collect a fee equivalent to the cost of producing these documents for each additional copy which may be furnished upon request to any licensee or any applicant for licensure and for each copy furnished on request to any other person.

Article 3. Regulation, Licensing, and Registration

7582. No person shall engage in a business regulated by this chapter; act or assume to act as, or represent himself or herself to be, a licensee unless he or she is licensed under this chapter; and no person shall falsely represent that he or she is employed by a licensee.

7582.05. (a) Notwithstanding any other provision of law, any person engaging in a business as a private patrol operator who violates Section 7582 is guilty of an infraction subject to the procedures described in Sections 19.6 and 19.7 of the Penal Code under either of the following circumstances:

(1) A complaint or a written notice to appear in court pursuant to Chapter 5c (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code is filed in court charging the offense as an infraction unless the defendant, at the time he or she is arraigned, after being advised of his or her rights, elects to have the case proceed as a misdemeanor.

(2) The court, with the consent of the defendant and the prosecution, determines that the offense is an infraction in which event the case shall proceed as if the defendant has been arraigned on an infraction complaint.

(b) This section does not apply to a violation of Section 7582 if the defendant has had his or her license previously revoked or suspended.

(c) Notwithstanding any other provision of law, a violation of Section 7582, which is an infraction, is punishable by a fine of one thousand dollars (\$1,000). No portion of the fine may be suspended by the court unless as a condition of that suspension the defendant is required to submit proof of a current valid license for the profession of private patrol operator which was the basis for his or her conviction.

7582.1. (a) A private patrol operator, or operator of a private patrol service, within the meaning of this chapter is a person, other than an armored contract carrier, who, for any consideration whatsoever:

Agrees to furnish, or furnishes, a watchman, guard, patrolperson, or other person to protect persons or property or to prevent the theft, unlawful taking, loss, embezzlement, misappropriation, or concealment of any goods, wares, merchandise, money, bonds, stocks, notes, documents, papers, or property of any kind; or performs the service of a watchman, guard, patrolperson, or other person, for any of these purposes.

(b) A person licensed as a private patrol operator only may not

make any investigation or investigations except those that are incidental to the theft, loss, embezzlement, misappropriation, or concealment of any property, or any other thing enumerated in this section, which he or she has been hired or engaged to protect, guard, or watch.

(c) An armored contract carrier within the meaning of this chapter is a contract carrier operating armored vehicles pursuant to California Highway Patrol and Public Utilities Commission authority.

(d) An armored vehicle guard within the meaning of this chapter is any person employed by an armored contract carrier who in the course of that employment carries a deadly weapon.

(e) A security guard or security officer, within the meaning of this chapter, is an employee of a private patrol operator, or an employee of a lawful business or public agency who is not exempted pursuant to Section 7582.2, who performs the functions as described in subdivision (a) on or about the premises owned or controlled by the customer of the private patrol operator or by the guard's employer or in the company of persons being protected.

(f) A street patrolperson, within the meaning of this chapter, is a security guard or security officer employed by a private patrol operator who performs the functions described in subdivision (a) by street patrol service utilizing foot patrol, motor patrol, or other means of transportation in public areas, streets or public thoroughfares in order to serve multiple customers. "Street patrolperson" does not include management or supervisory employees of the private patrol operator moving from one customer location to another to inspect personnel or security guard or security officers.

7582.2. This chapter does not apply to:

(a) A person employed exclusively and regularly by any employer who does not provide contract security services for other entities or persons, in connection with the affairs of the employer only and where there exists an employer-employee relationship, provided that the person at no time carries or uses any deadly weapon in the performance of his or her duties. For purposes of this subdivision, "deadly weapon" is defined to include any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a blade longer than five inches, any razor with an unguarded blade and any metal pipe or bar used or intended to be used as a club.

(b) An officer or employee of the United States of America, or of this state or a political subdivision thereof, while the officer or employee is engaged in the performance of his or her official duties, including uniformed peace officers employed part time by a public agency pursuant to a written agreement between a chief of police or sheriff and the public agency, provided the part-time employment does not exceed 50 hours in any calendar month.

(c) A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons.

(d) A charitable philanthropic society or association duly incorporated under the laws of this state which is organized and maintained for the public good and not for private profit.

(e) Patrol special police officers appointed by the police commission of any city, county, or city and county under the express terms of its charter who also under the express terms of the charter (1) are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and impartial trial, (2) must be not less than 18 years of age nor more than 40 years of age, (3) must possess physical qualifications prescribed by the commission, and (4) are designated by the police commission as the owners of a certain beat or territory as may be fixed from time to time by the police commission.

(f) An attorney at law in performing his or her duties as an attorney at law.

(g) A collection agency or an employee thereof while acting within the scope of his or her employment, while making an investigation incidental to the business of the agency, including an investigation of the location of a debtor or his or her property where the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent thereof.

(h) Admitted insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them.

(i) Any bank subject to the jurisdiction of the Superintendent of Banks of the State of California or the Comptroller of Currency of the United States.

(j) A person engaged solely in the business of securing information about persons or property from public records.

(k) A peace officer of this state or a political subdivision thereof while the peace officer is employed by a private employer to engage in off-duty employment in accordance with the provisions of Section 1126 of the Government Code. However, nothing herein shall exempt such peace officer who contracts for his or her services or the services of others as a private patrol operator.

(l) A retired peace officer of the state or political subdivision thereof when the retired peace officer is employed by a private employer in employment approved by the chief law enforcement officer of the jurisdiction where the employment takes place, provided that the retired officer is in a uniform of a public law enforcement agency, has registered with the bureau on a form approved by the director, and has met any training requirements or their equivalent as established for security personnel under Section 7583.5. This officer may not carry a loaded or concealed firearm unless he or she is exempted under the provisions of subdivision (a) of Section 12027 of the Penal Code or paragraph (1) of subdivision (b) of Section 12031 of the Penal Code or has met the requirements

set forth in Section 12033 of the Penal Code. However, nothing herein shall exempt the retired peace officer who contracts for his or her services or the services of others as a private patrol operator.

(m) A licensed insurance adjuster in performing his or her duties within the scope of his or her license as an insurance adjuster.

(n) Any savings and loan association subject to the jurisdiction of the Savings and Loan Commissioner or the Federal Home Loan Bank Board.

(o) Any secured creditor engaged in the repossession of the creditor's collateral and any lessor engaged in the repossession of leased property in which it claims an interest.

7582.3. (a) Unless specifically exempted by Section 7582.2, no person shall engage in the business of private patrol operator, as defined in Section 7582.1, unless that person has applied for and received a license to engage in that business pursuant to this chapter.

(b) Any person who violates any provision of this chapter or who conspires with another person to violate any provision of this chapter relating to private patrol operator licensure, or who knowingly engages an unlicensed private patrol operator after being notified in writing by the bureau of the patrol operator's unlicensed status with the bureau, is guilty of a misdemeanor punishable by fine not to exceed one thousand dollars (\$1,000) or by imprisonment in the county jail not to exceed one year, or by both such fine and imprisonment.

(c) Any person who engages in any business regulated by this chapter, who acts as or represents himself or herself to be a licensee under this chapter, who falsely represents that he or she is employed by a licensee, or who carries a badge, identification card, or business card, or uses a letterhead or advertises that he or she is a licensee under this chapter, unless the person is licensed under this chapter, is guilty of a misdemeanor and is punishable by a fine of one thousand dollars (\$1,000), or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

(d) Any person who is convicted of a violation of the provisions of this section shall not be issued a license under this chapter, within one year following that conviction.

(e) The chief shall gather evidence of violations of this chapter and of any rule or regulation established pursuant to this chapter by persons engaged in the business of private patrol operator who fail to obtain licenses and shall gather evidence of violations and furnish that evidence to prosecuting officers of any county or city for the purpose of prosecuting all violations occurring within their jurisdiction.

(f) The prosecuting officer of any county or city shall prosecute all violations of this chapter occurring within his or her jurisdiction.

7582.4. (a) The superior court for the county in which any person has engaged or is about to engage in any act which constitutes a violation of Section 7582.3 may, upon a petition filed by the bureau with the approval of the director, issue an injunction or other

appropriate order restraining this conduct. The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that no undertaking shall be required.

(b) The superior court for the county in which any person has engaged in any act which constitutes a violation of Section 7582.3 may, upon a petition filed by the bureau with the approval of the director, order this person to make restitution to persons injured as a result of the violation.

(c) The court may order a person subject to an injunction or restraining order, provided for in subdivision (a), or subject to an order requiring restitution pursuant to subdivision (b), to reimburse the bureau for expenses incurred by the bureau in its investigation related to its petition.

(d) The remedy provided for by this section shall be in addition to any other remedy provided for in this chapter.

7582.5. (a) The provisions of this chapter shall not prevent the local authorities of any city, county, or city and county, by ordinance and within the exercise of the police power of the city, county, or city and county from imposing local regulations upon any street patrol service or street patrol special officers requiring registration with an agency to be designated by the city, county, or city and county, including in the registration full information as to the identification and employment and subject to the right of the city, county, or city and county to allocate certain portions of the territory in the city, county, or city and county within which the activities of any street patrol service or person shall be confined. Any city, county, or city and county may refuse registration to any person of bad moral character and may impose reasonable additional requirements as are necessary to meet local needs and are not inconsistent with the provisions of this chapter.

(b) The provisions of this chapter shall not prevent the local authorities of any city, county, or city and county, by ordinance and within the exercise of the police power of the city, county, or city and county from imposing local regulations upon any employees of a private patrol operator who are unable to furnish evidence of current registration pursuant to subdivision (f) of Section 7581.

(c) The provisions of this chapter shall not prevent the local authorities of any city, county, or city and county, by ordinance and within the exercise of the police power of the city, county, or city and county from requiring private patrol operators and their employees to register their name and file a copy of their state identification card with the city, county, or city and county. No fee may be charged and no application may be required by the city, county, or city and county for this registration.

(d) The provisions of this chapter shall not prevent the local authorities in any city, county, or city and county, by ordinance and within the exercise of the police power of the city, county, or city and county from imposing reasonable additional requirements necessary

to regulate and control protection dogs according to their local needs and not inconsistent with the provisions of this chapter.

7582.6. An application for a license under this chapter shall be on a form prescribed by the director and accompanied by the application fee provided by this chapter.

7582.7. An application shall be verified and shall include:

- (a) The full name and business address of the applicant.
- (b) The name under which the applicant intends to do business.
- (c) A statement as to the general nature of the business in which the applicant intends to engage.
- (d) A statement as to the type of license for which the applicant is applying.
- (e) A verified statement of his or her experience qualifications.
- (f) If the applicant is an individual, a qualified manager, partner of a partnership, or officer of a corporation designated in subdivision (i), one personal identification form provided by the bureau upon which shall appear a photograph taken within one year immediately preceding the date of the filing of the application together with two legible sets of fingerprints, on a form approved by the Department of Justice, and a personal description of each person, respectively. The identification form shall include residence addresses and employment history for the previous five years and be signed under penalty of perjury.
- (g) In addition, if the applicant for a license is an individual, the application shall list all other names known as or used during the past 10 years and shall state that the applicant is to be personally and actively in charge of the business for which the license is sought, or if any other qualified manager is to be actively in charge of the business, the application shall be subscribed, verified, and signed by the applicant, under penalty of perjury, and if any other person is to be actively in charge of the business, the application shall also be subscribed, verified, and signed by that person under penalty of perjury.
- (h) If the applicants for license are copartners, the application shall state the true names and addresses of all partners and the name of the partner to be actively in charge of the business for which the license is sought; and list all other names known as or used during the past 10 years, or if a qualified manager other than a partner is to be actively in charge of the business, then the application shall be subscribed, verified, and signed by all of the partners under penalty of perjury, and if any other person is to be actively in charge of the business, the application shall also be subscribed, verified, and signed by that person, under penalty of perjury, under penalty of perjury by all of the partners and qualified manager, or by all of the partners or the qualified manager.
- (i) If the applicant for license is a corporation, the application shall state the true names, and complete residence addresses of the chief executive officer, secretary, chief financial officer, and any other corporate officer who will be active in the business to be

licensed. The application shall also state the name and address of the designated person to be actively in charge of the business for which the license is sought. The application shall be subscribed, verified, and signed by a duly authorized officer of the applicant and by the qualified manager thereof, under penalty of perjury.

(j) Any other information, evidence, statements, or documents as may be required by the director.

7582.8. Before an application for a license or registration is granted, the applicant for a license or his or her manager or the applicant for a security guard registration, shall meet all of the following:

(a) Be at least 18 years of age.

(b) Not have committed acts or crimes constituting grounds for denial of a license under Section 480.

(c) Comply with the requirements specified in this chapter for the particular license or registration for which an application is made.

(d) Comply with other qualifications as the director may fix by rule.

7582.9. The director may require an applicant or his or her manager, to demonstrate his or her qualifications by a written or oral examination, or a combination of both.

7582.10. Payment of the application fee prescribed by this chapter entitles an applicant or his or her manager to one examination without further charge. If the person fails to pass the examination, he or she shall not be eligible for any subsequent examination except upon payment of the reexamination fee prescribed by this chapter for each subsequent examination.

7582.11. The chief shall issue a license, the form and content of which shall be determined by the chief in accordance with Section 164. In addition, the chief shall issue a "Certificate of Licensure" to any licensee, upon request and upon the payment of a fee of fifty dollars (\$50).

7582.12. The license shall at all times be posted in a conspicuous place in the principal place of business of the licensee.

7582.13. Upon the issuance of a license, a pocket card of the size, design, and content as may be determined by the director shall be issued without charge to each licensee, if an individual, or if the licensee is a person other than an individual, to its manager and to each of its officers and partners, which card shall be evidence that the licensee is duly licensed pursuant to this chapter. The card shall contain the signature of the licensee, signature of the chief, and a photograph of the licensee, or bearer of the card, if the licensee is other than an individual, and clearly state that the person is licensed as a private patrol operator or is the manager or officer of the licensee. When any person to whom a card is issued terminates his or her position, office, or association with the licensee, the card shall be surrendered to the licensee and within five days thereafter shall be mailed or delivered by the licensee to the bureau for cancellation.

7582.14. A license issued under this chapter is not assignable.

7582.15. A licensee shall at all times be legally responsible for the good conduct in the business of each of his or her employees or agents, including his or her manager.

7582.16. Each licensee shall maintain a record containing information relative to his or her employees as may be prescribed by the director.

7582.17. No licensee shall conduct a business under a fictitious or other business name unless and until he or she has obtained the written authorization of the bureau to do so.

The bureau shall not authorize the use of a fictitious or other business name which is so similar to that of a public officer or agency or of that used by another licensee that the public may be confused or misled thereby.

The authorization shall require, as a condition precedent to the use of any fictitious name, that the licensee comply with Chapter 5 (commencing with Section 17900) of Part 3 of Division 7.

A licensee desiring to conduct his or her business under more than one fictitious business name shall obtain the authorization of the bureau in the manner prescribed in this section for the use of each name.

The licensee shall pay a fee of twenty-five dollars (\$25) for each authorization to use an additional fictitious business name and for each change in the use of a fictitious business name. If the original license is issued in a nonfictitious name and authorization is requested to have the license reissued in a fictitious business name the licensee shall pay a fee of twenty-five dollars (\$25) for the authorization.

7582.18. Each licensee shall file with the bureau the complete address of his or her principal place of business including the name and number of the street, or, if the street where the business is located is not numbered, the number of the post office box. The director may require the filing of other information for the purpose of identifying the principal place of business.

7582.19. A licensee shall, within 30 days after such change, notify the bureau of any change in its corporate officers.

Applications, on forms prescribed by the director, shall be submitted by all new officers. The director may suspend or revoke a license issued under this chapter if he or she determines that at the time the person became an officer of a licensee, any of the facts stated in Section 7582.24 or 7582.25 existed as to such person.

7582.20. Every advertisement by a licensee soliciting or advertising business shall contain his or her name, address and license number as they appear in the records of the bureau. For the purpose of this section, "advertisement" includes any business card, stationary, brochure, flyer, circular, newsletter, fax form, printed or published paid advertisement in any media form, or telephone book listing. Every advertisement by a licensee soliciting or advertising the licensee's business shall contain his or her business name,

business address or business telephone number, and license number, as they appear in the records of the bureau.

7582.21. A licensee shall not advertise or conduct business from any location other than that shown on the records of the bureau as his or her principal place of business unless he or she has received a branch office certificate for the location after compliance with the provisions of this chapter and any additional requirements necessary for the protection of the public as the director may by regulation prescribe. A licensee shall notify the bureau in writing within 10 days after closing or changing the location of a branch office.

7582.22. (a) The business of each licensee shall be operated under the active direction, control, charge, or management, in this state, of the licensee, if he or she is qualified, or the person who is qualified to act as the licensee's manager, if the licensee is not qualified.

(b) No person shall act as a qualified manager of a licensee until he or she has complied with each of the following:

(1) Demonstrated his or her qualifications by a written or oral examination, or a combination of both, if required by the director.

(2) Made a satisfactory showing to the director that he or she has the qualifications prescribed in Section 7582.8 and that none of the facts stated in Section 7582.24 or 7582.25 exist as to him or her.

7582.23. (a) In case of the death of a person licensed as an individual, a member of the immediate family of the deceased licensee shall be entitled to continue the business under the same license for 120 days following the death of the licensee, provided that written application for permission is made to the bureau within 30 days following the death of the licensee. At the end of the 120-day period, the license shall be automatically canceled. If no request is received within the 30-day period, the license shall be automatically canceled at the end of that period.

(b) If the manager, who has qualified as provided in Section 7582.22, ceases for any reason whatsoever to be connected with the licensee to whom the license is issued, the licensee shall notify the bureau in writing 30 days from this cessation. If the notice of cessation is filed timely, the license shall remain in force for a period of 90 days after cessation or for an additional period, not to exceed one year, as approved by the director, pending the qualification of another manager as provided in this chapter. After the 90-day period or additional period, as approved by the director, the license shall be automatically suspended, unless the bureau receives written notification that the license is under the active charge of a qualified manager. If the licensee fails to notify the bureau within the 30-day period, his or her license shall be automatically suspended and may be reinstated only upon the filing of an application for reinstatement, payment of the reinstatement fee, and the qualification of a manager as provided in this chapter.

(c) In the case of the death or disassociation of a partner of an entity licensed as a partnership, the licensee shall notify the bureau,

in writing, within 30 days from the death or disassociation of the individual. If notice is given, the license shall remain in force for 90 days following the death or disassociation. At the end of this period the license shall be automatically canceled. If the licensee fails to notify the bureau within the 30-day period, the license shall be automatically canceled.

(d) A license extended under this section is subject to all other provisions of this chapter.

7582.24. After a hearing the director may deny a license unless the applicant makes a showing satisfactory to the director that the applicant, if an individual, has not, or if the applicant is a person other than an individual, that its manager and each of its officers have not:

(a) Committed any act, which, if committed by a licensee, would be a ground for the suspension or revocation of a license under this chapter.

(b) Committed any act constituting dishonesty or fraud.

(c) Committed any act or crime constituting grounds for denial of licensure under Section 480, including illegally using, carrying, or possessing a deadly weapon.

(d) Been refused a license under this chapter or had a license revoked.

(e) Been an officer, partner, or manager of any person who has been refused a license under this chapter or whose license has been revoked.

(f) While unlicensed committed, or aided and abetted the commission of, any act for which a license is required by this chapter.

(g) Knowingly made any false statement in his or her application.

7582.25. The director may refuse to issue any license provided for in this chapter to any person:

(a) Who has had any license revoked, or whose license is under suspension, or has failed to renew his or her license while it was under suspension.

(b) If any member of any partnership, or any officer or director of any corporation, or any officer or person acting in a managerial capacity of any firm or association has had any license issued to him or her revoked, or whose license is under suspension, or who has failed to renew his or her license while it was under suspension.

(c) If any member of the partnership, or any officer or director of the corporation, or any officer or person acting in a managerial capacity of the firm or association, was either a member of any partnership, or an officer or director of any corporation, or an officer or person acting in a managerial capacity of any firm or association, whose license has been revoked, or whose license is under suspension, or who failed to renew a license while it was under suspension, and while acting as such member, officer, director, or person acting in a managerial capacity participated in any of the prohibited acts for which any such license was revoked or suspended.

7582.26. (a) Any licensee or officer, director, partner, or manager of a licensee may divulge to any law enforcement officer or

district attorney, or his or her representative, any information he or she may acquire as to any criminal offense, but he or she shall not divulge to any other person, except as he or she may be required by law so to do, any information acquired by him or her except at the direction of the employer or client for whom the information was obtained.

(b) No licensee or officer, director, partner, manager, or employee of a licensee shall knowingly make any false report to his or her employer or client for whom information was being obtained.

(c) No written report shall be submitted to a client except by the licensee, qualifying manager, or a person authorized by one or either of them, and the person submitting the report shall exercise diligence in ascertaining whether or not the facts and information in the report are true and correct.

(d) No licensee, or officer, director, partner, manager, or employee of a licensee, shall use a title, or wear a uniform, or use an insignia, or use an identification card, or make any statement with the intent to give an impression that he or she is connected in any way with the federal government, a state government, or any political subdivision of a state government.

(e) No licensee, or officer, director, partner, manager, or employee of a licensee, shall enter any private building or portion thereof, except premises commonly accessible to the public, without the consent of the owner or of the person in legal possession thereof.

(f) No private patrol licensee, or officer, director, partner, manager, or employee of a private patrol licensee shall use or wear a badge, except while engaged in guard or patrol work and while wearing a uniform. Any person authorized to use or wear a badge shall wear a patch on each arm that reads "private security" and that includes the name of the private patrol company by which the person is employed or for which the person is a representative. The patch shall be of a standard design approved by the director and shall be clearly visible.

(g) No licensee shall permit an employee or agent in his or her own name to advertise, engage clients, furnish reports or present bills to clients, or in any manner whatever conduct business for which a license is required under this chapter. All business of the licensee shall be conducted in the name of and under the control of the licensee.

(h) No licensee shall use a fictitious name in connection with the official activities of the licensee's business.

(i) No private patrol operator licensee or officer, director, partner, or manager of a private patrol operator licensee, or person required to be registered as a security guard pursuant to this chapter shall use or wear a baton or exposed firearm as authorized by this chapter unless he or she is wearing a uniform which complies with the requirements of Section 7582.27.

7582.27. Any person referred to in subdivision (i) of Section 7582.26 who uses or wears a baton or exposed firearm as authorized

pursuant to this chapter shall wear a patch on each arm that reads "private security" and that includes the name of the company by which the person is employed or for which the person is a representative. The patch shall be clearly visible at all times. The patches of a private patrol operator licensee, or his or her employees or representatives shall be of a standard design approved by the director.

7582.28. Any badge or cap insignia worn by a person who is a licensee, officer, director, partner, manager, or employee of a licensee, shall be of a design approved by the director, and shall bear on its face a distinctive word indicating the name of the licensee and an employee number by which the person may be identified by the licensee.

The provisions of this section shall not be construed to authorize persons to wear badges who are prohibited by Section 7582.26 from wearing badges.

Article 4. Private Patrol Operators

7583. For purposes of this article, "licensee" means a licensed private patrol operator.

7583.1. An applicant, or his or her manager, for a license as a private patrol operator shall have had at least one year of experience as a patrolperson, guard or watchman, or the equivalent thereof as determined by the director. An applicant shall substantiate the claimed year of qualifying experience and the exact details as to the character and nature thereof by written certifications from the employer, subject to independent verification by the chief as he or she may determine. In the event of inability of an applicant to supply the written certifications from the employer in whole or in part, applicants may offer other written certifications from other than employers substantiating employment for consideration by the chief.

7583.2. No person licensed as a private patrol operator shall do any of the following:

(a) Fail to properly maintain an accurate and current record of all firearms or other deadly weapons that are in the possession of the licensee or of any employee while on duty. Within seven days after a licensee or his or her employees discover that a deadly weapon which has been recorded as being in his or her possession has been misplaced, lost, or stolen, or in any other way missing, the licensee or his or her manager shall mail or deliver to any local law enforcement agency who has jurisdiction, a written report concerning the incident. The report shall describe fully the circumstances surrounding the incident, any injuries or damages incurred, the identity of all participants, and whether a police investigation was conducted.

(b) Fail to properly maintain an accurate and current record of the name, address, commencing date of employment, and position of each employee, and the date of termination of employment when

an employee is terminated.

(c) Fail to properly maintain an accurate and current record of proof of completion by each employee of the licensee of the course of training in the exercise of the power to arrest as required by Section 7583.5.

(d) Fail to certify an employee's completion of the course of training in the exercise of the power to arrest prior to placing the employee at a duty station.

(e) Fail to either certify proof of current and valid registration for each employee who is subject to registration or fail to require an employee to complete an application for registration within three working days after employing an individual who does not possess a current and valid registration from the bureau.

(f) Permit any employee to carry a firearm or other deadly weapon without first ascertaining that the employee is proficient in the use of each weapon to be carried. With respect to firearms, evidence of proficiency shall include a certificate from a firearm training facility approved by the director certifying that the employee is proficient in the use of that specified caliber of firearm and a current and valid firearm qualification permit issued by the department. With respect to other deadly weapons, evidence of proficiency shall include a certificate from a training facility approved by the director certifying that the employee is proficient in the use of that particular deadly weapon.

(g) Fail to deliver to the director a written report describing fully the circumstances surrounding the discharge of any firearm, or physical altercation with a member of the public while on duty, by a licensee or any officer, partner, or employee of a licensee while acting within the course and scope of his or her employment within seven days after the incident. For the purposes of this subdivision, a report shall be required only for physical altercations that result in any of the following: (1) the arrest of a security guard, (2) the filing of a police report by a member of the public, (3) injury on the part of a member of the public that requires medical attention, or (4) the discharge, suspension, or reprimand of a security guard by his or her employer. The report shall include, but not be limited to, a description of any injuries or damages incurred, the identity of all participants, and whether a police investigation was conducted. Any report may be investigated by the director to determine if any disciplinary action is necessary.

(h) Fail to notify the bureau in writing and within 30 days that a manager previously qualified pursuant to this chapter is no longer connected with the licensee.

7583.3. No person required to be registered as a security guard pursuant to this chapter shall do any of the following:

(a) Fail to carry on his or her person, while on duty, a valid and current security guard registration card or an unexpired temporary registration card issued pursuant to Section 7583.11.

(b) Fail to carry on his or her person a valid and current firearms

permit when carrying a firearm on duty.

(c) Carry or use a firearm unless he or she possesses a valid and current firearms permit issued pursuant to this chapter.

(d) Fail to report to his or her employer within 24 hours of the incident the circumstances surrounding any incident involving the discharge of any firearm in which he or she is involved while acting within the course and scope of his or her employment.

7583.4. Any person registered as a security guard or patrolperson shall deliver to the director a written report describing fully the circumstances surrounding any incident involving the discharge of any firearm in which he or she was involved while acting within the course and scope of his or her employment, within seven days after the incident. The report shall be made on a form prescribed by the director which shall include, but not be limited to, the following:

(a) The name, address, and date of birth of the guard or patrolperson.

(b) The registration number of the guard or patrolperson.

(c) The firearm permit number and baton permit number of the guard or patrolperson, if applicable.

(d) The name of the employer of the person.

(e) The description of any injuries and damages that occurred.

(f) The identity of all participants in the incident.

(g) Whether a police investigation was conducted relating to the incident.

(h) The date and location of the incident. Any report may be investigated by the director to determine if any disciplinary action is necessary.

A copy of the report delivered to the director pursuant to this section shall also be delivered within seven days of the incident to the local police or sheriff's department which has jurisdiction over the geographic area where the incident occurred.

7583.5. (a) Every licensee and any person employed and compensated by a licensee, other lawful business or public agency as a security guard or patrolperson, and who in the course of that employment or business carries a firearm, shall complete a course of training in the exercise of the powers to arrest and a course of training in the carrying and use of firearms. This subdivision shall not apply to armored vehicle guards hired prior to January 1, 1977. Armored vehicle guards hired on or after January 1, 1977, shall complete a course of training in the carrying and use of firearms, but shall not be required to complete a course of training in the exercise of the powers to arrest. The course of training in the carrying and use of firearms shall not be required of any employee who is not required or permitted by a licensee to carry or use firearms. The course in the carrying and use of firearms and the course of training in the exercise of the powers to arrest shall meet the standards which shall be prescribed by the Department of Consumer Affairs. The department shall encourage restraint and caution in the use of firearms.

(b) No uniformed employee of a licensee shall carry or use any

firearm unless the employee has in his or her possession a valid firearm qualification card.

7583.6. Every person entering the employ of a licensee to perform the functions of a security guard or a security patrolperson shall complete a course in the exercise of the power to arrest prior to being assigned to a duty location.

7583.7. (a) The course of training in the exercise of the power to arrest may be administered, tested, and certified by any licensee. The department may approve any person or school to teach the course in the exercise of the power to arrest. The course of training shall be approximately two hours in length and shall cover the following topics:

- (1) Responsibilities and ethics in citizen arrest.
- (2) Relationship with the public police in arrest.
- (3) Limitations on security guard power to arrest.
- (4) Restrictions on searches and seizures.
- (5) Criminal and civil liabilities.
- (A) Personal liability.
- (B) Employer liability.

(b) The department shall make available a guidebook as a standard for teaching the course in the exercise of the power to arrest. The department shall encourage additional training and may provide a training guide recommending additional courses to be taken by security personnel.

(c) The bureau may inspect, supervise, or view the administration of the test at any time and without any prior notification. Any impropriety in the administration of the course or the test shall constitute grounds for disciplinary action.

7583.8. No employee of a licensee who performs the function of a security guard or security patrolperson shall be issued a registration card until proper certification by the instructor that the exercise of the power to arrest course has been taught and the employee's certification that the instruction was received has been delivered to the department.

7583.9. Within three working days after employment, any employee who performs the function of a security guard or security patrolperson who is not currently registered with the bureau, shall submit to the bureau a completed application for registration on a form as prescribed by the director, two classifiable fingerprint cards, and the appropriate registration fee. "Within three working days after employment" means within 72 hours from the time an employee is first compensated by a licensee for security guard or security patrolperson services. No application is required to be submitted if the employee terminates within the three working days. The licensee shall maintain supplies of applications and fingerprint cards which shall be provided by the bureau upon request.

7583.10. The application shall be verified and shall include all of the following:

- (a) The full name, residence address, telephone number, and date

of birth of the employee.

(b) The name, address, telephone number, and license number of the employer and the date the employment commenced.

(c) The signature of the employee and the employer's certification that the employee has received a course in the exercise of the power to arrest.

(d) A statement as to whether the employee has been convicted of a misdemeanor, excluding minor traffic violations.

(e) A statement as to whether the employee has been convicted of a felony.

7583.11. (a) Except as provided in subdivision (b), an employee of a licensee may be assigned to work with a temporary registration card which indicates completion of the course in the exercise of the power to arrest until the bureau issues a registration card or denies the application for registration. A temporary registration card shall in no event be valid for more than 120 days. However, the director may extend the expiration date beyond the 120 days at any time when there is an abnormal delay in processing applications for prospective security guards. For purposes of this section, the 120-day period shall commence on the date the applicant signs the application.

(b) An employee who has been convicted of a crime prior to applying for a position as a security guard shall not be issued a temporary registration card and shall not be assigned to work as a security guard until the bureau issues a permanent registration card. This subdivision shall apply only if the applicant for registration as a security guard has disclosed the conviction to the bureau on his or her application form, or if the fact of the conviction has come to the attention of the bureau through official court or other governmental documents. In no event shall the director, the department, the bureau, the chief, or the State of California be liable for any civil damages in the event of the issuance of a temporary registration where the applicant has falsified his or her application to conceal a prior criminal conviction.

7583.12. No employee of a licensee shall carry or use a firearm unless the employee has in his or her possession a valid guard registration card and a valid firearm qualification card issued pursuant to this chapter.

7583.13. (a) The bureau, upon receipt of a criminal offense record or record of a subsequent arrest from the Department of Justice, shall make an immediate determination of fitness of (1) applicants for registration under this article, or (2) applicants for firearm qualification cards, when information contained in the records of the Department of Justice makes this determination possible. Applications of those determined to be unfit shall be immediately denied.

(b) The bureau shall keep a current and accurate record of the individuals who have applied for and been denied registration under this article or a firearms qualification card. A list consisting of

individual names and other pertinent identifying information may be made of those individuals who have been denied registration. The list may be updated bimonthly and made available to interested licensees and law enforcement agencies.

7583.14. (a) If the chief determines that an applicant's criminal history contains open arrest information, the chief shall issue a notice to the applicant allowing 45 days for the applicant to provide documentation concerning the disposition of the arrest or arrests.

(b) The notice shall be sent to the applicant at his or her last known residential address and shall provide sufficient information to assist the applicant in complying with the chief's request. If the applicant fails to respond within 45 days, the applicant's employment shall be automatically suspended until the bureau obtains the necessary documentation to approve or deny the application, or suspend the registration.

7583.15. If the director determines that continued employment of an applicant, firearms qualification cardholder, or registrant, in his or her current capacity, may present an undue hazard to the public safety, the licensee, upon proper notification from the director, shall suspend the applicant, firearms qualification cardholder, or registrant from employment in that capacity.

A registrant, firearms qualification card holder, or applicant may request a review by the Private Security Disciplinary Review Committee as set forth in Section 7581.3 to appeal the suspension.

7583.16. (a) The director may refuse to register any employee, or may suspend or revoke a previously issued registration, if the individual has committed any action which, if committed by a licensee, would be grounds for refusing to issue a license, or for the suspension or revocation of a license issued under this chapter.

(b) The denial of an application for registration under this article shall be in writing and shall describe the basis for the denial. The denial shall inform the applicant that if he or she desires a review by a disciplinary review committee to contest the denial, the review shall be requested of the director within 30 days following notice of the issuance of the denial.

7583.17. Upon approval of an application for registration, the chief shall cause to be issued to the applicant at his or her last known residential address a registration card in a form approved by the director. In the event of the loss or destruction of the card, the cardholder may apply to the bureau for a certified replacement of the card, stating the circumstances surrounding the loss, and pay a ten dollar (\$10) certification fee, whereupon the bureau shall issue a certified replacement of the card.

7583.18. A qualified manager who complies with Section 7582.22 is not required to register under this article.

7583.19. A licensee shall at all times be responsible for ascertaining that those of his or her employees who are subject to registration are currently registered or have made proper application for registration as provided in this article. A licensee may

not have in his or her employment a person whose registration has expired or been revoked, denied, suspended, or canceled.

7583.20. (a) All registrations which expire on or after January 1, 1985, shall be placed on a cyclical renewal and shall expire two years following the date of issuance or assigned renewal date. In order to implement such cyclical renewal, the population of registrants shall be divided into 24 equal groups, the registrations of those in each group to expire on the last day of each successive month. Notwithstanding any other provision of law, the bureau shall have authority to extend or shorten the first term of licensure following January 1, 1985, and to prorate the required license fee in order to implement this cyclical renewal. A registrant seeking to renew a guard registration shall forward to the bureau no earlier than 60 days before expiration, a completed registration renewal application and the renewal fee prescribed by this chapter. The renewal application shall be on a form prescribed by the director, dated and signed by the applicant, certifying under penalty of perjury that the information in the application is true and correct.

(b) The licensee shall provide to any employee information regarding procedures for renewal or registration.

(c) In the event a registrant fails to request a renewal of his or her registration as provided in this chapter, the registration shall expire. If the registration is renewed as provided in this chapter within 60 days after its expiration, the registrant, as a condition precedent to renewal, shall pay the renewal fee and also pay the delinquency fee prescribed in this chapter.

(d) The delinquency fee is 50 percent of the renewal fee in effect on the date of expiration, but not less than twenty-five dollars (\$25).

(e) If the renewed registration card has not been delivered to the registrant prior to the date of expiration of the prior registration, the registrant may present evidence of renewal to substantiate continued registration for a period not to exceed 90 days after the date of expiration.

(f) A registration shall not be renewed or reinstated until any and all fines assessed pursuant to Section 7587.7 and not resolved in accordance with the provisions of that section have been paid.

7583.21. The registration of a security guard shall be automatically suspended if the guard is convicted of any crime which is substantially related to the functions, duties, and responsibilities of a security guard. The automatic suspension shall be effectuated by the mailing of a notice of conviction and suspension of license to be sent by the bureau to the registered guard at his or her address of record. A copy of the notice shall be sent to the private patrol operator employing the guard with notice that the employer shall suspend any and all employment of the guard forthwith. The notice shall contain a statement of preliminary determination by the director or his or her designee that the crime stated is reasonably related to the functions, duties, and responsibilities of a security guard. Upon proper request by the guard, a hearing shall be

convened within 60 days of the request, before the private security disciplinary review committee, as specified in Section 7581.3, for a determination as to whether the automatic suspension shall be made permanent or whether the registration shall be revoked or the guard otherwise disciplined.

In enacting this provision, the Legislature finds and declares that registered guards convicted of the commission of crimes reasonably related to the functions, duties, and responsibilities of a security guard shall be subject to automatic suspension of their license and that summary suspension is justified by compelling state interests of public safety and security within the meaning of the California Supreme Court's decision in *Eye Dog Foundation v. State Board of Guide Dogs for the Blind*, 67 Cal. 2d 536.

7583.22. (a) Every licensee, qualified manager of a licensee, or security guard who in the course of his or her employment carries a firearm shall complete a course of training in the carrying and use of firearms and shall receive a firearms qualification card prior to the carrying of a firearm.

(b) A licensee shall not permit an employee to carry or use a loaded or unloaded firearm, whether or not it is serviceable or operative, unless the employee possesses a valid and current firearms qualification card issued by the bureau.

7583.23. The bureau shall issue a firearms permit when all of the following conditions are satisfied:

(a) The applicant is a licensee, a qualified manager of a licensee, or a registered uniformed security guard.

(b) A certified firearms training instructor has certified that the applicant has successfully completed a written examination prepared by the bureau and training course in the carrying and use of firearms approved by the bureau.

(c) The applicant has filed with the bureau a classifiable fingerprint card, a completed application for a firearms permit on a form prescribed by the director, dated and signed by the applicant, certifying under penalty of perjury that the information in the application is true and correct.

(d) The bureau has determined, after investigation, that the carrying and use of a firearm by the applicant, in the course of his or her duties, presents no apparent threat to the public safety, or that the carrying and use of a firearm by the applicant is not in violation of the Penal Code.

(e) The applicant has produced evidence to the firearm training facility that he or she is a citizen of the United States or has permanent legal alien status in the United States. Evidence of citizenship or permanent legal alien status shall be that deemed sufficient by the bureau to ensure compliance with federal laws prohibiting possession of firearms by persons unlawfully in the United States and may include, but not be limited to, Department of Justice, Immigration and Naturalization Service Form I-151 or I-551, Alien Registration Receipt Card, naturalization documents, or

birth certificates evidencing lawful residence or status in the United States.

(f) The application is accompanied by the application fees prescribed in this chapter.

7583.24. (a) The bureau shall not issue a firearm permit if the applicant is prohibited from possessing, receiving, owning, or purchasing a firearm pursuant to Section 12021 or 12021.1 of the Penal Code or Section 8100 or 8103 of the Welfare and Institutions Code.

(b) Before issuing an initial firearm permit the bureau shall provide the Department of Justice with the name, address, social security number, and fingerprints of the applicant.

(c) The Department of Justice shall inform the bureau, within 60 days from receipt of the information specified in subdivision (b), of the applicant's eligibility to possess, receive, purchase, or own a firearm pursuant to Section 12021 or 12021.1 of the Penal Code or Section 8100 or 8103 of the Welfare and Institutions Code.

(d) An applicant who has been denied a firearm permit based upon subdivision (a) may reapply for the permit after the prohibition expires. The bureau shall treat this application as an initial application and shall follow the required screening process as specified in this section.

7583.25. (a) The bureau shall not renew a firearm permit if the applicant is prohibited from possessing, receiving, purchasing, or owning a firearm pursuant to Section 12021 or 12021.1 of the Penal Code or Section 8100 or 8103 of the Welfare and Institutions Code.

(b) Before renewing a firearm permit, the bureau shall provide the Department of Justice with the information necessary to identify the renewal applicant. No firearm permit shall be renewed if the expiration date of the permit is between October 1, 1993, and October 1, 1994, unless the application for renewal is also accompanied by a classifiable fingerprint card and the fingerprint processing fees for that card.

(c) The Department of Justice shall inform the bureau, within 30 days of receipt of the information specified in subdivision (b), of the renewal applicant's eligibility to possess, receive, purchase, or own a firearm pursuant to Sections 12021 and 12021.1 of the Penal Code and Sections 8100 and 8103 of the Welfare and Institutions Code.

(d) An applicant who is denied a firearm permit renewal based upon subdivision (a) may reapply for the permit after the prohibition expires. The bureau shall treat this as an initial application and shall follow the screening process specified in Section 7583.24.

7583.26. (a) The Department of Justice may charge the bureau a fee sufficient to reimburse the department's costs for furnishing firearm eligibility information upon submission of the application for issuance or renewal of a firearm permit. The fee charged shall not exceed the actual costs for system development, maintenance, and processing necessary to provide this service.

(b) The bureau shall collect the fee described in subdivision (a) for all initial and renewal applications for firearm permits.

7583.27. A firearm permit shall be automatically revoked if at any time the Department of Justice notifies the bureau that the holder of the firearm permit is prohibited from possessing, receiving, or purchasing a firearm pursuant to Sections 12021 and 12021.1 of the Penal Code or Sections 8100 and 8103 of the Welfare and Institutions Code. Following the automatic revocation, an administrative hearing shall be provided upon written request to the bureau in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

7583.28. If an applicant fails to complete his or her application within one year after it has been filed, the application shall be considered to be abandoned. An application submitted subsequent to the abandonment of the former application shall be treated as a new application.

7583.29. If a firearms permit is denied, the denial of the permit shall be in writing and shall describe the basis for the denial. The denial shall inform the applicant that if he or she desires a review by a disciplinary review committee to contest the denial, the review shall be requested of the director within 30 days following notice of the issuance of the denial. However, no review or hearing shall be granted to an individual who is otherwise prohibited by law from carrying a firearm.

7583.30. The firearms qualification card, if issued, shall be mailed to the applicant at the address which appears on the application. In the event of the loss or destruction of the card, the cardholder may apply to the bureau for a certified replacement of the card, stating the circumstances surrounding the loss, and pay a ten dollar (\$10) certification fee, whereupon the bureau shall issue a certified replacement of the card.

7583.31. A firearms qualification card does not authorize the holder thereof to carry a pistol, revolver, or other firearm capable of being concealed upon the person in a concealed manner pursuant to Section 12050 of the Penal Code.

7583.32. (a) A firearms qualification card expires one year from the date of issuance, if not renewed. A person who wishes to renew a firearms qualification card may file an application for renewal within 60 days prior to the card's expiration. A person whose card has expired shall not carry a firearm until he or she has been issued a renewal card by the bureau.

(b) The bureau shall not renew a firearms qualification card unless all of the following conditions are satisfied:

(1) The cardholder has filed with the bureau a completed application for renewal of a firearms qualification card, on a form prescribed by the director, dated and signed by the applicant under penalty of perjury certifying that the information on the application is true and correct.

(2) The applicant has requalified on the range and has

successfully passed a written examination based on course content as specified in the firearms training manual approved by the department and taught at a training facility approved by the bureau.

(3) The application is accompanied by a firearms requalification fee as prescribed in this chapter.

(4) The applicant has produced evidence to the firearm training facility either upon receiving his or her original qualification card or upon filing for renewal of that card that he or she is a citizen of the United States or has permanent legal alien status in the United States. Evidence of citizenship or permanent legal alien status shall be that deemed sufficient by the bureau to ensure compliance with federal laws prohibiting possession of firearms by persons unlawfully in the United States and may include, but not be limited to, Department of Justice, Immigration and Naturalization Service Form I-151 or I-551, Alien Registration Receipt Card, naturalization documents, or birth certificates evidencing lawful residence or status in the United States.

(c) An expired firearms qualification card may not be renewed. A person with an expired registration is required to apply for a new firearms qualification in the manner required of persons not previously registered. A person whose card has expired shall not carry a firearm until he or she has been issued a new firearms qualification card by the bureau.

7583.33. Any licensee, qualified manager, or a registered uniformed security guard who wishes to carry a baton in the performance of his or her duties, shall qualify to carry the weapon pursuant to Article 5 (commencing with Section 7585).

7583.34. A licensee shall not permit any employee to carry a baton prior to ascertaining that the employee is proficient in the use of the weapon. Evidence of proficiency shall include a certificate from a baton training facility approved by the bureau which certifies that the employee is proficient in the use of the baton.

7583.35. Every licensee, qualified manager, or a registered uniformed security guard, who in the course of his or her employment carries tear gas or any other nonlethal chemical agent, shall complete the required course pursuant to Section 12403.5 of the Penal Code.

7583.36. A licensee shall not permit any employee to carry tear gas or any other nonlethal chemical agent prior to ascertaining that the employee is proficient in the use of tear gas or other nonlethal chemical agent. Evidence of proficiency shall include a certificate from a training facility approved by the Department of Justice or by the Commission on Peace Officers Standards and Training that the person is proficient in the use of tear gas or any other nonlethal chemical agent.

7583.37. The director may assess fines as enumerated in Article 7 (commencing with Section 7587). Assessment of administrative fines shall be independent of any other action by the bureau or any local, state, or federal governmental agency which may result from a

violation of this article. In addition to other prohibited acts under this chapter, no licensee, qualified manager, or registered security guard shall, during the course and scope of licensed activity, do any of the following:

- (a) Carry any inoperable, replica, or other simulated firearm.
 - (b) Use a firearm in violation of the law, or in knowing violation of the standards for the carrying and usage of firearms as taught in the course of training in the carrying and use of firearms. Unlawful or prohibited uses of firearms shall include, but not be limited to, the following:
 - (1) Illegally using, carrying, or possessing a dangerous weapon.
 - (2) Brandishing a weapon.
 - (3) Drawing a weapon without proper cause.
 - (4) Provoking a shooting incident without cause.
 - (5) Carrying or using a firearm while on duty while under the influence of alcohol or dangerous drugs.
 - (6) Carrying or using a firearm of a caliber for which a firearms permit has not been issued by the bureau.
 - (c) Carry or use a baton in the performance of his or her duties, unless he or she has in his or her possession a valid baton certificate issued pursuant to Section 7585.14.
 - (d) Carry or use tear gas or any other nonlethal chemical agent in the performance of his or her duties unless he or she has in his or her possession proof of completion of a course in the carrying and use of tear gas or any other nonlethal chemical agent.
 - (e) Carry a concealed pistol, revolver, or other firearm capable of being concealed upon the person unless one of the following circumstances applies:
 - (1) The person has been issued a permit to carry a pistol, revolver, or other firearm capable of being concealed upon the person in a concealed manner by a local law enforcement agency pursuant to Section 12050 of the Penal Code.
 - (2) The person is employed as a guard or messenger of a common carrier, bank, or other financial institution and he or she carries the weapon while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state, as specified in subdivision (e) of Section 12027 of the Penal Code.
- 7583.38. A city, county, or city and county may regulate the uniforms and insignias worn by uniformed employees of a private patrol operator and vehicles used by a private patrol operator to make the uniforms and vehicles clearly distinguishable from the uniforms worn by, and the vehicles used by, local regular law enforcement officers.
- 7583.39. No private patrol operator who employs a security guard who carries a firearm as part of his or her duties shall engage in any of the practices for which he or she is required to be licensed by this chapter, unless he or she maintains an insurance policy as defined in Section 7583.40.

7583.40. "Insurance policy," as used in this article, means a contract of liability insurance issued by an insurance company authorized to transact business in this state which provides minimum limits of insurance of five hundred thousand dollars (\$500,000) for any one loss due to bodily injury or death and five hundred thousand dollars (\$500,000) for any one loss due to injury or destruction of property.

7583.41. Proof that a licensee maintains an insurance policy as required by this article shall be provided by the licensee to the bureau upon demand.

7583.42. The failure of a private patrol operator to maintain an insurance policy as required by this article shall constitute grounds for the suspension of the private patrol operator's license.

Article 5. Firearms and Baton Training Facilities

7585. The course of training in the carrying and usage of firearms, the satisfactory completion of which shall be required of applicants who wish to obtain a firearms qualification card, shall be in the format prescribed by the Department of Consumer Affairs as delineated in the bureau's "Firearms Training Manual." The course of training contained in the manual shall include, but not be limited to, the following:

- (a) Moral and legal aspects of firearms usage.
- (b) Firearms nomenclature and maintenance.
- (c) Weapon handling and shooting fundamentals.
- (d) Emergency procedures.
- (e) Prequalification range training, including the firing of practice rounds.
- (f) Qualification course of fire.
- (g) Examination which has been provided by the bureau of the subject matter taught.

7585.1. For purposes of this article, "firearms course" means the firearms training course as outlined in Section 7585.

7585.2. The firearms requalification course shall consist of the successful completion of a firearms requalification course approved by the bureau.

7585.3. (a) Any institution, firm, or individual wishing the approval of the bureau to offer the firearms course shall complete an application for certification as a firearms training facility. The application shall be in a form prescribed by the chief and shall include, but not be limited to, the following information:

- (1) The name, business address, and telephone number of the institution, firm, or individual.
- (2) A detailed description of the places, days, and times the course will be offered.
- (3) An estimate of the minimum and maximum class size.
- (4) The location and description of the range facilities.
- (5) The name or names of the firearms training instructors who

will teach the course who have been certified by the bureau, and their certificate numbers, if available.

(b) The application shall be accompanied by the fee prescribed in this chapter.

7585.4. Upon approval by the bureau of a firearms training facility, the chief shall issue to the facility a "Firearms Training Facility Certificate." The certificate is valid only when the firearms training facility has in its employ a firearms training instructor who has been certified by the bureau. The certificate shall be posted in a conspicuous place at the facility.

7585.5. (a) Any individual who desires certification by the bureau to instruct a firearms course shall complete an application for a firearms training instructor certificate. An application shall be made on a form provided by the bureau.

(b) An applicant for a firearms training instructor certificate shall meet the following minimum qualifications:

(1) Possess an associate of arts degree in the administration of justice or one year of teaching or training experience in firearms or the equivalent thereof.

(2) Possess a police or security firearms instructor training certificate issued by the National Rifle Association or a firearms instructor training certificate issued by a federal, state, or local agency.

(c) The application shall be accompanied by the fee prescribed in this chapter.

(d) Upon approval by the bureau of an applicant for certification as a firearms training instructor, the chief shall issue to the applicant a "Firearms Training Instructor Certificate." The certificate shall be posted at the training site.

7585.6. (a) All firearms course material provided to the certificate holder in the "Firearms Training Manual" issued by the bureau shall be covered in each class session. Any course textbook or manual developed to be used by a firearm training facility as a course in the carrying and usage of firearms shall include the aspects of employee restraint and defensive missions of security guards in addition to following the format delineated in the bureau's "Firearms Training Manual" and shall be examined and approved by the bureau prior to use. Once the bureau has approved the textbooks or manuals, all firearm training facilities shall be required to instruct in accordance with one of the textbooks or manuals. In no event shall the class instruction total less than eight hours for the initial firearms qualification.

The range instruction for the initial firearms qualification shall not exceed eight hours and shall cover the following subjects:

- (1) Range safety and procedure.
- (2) Demonstration and dry firing.
- (3) Practice rounds.
- (4) Qualification firing.

(b) If a person fails to successfully complete the range instruction,

that person may, at the discretion of the firearms training facility, continue range instruction for an additional eight hours. However, the person shall, in order to receive a firearms qualification card, be required to successfully pass the range instruction within 30 days of the passage of the classroom instruction.

(c) Prior to range instruction a person shall participate in the classroom instruction and pass a bureau-developed examination of the subject matter with a minimum score of 85 percent. If a person fails to pass the written examination, he or she shall once more participate in the entire classroom instruction prior to retaking the examination. In no event shall a firearm instructor review the examination question by question with a person, allow a person to review the examination questions and answers, or in any manner assist a person with the examination.

7585.7. (a) Each firearms training facility shall be required to retain for two years the following information regarding each student:

- (1) The student's name.
- (2) The date of course completion.
- (3) Any information regarding the passage or failure of the firearms training course.
- (4) The instructor's name.
- (5) The make and caliber of the qualifying weapon.
- (6) The range scores.
- (7) The written examination scores.

(b) Records shall be made available for examination by the bureau on demand.

(c) Each firearm training facility shall have a written procedure for the security of the written examination which shall be made available for inspection by the bureau on demand.

7585.8. (a) Each firearm training facility shall, prior to allowing any person to participate in the course of training in the carrying and usage of firearms, verify and certify on the firearms qualification application that they have seen documentation verifying that the person to whom they are providing firearms training is a citizen of the United States or possesses permanent legal alien status in the United States in accordance with Sections 7583.23 and 7596.7.

(b) During calendar year 1985, each firearm training facility shall, prior to allowing any person to participate in the requalification course in the carrying and usage of firearms, verify and certify on the firearm requalification application that they have seen documentation verifying that the person to whom they are providing firearms training is a citizen of the United States or possesses permanent legal alien status in the United States in accordance with Sections 7583.32 and 7596.3.

7585.9. (a) The course of training in the carrying and usage of the baton, the satisfactory completion of which shall be required of applicants who wish to obtain a baton permit, shall be in the format prescribed by the Department of Consumer Affairs as delineated in

the bureau's "Baton Training Manual." The course of training contained in the manual shall include, but not be limited to, the following subjects:

- (1) Moral and legal aspects of baton usage.
- (2) Use of force.
- (3) Baton familiarization and uses.
- (4) First aid for baton injuries.
- (5) Fundamentals of baton handling.
- (A) Stances and grips.
- (B) Target areas.
- (C) Defensive techniques.
- (D) Control techniques.
- (E) Arrest and control techniques.

(6) Examination of the subject matter as taught in the classroom and as provided by the bureau.

(b) The baton training outline distributed by the Department of Justice shall be recognized as an approved outline for the baton training course until January 1, 1984, or until the bureau distributes the "Baton Training Manual."

7585.10. For purposes of this article "a baton course" means the baton training course as outlined in Section 7585.9.

7585.11. (a) Any institution, firm, or individual wishing approval of the bureau to offer the baton course shall complete an application for certification as a baton training facility. The application shall be in a form prescribed by the chief and shall include, but not be limited to, all of the following information:

(1) The name, business address, and telephone number of the institution, firm or individual.

(2) A detailed description of the places, days, and times the course will be offered.

(3) An estimate of the minimum and maximum class size.

(4) Location and description of the facilities.

(5) The name or names of the baton instructors who will teach the course who have been certified by the bureau, and their certificate numbers if available.

(b) The application shall be accompanied by the fee prescribed in this chapter.

(c) No approval shall be given, and no certification shall be issued, to a baton training facility until a baton training instructor who has been certified by the bureau has been approved to teach the course.

(d) Upon approval by the bureau of a baton training facility, the chief shall issue to the facility a "Baton Training Facility Certificate." The certificate is valid only when the baton training facility has in its employ a baton training instructor who has been certified by the bureau. The certificate shall be posted in a conspicuous place at the facility.

7585.12. Any individual who desires certification by the bureau to instruct the baton course shall complete an application for a baton training instructor certificate. An application shall be made on a form

provided by the bureau.

An applicant for a baton training instructor certificate shall meet the following minimum qualifications:

(a) Possess an associate of arts degree in the administration of justice or the equivalent thereof.

(b) Possess a baton instructor certificate issued by a federal, state, or local agency or one year of verifiable baton teaching or training experience or the equivalent thereof to be determined by the chief.

(c) The application shall be accompanied by the fee prescribed in this chapter.

(d) Upon approval by the bureau of an applicant for certification as a baton training instructor, the chief shall issue to the applicant a "Baton Training Instructor Certificate." The certificate shall be posted at the baton training site.

7585.13. All baton course material provided to the certificate holder in the "Baton Training Manual" issued by the bureau shall be covered in each class session. In no event shall the class instruction for the course required for baton certification total less than eight hours.

7585.14. (a) A baton training facility shall issue a bureau-developed baton permit to any person who successfully completes a baton training course as described in Section 7585.9 and possesses a valid security guard registration card issued pursuant to Article 4 (commencing with Section 7583) or who has made application for that registration card. The permit is valid only when the holder possesses a valid guard registration card.

(b) The bureau shall issue baton permits to a baton training facility, in good standing, upon request and upon payment of the fees as set forth in this chapter.

(c) Each baton training facility shall submit to the bureau, on forms as prescribed by the director, no later than five working days following the issuance of a permit for each person, the name, address, bureau registration or license number, date of birth, and baton permit number of each person issued a permit.

7585.15. (a) Each baton training facility shall be required to retain for two years the following information regarding each student:

(1) The student's name.

(2) The date of course completion.

(3) Any information regarding the passage or failure of the baton training course.

(4) The instructor's name.

(5) Written examination scores.

(b) Records shall be made available for examination by the bureau on demand.

(c) Each baton training facility shall have a written procedure for the security of the examinations and the baton certificates which shall be made available for inspection by the bureau on demand.

7585.16. In the event of the loss, theft, or destruction of a baton

permit, a permit holder may request the bureau to issue a replacement permit. The request shall be in writing, shall state the circumstances surrounding the loss, theft, or destruction of the permit and the name of the instructor, training facility, and date of instruction relating to the issuance of the original baton permit. The request shall be accompanied by a five dollar (\$5) replacement fee. The bureau may issue a replacement baton permit upon verification of successful baton training.

7585.17. Each firearms training facility or baton training facility shall notify the bureau within five working days whenever any training instructor certified by the bureau is employed or ceases to be employed with the training facility.

7585.18. Each firearms training facility, firearms training instructor, baton training facility, or baton training instructor shall report to the bureau the name of any person who, while taking the course, demonstrated that the carrying and usage of a firearm or the carrying and usage of a baton by that person would present an undue hazard to the safety of the public. The report shall contain the name and address of the student, the name of the student's employer, if available, and the reasons or specific incident which caused the certificate holder to make the report. All substantiating documents, including, but not limited to, an affidavit from the instructor regarding the incident, or reasons, shall be included in the report.

7585.19. (a) The chief may refuse to issue or may cancel a previously issued firearms training facility certificate, firearms training instructor certificate, baton training facility certificate, or baton training instructor certificate, or may assess fines pursuant to Section 7587.7, on the grounds that one or more instructors have done any of the following:

(1) Failed to maintain the records required by Section 7585.7 or 7585.15.

(2) Failed to submit the records to the bureau as required by Section 7585.14.

(3) Given inaccurate instructions regarding the laws of California and the regulations of the bureau, including, but not limited to, the necessity of an individual to possess a valid firearms qualification card issued by the bureau prior to carrying any firearm; or the necessity of an individual to possess a valid baton permit issued by the bureau prior to carrying any baton.

(4) Used improper caution while instructing students, so as to endanger the safety of students.

(5) Failed to instruct completely in accordance with the bureau's "Firearms Training Manual" as required by Section 7585.6.

(6) Failed to instruct completely in accordance with the bureau's "Baton Training Manual" as required by Section 7585.9.

(7) Allowed a noncertified instructor to teach any portion of the firearms course, including range qualification. This does not include range coaches employed to assist the instructor.

(8) Allowed a noncertified instructor to teach any portion of the

baton course.

(9) Falsified any application for registration, firearms qualification card, firearms requalification permit, or baton certificate.

(10) Failed to inform the bureau of any range or classroom incident as required by Section 7585.18.

(11) Failed to notify the bureau of any change of employment pursuant to Section 7585.17.

(12) Made any false statement of fact required to be revealed in the application for certification as a firearms training facility or as a firearms training instructor.

(b) Fines shall not be assessed on firearms training facilities which are a part of the California community college system.

7585.20. (a) A firearms training facility certificate, a firearms training instructor certificate, a baton training facility certificate, or a baton training instructor certificate which expires on or after January 1, 1985, shall be placed on a cyclical renewal and shall expire two years following the date of issuance or assigned renewal date. In order to implement such cyclical renewal, the population of licensees mentioned in this section shall be divided into 24 equal groups, the licenses of each group to expire on the last day of each successive month. Notwithstanding any other provision of law, the bureau shall have authority to extend or shorten the first term of licensure following January 1, 1985, and to prorate the required license fee in order to implement this cyclical renewal. To renew an unexpired certificate, the certificate holder shall apply for renewal on a form prescribed by the director and pay the renewal fee prescribed by this chapter.

(b) If renewal is granted, such evidence of renewal of the certificate as the director may prescribe shall be issued to the certificate holder.

(c) In the event the certificate holder fails to renew his or her training facility certificate or training instructor certificate, the certificate shall be automatically canceled, but may be reinstated within 30 days of the date of cancellation upon application for reinstatement and upon the payment of the reinstatement fee provided by this chapter. Reinstatement of a canceled certificate shall not prohibit the bringing of disciplinary proceedings for any act committed in violation of this chapter during the period the certificate is canceled.

(d) A firearms training facility, a firearms training instructor, a baton training facility, or a baton training instructor whose certificate has not been renewed may obtain a new license only upon compliance with all of the provisions of this article relating to the issuance of an original certificate.

(e) A firearms training facility, firearms training instructor, baton training facility, or a baton training instructor certificate shall not be renewed until any and all fines assessed pursuant to Section 7587.7 and not resolved in accordance with the provisions of that section

have been paid.

Article 6. Expiration and Renewal of License

7586. Every private patrol operator license, branch office certificate, and pocket card issued under this chapter which expires on or after January 1, 1985, shall be placed on a cyclical renewal and shall expire two years following the date of issuance or assigned renewal date. In order to implement this cyclical renewal, the population of licensees shall be divided into 24 equal groups, the licenses of those in each group to expire on the last day of each successive month. Notwithstanding any other provision of law, the bureau shall have authority to extend or shorten the first term of licensure following January 1, 1985, and to prorate the required license fee in order to implement this cyclical renewal.

7586.1. (a) To renew an unexpired license or certificate, the licensee shall, on or before the date on which it would otherwise expire, apply for renewal on a form prescribed by the director, and pay the renewal fee prescribed by this chapter. On renewal, such evidence of renewal of the license or certificate as the director may prescribe, and renewal pocket cards for the persons mentioned in Section 7582.13, shall be issued to the licensee.

(b) A license or certificate shall not be renewed until any and all fines assessed pursuant to Section 7587.7 and not resolved in accordance with the provisions of that section have been paid.

7586.2. Except as otherwise provided in this article, an expired license or branch office certificate may be renewed at any time within one year after its expiration on filing of application for renewal on a form prescribed by the director, and payment of the renewal fee in effect on the last preceding regular renewal date. If the license or certificate is renewed more than 30 days after its expiration, the licensee, as a condition precedent to renewal, shall also pay the delinquency fee prescribed in this chapter. Renewal under this section shall be effective on the date on which the application is filed, on the date on which the renewal fee is paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the license or certificate shall continue in effect through the date provided in Section 7586 which next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

Renewal of a license or certificate shall not prohibit the bringing of disciplinary proceedings for an act committed before the effective date of the renewal.

7586.3. A suspended license or branch office certificate is subject to expiration and shall be renewed as provided in this article, but renewal of the license does not entitle the licensee, while the license remains suspended and until it is reinstated, to engage in the licensed activity, or in any other activity, or in any other activity or conduct in violation of the order or judgment by which the license was

suspended, and renewal of the branch office certificate does not entitle the licensee, while the certificate remains suspended, and until it is reinstated, to engage in the licensed activity at the location for which the certificate was issued, or to engage in any other activity or conduct in violation of the order or judgment by which the certificate was suspended.

7586.4. A revoked license or branch office certificate is subject to expiration as provided in this article, but it may not be renewed. If it is reinstated after its expiration, the licensee, as a condition precedent to its reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last regular renewal date before the date on which it is reinstated, plus the delinquency fee, if any, accrued at the time of its revocation.

7586.5. A license or branch office certificate which is not renewed within one year after its expiration may not be renewed, restored, reinstated, or reissued thereafter.

The holder of the license or certificate may obtain a new license or certificate only on compliance with all of the provisions of this chapter relating to the issuance of an original license or certificate.

Article 7. Disciplinary Proceedings

7587. Except as otherwise required to comply with the provisions of Section 7581.3 or Article 6 (commencing with Section 7586), the proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director shall have all the powers granted therein.

7587.1. Notwithstanding Section 477, a firearm qualification card and a baton permit shall be considered a license subject to the terms of this section.

The director may deny, suspend, or revoke a license issued under this chapter if he or she determines that the licensee or his or her manager, if an individual, or if the licensee is a person other than an individual, that any of its officers, directors, partners, or its manager, has:

(a) Made any false statement or given any false information in connection with an application for a license or a renewal or reinstatement of a license.

(b) Violated any provisions of this chapter.

(c) Violated any rule of the director adopted pursuant to the authority contained in this chapter.

(d) Committed any act or crime constituting grounds for denial of licensure under Section 480, including illegally using, carrying, or possessing a deadly weapon.

(e) Impersonated, or permitted or aided and abetted an employee to impersonate a law enforcement officer or employee of the United States of America, or of any state or political subdivision thereof.

(f) Committed or permitted any employee to commit any act, while the license was expired which would be cause for the suspension or revocation of a license, or grounds for the denial of an application for a license.

(g) Willfully failed or refused to render to a client services or a report as agreed between the parties and for which compensation has been paid or tendered in accordance with the agreement of the parties.

(h) Committed assault, battery, or kidnapping, or used force or violence on any person, without proper justification.

(i) Knowingly violated, or advised, encouraged, or assisted the violation of any court order or injunction in the course of business as a licensee.

(j) Acted as a runner or capper for any attorney.

(k) Been convicted of a violation of Section 148 of the Penal Code.

(l) Committed any act which is a ground for denial of an application for a license under this chapter.

(m) Committed any act prohibited by Chapter 1.5 (commencing with Section 630) of Title 15 of Part 1 of the Penal Code.

(n) Purchased, possessed, or transported any tear gas weapon except as authorized by law. A violation of this subdivision may be punished by the suspension of a license for a period to be determined by the director.

(o) Been convicted of a violation of Section 95.3 of the Penal Code.

7587.2. Any person who knowingly makes a false statement in his or her application for a license or registration as a security guard is guilty of a misdemeanor.

7587.3. The director may suspend or revoke a license issued under this chapter if he or she determines that the licensee or his or her manager, if an individual, or if the licensee is a person other than an individual, that any of its officers, directors, partners, or its manager, has:

(a) Used any letterhead, advertisement, or other printed matter, or in any manner whatever represented that he or she is an instrumentality of the federal government, a state, or any political subdivision thereof.

(b) Used a name different from that under which he or she is currently licensed in any advertisement, solicitation, or contract for business.

7587.4. The director may suspend or revoke a license issued under this chapter if he or she determines that the licensee or his or her manager, if an individual, or if the licensee is a person other than an individual, that any of its officers, directors, partners, or its manager, has committed any act in the course of the licensee's business constituting dishonesty or fraud.

"Dishonesty or fraud" as used in this section, includes, in addition to other acts not specifically enumerated herein:

(a) Knowingly making a false statement relating to evidence or information obtained in the course of employment, or knowingly

publishing a slander or a libel in the course of business.

(b) Using illegal means in the collection or attempted collection of a debt or obligation.

(c) Manufacture of evidence.

(d) Acceptance of employment adverse to a client or former client relating to a matter with respect to which the licensee has obtained confidential information by reason of or in the course of his or her employment by the client or former client.

7587.5. The record of conviction, or a certified copy thereof, shall be conclusive evidence of the conviction as that term is used in this article, Section 7582.24, or Section 480.

A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this article, Section 7582.24, or Section 480. The director may order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

7587.6. The director, in lieu of suspending or revoking a license issued under this chapter for violations of Sections 7587.1, 7587.3, and 7587.4, may impose a civil penalty not to exceed five hundred dollars (\$500) upon a licensee, if the director determines that this action better serves the purposes of this chapter.

7587.7. If, upon investigation, the director determines a licensee, including a corporation, or registrant is in violation of Section 7583.2, 7583.3, 7583.37, 7585.19, 7587.2, or 7587.14, the director may issue a citation to the licensee or registrant. The citation shall be in writing and shall describe with particularity the nature of the violation, including specific reference to the provision of law determined to have been violated. If the director deems it appropriate, the citation may contain an order of abatement fixing a reasonable time for abatement of the violation and may contain an assessment of an administrative fine. The amount of the fine shall in no event exceed one thousand dollars (\$1,000) or as otherwise provided in this chapter, whichever is less.

A citation or fine assessment shall inform the licensee or registrant that if he or she contests the finding of a violation, they may request a review by a disciplinary review committee in accordance with Section 7581.3. If a review is not requested pursuant to this section, payment of any fine shall not constitute an admission of the violation charged. If a review is not allowed under this chapter, a licensee or registrant may request a hearing in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code if he or she wishes to contest the findings of a violation, and if a hearing is not requested, payment

of any fines shall not constitute an admission of the violation charged.

If the licensee or registrant neither requests a review, nor pays the assessed fine within 30 days of the assessment, the license or registration of the person shall not be renewed pursuant to the provisions of this chapter until the assessed fine is paid.

Administrative fines collected pursuant to this article shall be deposited in the Private Security Services Fund, which fund is hereby created to carry out the purposes of this chapter.

7587.8. The director may assess fines for the following acts pursuant to Article 4 (commencing with Section 7583) only as follows:

(a) Violation of subdivisions (a), (b), and (c) of Section 7583.2; twenty-five dollars (\$25) per violation.

(b) Violation of subdivision (e) of Section 7583.2; twelve dollars (\$12) per violation for the first 10 violations and fifty dollars (\$50) per violation for each violation thereafter.

(c) Violation of subdivisions (g) and (h) of Section 7583.2; twenty-five dollars (\$25) for the first violation and one hundred dollars (\$100) per violation for each violation thereafter.

(d) Violation of subdivision (d) of Section 7583.2; one hundred dollars (\$100) per violation.

(e) Violation of subdivision (f) of Section 7583.2; two hundred fifty dollars (\$250) per violation.

7587.9. The director may assess fines for the following acts pursuant to Article 4 (commencing with Section 7583) only as follows:

(a) Violation of subdivisions (a) and (b) of Section 7583.3; ten dollars (\$10) per violation.

(b) Violation of subdivision (c) of Section 7583.3; twenty-five dollars (\$25) for the first violation and one hundred dollars (\$100) per violation for each violation thereafter.

(c) Violation of Section 7583.4; twenty-five dollars (\$25) for the first violation and one hundred dollars (\$100) per violation for each violation thereafter.

7587.10. The director may assess fines for the following acts pursuant to Article 4 (commencing with Section 7583) only as follows:

(a) Violation of subdivisions (c) and (d) of Section 7583.37 ; twenty-five dollars (\$25) for the first violation and one hundred dollars (\$100) for each violation thereafter.

(b) Violation of subdivision (a) of Section 7583.37; one hundred dollars (\$100) for the first violation and five hundred dollars (\$500) for each violation thereafter.

(c) Violation of subdivision (e) of Section 7583.37; five hundred dollars (\$500) for each violation.

(d) Violation of subdivision (b) of Section 7583.37; five hundred dollars (\$500) for the first violation and suspension of a firearm qualification card for six months for each violation thereafter.

7587.12. The director may assess fines for the following acts only

as follows:

(a) Violations of paragraph (1), (2), (11), or (12) of subdivision (a) of Section 7585.19; twenty-five dollars (\$25) for each violation.

(b) Violations of paragraph (3), (7), (8), or (10) of subdivision (a) of Section 7585.19; one hundred dollars (\$100) for each violation.

(c) Violations of paragraph (6) of subdivision (a) of Section 7585.19; two hundred fifty dollars (\$250) for each hour shortened.

(d) Violations of paragraph (4) of subdivision (a) of Section 7585.19; five hundred dollars (\$500) for each violation.

(e) Violations of paragraph (5) of subdivision (a) of Section 7585.19; five hundred dollars (\$500) for every hour the course has been shortened.

(f) Violations of paragraph (9) of subdivision (a) of Section 7585.19; one thousand dollars (\$1,000) for each violation.

7587.13. Any person who knowingly falsifies the fingerprints or photographs submitted pursuant to any provision of this chapter is guilty of a felony. Any person who violates any of the other provisions of this chapter is guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment in the county jail not to exceed one year, or by both such fine and imprisonment.

7587.14. The director may assess administrative fines against any licensee, registrant, or firearms qualification cardholder for failure to notify the bureau within 30 days of any change of residence or business address. The principal place of business may be at a home or at a business address, but it shall be the place at which the licensee maintains a permanent office.

(a) The fine shall be twenty-five dollars (\$25) for each violation by a licensee.

(b) The fine shall be fifteen dollars (\$15) for each violation by a registrant or a firearms qualification cardholder.

Article 8. Revenue

7588. The fees prescribed by this chapter are as follows:

(a) The application and examination fee for an original license for a private patrol operator is two hundred dollars (\$200).

(b) The application fee for an original branch office certificate for a private patrol operator is seventy-five dollars (\$75).

(c) The fee for an original license for a private patrol operator is five hundred dollars (\$500).

(d) The renewal fee is as follows:

(1) For a license as a private patrol operator, five hundred dollars (\$500).

(2) For a combination license as a private investigator under Chapter 11.3 (commencing with Section 7512) and private patrol operator, AC or DC prefix, six hundred dollars (\$600).

(3) For a branch office certificate for a combination private investigator under Chapter 11.3 (commencing with Section 7512)

and private patrol operator, forty dollars (\$40), and for a private patrol operator, seventy-five dollars (\$75).

(e) The delinquency fee is 50 percent of the renewal fee in effect on the date of expiration.

(f) A reinstatement fee is equal to the amount of the renewal fee plus the regular delinquency fee.

(g) The fee for reexamination of an applicant or his or her manager is twenty dollars (\$20).

(h) Registration fees pursuant to this chapter are as follows:

(1) A registration fee for a security guard is twenty-five dollars (\$25).

(2) A security guard registration renewal fee of twenty-five dollars (\$25).

(i) Fees to carry out other provisions of this chapter are as follows:

(1) A firearms qualification fee of sixty dollars (\$60).

(2) A firearms requalification fee of forty dollars (\$40).

(3) An initial baton certification fee of fifty dollars (\$50).

(4) An application fee and renewal fee for certification as a firearms training facility or a baton training facility of five hundred dollars (\$500).

(5) An application fee and renewal fee for certification as a firearms training instructor or a baton training instructor of two hundred fifty dollars (\$250).

(j) This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

7588. The fees prescribed by this chapter are as follows:

(a) The application and examination fee for an original license for a private patrol operator is one hundred dollars (\$100).

(b) The application fee for an original branch office certificate for a private patrol operator is fifty dollars (\$50).

(c) The fee for an original license for a private patrol operator is three hundred fifty dollars (\$350).

(d) The renewal fee is as follows:

(1) For a license as a private patrol operator, three hundred fifty dollars (\$350).

(2) For a combination license as a private investigator under Chapter 11.3 (commencing with Section 7512) and private patrol operator, AC or DC prefix, four hundred dollars (\$400).

(3) For a branch office certificate for a combination private investigator under Chapter 11.3 (commencing with Section 7512) and private patrol operator, twenty dollars (\$20), and for a private patrol operator, fifty dollars (\$50).

(e) The delinquency fee is 50 percent of the renewal fee in effect on the date of expiration.

(f) A reinstatement fee is equal to the amount of the renewal fee plus the regular delinquency fee.

(g) The fee for reexamination of an applicant or his or her manager is ten dollars (\$10).

(h) Registration fees pursuant to this chapter are as follows:

- (1) A registration fee for a security guard is eighteen dollars (\$18).
- (2) A security guard registration renewal fee of eighteen dollars (\$18).

(i) Fees to carry out other provisions of this chapter are as follows:

- (1) A firearms qualification fee of thirty dollars (\$30).
- (2) A firearms requalification fee of twenty dollars (\$20).
- (3) An initial baton certification fee of twenty dollars (\$20).
- (4) An application fee and renewal fee for certification as a firearms training facility or a baton training facility of one hundred dollars (\$100).
- (5) An application fee and renewal fee for certification as a firearms training instructor or a baton training instructor of fifty dollars (\$50).

(j) This section shall become operative January 1, 1998.

7588.1. The fee for processing fingerprints for all registrations and licenses is that amount charged the bureau by the Department of Justice.

7588.2. The Department of Consumer Affairs shall receive and account for all money derived from the operation of this chapter and, at the end of each month, shall report such money to the Controller and shall pay it to the Treasurer, who shall keep the money in a separate fund known as the Private Security Services Fund. All money in the Private Security Services Fund shall be expended in accordance with law by the bureau for the purpose of carrying out the provisions of this chapter when appropriated by the Legislature. Effective July 1, 1995, the department shall propose a separate budget and expenditure statement and a separate revenue statement outlining all money derived from and expended for the licensing and regulation of private security services in accordance with this chapter.

7588.3. All money derived from the licensing and regulation of persons licensed under this chapter shall be expended exclusively on the licensing and regulation of these persons. If, at the end of any fiscal year, the money derived from this licensing and not expended pursuant to this section is an amount which equals or is more than the money necessary for the regulation of licensees for the next two fiscal years, license or other fees shall be reduced during the following fiscal year in an amount which will reduce any surplus money derived from the licensing to an amount less than the money expended for the regulation of licensees for the next two fiscal years.

7588.4. Application or license fees shall not be refunded except in accordance with Section 158.

SEC. 7. Section 7599.72 of the Business and Professions Code is amended to read:

7599.72. The department shall receive and account for all money derived from the operation of this chapter and, at the end of each month, shall report that money to the Controller and shall pay it to the Treasurer, who shall keep the money in the Private Security

Services Fund.

SEC. 8. Revenues collected for the licensing and regulation of private investigators under the Private Investigator Act, which is repealed by Section 5 of this act, and which are held in the Private Investigator Fund on the effective date of this act, shall be transferred as of that date to the Private Investigator Fund created by this act. The remaining revenues in the Private Investigator Fund collected for the licensing and regulation of private patrol operators, armored contract carriers, and firearms and baton training facilities shall be transferred on the effective date of this act to the Private Security Services Fund created by this act.

SEC. 9. It is the intent of the Legislature in repealing the Private Investigator Act, and moving all existing provisions into either the new Private Investigator Act, relating to private investigators, or the Security Services Act, relating to security services, that the new laws be construed as a continuation of the prior laws, and not to make any substantial change in the law.

CHAPTER 1286

An act to add Section 7851.5 to the Family Code, relating to family law.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 7851.5 is added to the Family Code, to read:
7851.5. The petitioner shall be liable for all reasonable costs incurred in connection with the termination of parental rights, including, but not limited to, costs incurred for the investigation required by this article. However, public agencies and nonprofit organizations are exempt from payment of the costs of the investigation. The liability of a petitioner for costs under this section shall not exceed nine hundred dollars (\$900). The court may defer, waive, or reduce the costs when the payment would cause an economic hardship which would be detrimental to the welfare of the child.

CHAPTER 1287

An act to add Section 48915.6 to the Education Code, relating to school pupils.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 48915.6 is added to the Education Code, to read:

48915.6. The restrictions and special procedures provided in Section 48915.5 for the expulsion of a pupil with exceptional needs because of the pupil's possession of a firearm, knife, explosive, or other dangerous object of no reasonable use for the pupil, at school or at a school activity off school grounds, shall apply only if mandated under federal law, including Section 1415 of Title 20 of the United States Code.

CHAPTER 1288

An act to amend Sections 41401, 41881, 44265.5, 45370, 45371, 49060, 49070, 52315, 52860, 56100, 56346, 56426.7, 56426.8, 56426.9, 56429, 56440, 56441.11, 56505, 56822, 60241, 60281, 60282, 60283, 60294, 60312, and 60313 of, and to add Section 56363.1 to, the Education Code, relating to special education.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

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

SECTION 1. Section 41401 of the Education Code is amended to read:

41401. For the purposes of this article:

(a) "Administrative employee" means an employee of a school district, employed in a position requiring certification qualifications, but who does not come within the meaning of subdivision (c) or (d).

(b) "Classified employee" means an employee of a school district, employed in a position not requiring certification qualifications.

(c) "Pupil services employee" means an employee of a school district, employed in a position requiring a standard designated services credential, health and development credential, or a librarian credential, and who performs direct services to pupils. "Pupil services employee" shall include, but not be limited to, inschool librarians, school nurses, assistant inschool librarians, audiovisual personnel, counselors, psychologists, psychometrists, guidance and

welfare personnel, attendance personnel, school social workers, and all other certificated personnel performing pupil-personnel services, health, or librarian services.

(d) "Teacher" means an employee of a school district, employed in a position requiring certification qualifications and whose duties require him or her to provide direct instruction to pupils in the schools of that district for the full time for which he or she is employed. "Teacher" shall include, but not be limited to, teachers of special classes, teachers of exceptional children, teachers of pupils with physical disabilities, teachers of mentally retarded minors, substitute teachers, instructional television teachers, specialist mathematics teachers, specialist reading teachers, home and hospital teachers, and learning disability group teachers. Instructional preparation time shall be counted as part of the teacher full-time equivalent, including, but not limited to, mentor teacher or department chairperson time.

SEC. 2. Section 41881 of the Education Code is amended to read:

41881. The Superintendent of Public Instruction shall allow to each district participating in a regional occupational center or to each county superintendent of schools operating a regional occupational center, for each unit of average daily attendance attributable to a person educated in a regional occupational center or program pursuant to Section 52315, the following amounts:

(a) One thousand nine hundred fifty-five dollars (\$1,955) for each person with a visual impairment.

(b) One thousand one hundred twenty dollars (\$1,120) for each deaf person.

(c) Six hundred twenty dollars (\$620) for each orthopedically impaired person.

The allowance prescribed by this section is in addition to other allowances or apportionments which may be received because of such attendance and can only be received if the specific service for which the allowance or apportionment is made is not otherwise provided by a community college within a reasonable commuting distance of the regional occupational center.

Each governing body maintaining a regional occupational center or program shall account for expenditures made on account of additional special instruction and support services pursuant to Section 52315. Expenditures shall be reported as an amount per pupil in average daily attendance in each of the categories specified in subdivisions (a), (b), and (c). If the Superintendent of Public Instruction determines that the expenditures, as reported, do not equal or exceed the allowances prescribed in subdivisions (a), (b), and (c), the amount of the deficiency shall be withheld from apportionments to the school district or the county superintendent of schools in the succeeding fiscal year in accordance with the procedure prescribed in Section 41341.

SEC. 3. Section 44265.5 of the Education Code is amended to read:

44265.5. (a) Pupils who are visually impaired shall be taught by teachers whose professional preparation and credential authorization are specific to that impairment.

(b) Pupils who are deaf or hard of hearing shall be taught by teachers whose professional preparation and credential authorization are specific to that impairment.

(c) Pupils who are orthopedically impaired shall be taught by teachers whose professional preparation and credential authorization are specific to that impairment.

SEC. 4. Section 45370 of the Education Code is amended to read:

45370. It is the intent of the Legislature in enacting this article that the governing board of each school district, each county superintendent of schools and each state special school or center employ qualified persons to serve as readers for the legally blind certified classroom teachers employed by each of these entities.

SEC. 5. Section 45371 of the Education Code is amended to read:

45371. There is hereby created in the State Treasury the Reader Employment Fund, to be administered by the Superintendent of Public Instruction. From any funds that are appropriated to the Reader Employment Fund, the Superintendent of Public Instruction shall allocate to each applicant school district, county superintendent of schools, and state special school or center operated pursuant to Part 32 (commencing with Section 59000) an amount sufficient to provide the legally blind certificated classroom teachers employed by the applicant with the services of a reader for a maximum of 15 hours per school week.

SEC. 6. Section 49060 of the Education Code is amended to read:

49060. It is the intent of the Legislature to resolve potential conflicts between California law and the provisions of Public Law 93-380 regarding parental access to, and the confidentiality of, pupil records in order to insure the continuance of federal education funds to public educational institutions within the state, and to revise generally and update the law relating to such records.

This chapter applies to public agencies that provide educationally related services to pupils with disabilities pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code and to public agencies that educate pupils with disabilities in state hospitals or developmental centers and in youth and adult facilities.

This chapter shall have no effect regarding public community colleges, other public or private institutions of higher education, other governmental or private agencies which receive federal education funds unless described herein, or, except for Sections 49068 and 49069 and subdivision (b) (5) of Section 49076, private schools.

The provisions of this chapter shall prevail over the provisions of Section 12400 of this code and Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code to the extent that they may pertain to access to pupil records.

SEC. 7. Section 49070 of the Education Code is amended to read: 49070. Following an inspection and review of a pupil's records, the parent of a pupil or former pupil of a school district may challenge the content of any pupil record.

(a) The parent of a pupil may file a written request with the superintendent of the district to correct or remove any information recorded in the written records concerning his or her child which the parent alleges to be any of the following:

- (1) Inaccurate.
- (2) An unsubstantiated personal conclusion or inference.
- (3) A conclusion or inference outside of the observer's area of competence.
- (4) Not based on the personal observation of a named person with the time and place of the observation noted.

(5) Misleading.

(6) In violation of the privacy or other rights of the pupil.

(b) Within 30 days of receipt of a request pursuant to subdivision (a), the superintendent or the superintendent's designee shall meet with the parent and the certificated employee who recorded the information in question, if any, and if the employee is presently employed by the school district. The superintendent shall then sustain or deny the allegations.

If the superintendent sustains any or all of the allegations, he or she shall order the correction or the removal and destruction of the information. However, in accordance with Section 49066, the superintendent shall not order a pupil's grade to be changed unless the teacher who determined the grade is, to the extent practicable, given an opportunity to state orally, in writing, or both, the reasons for which the grade was given and is, to the extent practicable, included in all discussions relating to the changing of the grade.

If the superintendent denies any or all of the allegations and refuses to order the correction or the removal of the information, the parent may, within 30 days of the refusal, appeal the decision in writing to the governing board of the school district.

(c) Within 30 days of receipt of an appeal pursuant to subdivision (b), the governing board shall, in closed session with the parent and the certificated employee who recorded the information in question, if any, and if the employee is presently employed by the school district, determine whether or not to sustain or deny the allegations.

If the governing board sustains any or all of the allegations, it shall order the superintendent to immediately correct or remove and destroy the information from the written records of the pupil. However, in accordance with Section 49066, the governing board shall not order a pupil's grade to be changed unless the teacher who determined the grade is, to the extent practicable, given an opportunity to state orally, in writing, or both, the reasons for which the grade was given and is, to the extent practicable, included in all discussions relating to the changing of the grade.

The decision of the governing board shall be final.

Records of these administrative proceedings shall be maintained in a confidential manner and shall be destroyed one year after the decision of the governing board, unless the parent initiates legal proceedings relative to the disputed information within the prescribed period.

(d) If the final decision of the governing board is unfavorable to the parent, or if the parent accepts an unfavorable decision by the district superintendent, the parent shall have the right to submit a written statement of his or her objections to the information. This statement shall become a part of the pupil's school record until the information objected to is corrected or removed.

SEC. 8. Section 52315 of the Education Code is amended to read: 52315. Any visually impaired, orthopedically impaired, or deaf person who is not enrolled in a regular high school or community college program may attend a regional occupational center or regional occupational program on the same basis as a high school pupil. Additional special instruction and support services shall be provided to these persons.

If the Superintendent of Public Instruction determines that there would be a duplication of effort to these impaired persons if a regional occupational center or regional occupational program provided services to them, in that other programs exist that are available to them, the superintendent may disapprove of the curriculum to provide programs to these impaired persons pursuant to Section 52309 and of any state funding made available pursuant to Section 41897 for these purposes.

SEC. 9. Section 52860 of the Education Code is amended to read: 52860. If a school district and school choose to include within the provisions of this article funds allocated pursuant to Part 30 (commencing with Section 56000), the school district shall comply with all requirements of that part, with the following exceptions:

(a) Resource specialist program services, designated instruction and services, and team teaching for special day classes, except special day classes operating pursuant to Section 56364.1, may be provided to pupils who have not been identified as individuals with exceptional needs, provided that all identified individuals with exceptional needs are appropriately served and a description of the services is included in the schoolsite plan.

(b) Programs for individuals with exceptional needs shall be under the direction of credentialed special education personnel, but services may be provided entirely by personnel not funded by special education moneys, provided that all services specified in the individualized education program are received by the pupil.

SEC. 10. Section 56100 of the Education Code is amended to read: 56100. The State Board of Education shall do all of the following:

(a) Adopt rules and regulations necessary for the efficient administration of this part.

(b) Adopt criteria and procedures for the review and approval by the board of local plans. Local plans may be approved for up to four

years.

(c) Adopt size and scope standards for use by districts, special education local plan areas, and county offices, pursuant to subdivision (a) of Section 56170.

(d) Provide review, upon petition, to any district, special education local plan area, or county office that appeals a decision made by the department which affects its providing services under this part except a decision made pursuant to Chapter 5 (commencing with Section 56500).

(e) Review and approve a program evaluation plan for special education programs provided by this part in accordance with Chapter 6 (commencing with Section 56600). This plan may be approved for up to three years.

(f) Recommend to the Commission on Teacher Credentialing the adoption of standards for the certification of professional personnel for special education programs conducted pursuant to this part.

(g) Adopt regulations to provide specific procedural criteria and guidelines for the identification of pupils as individuals with exceptional needs.

(h) Adopt guidelines of reasonable pupil progress and achievement for individuals with exceptional needs. The guidelines shall be developed to aid teachers and parents in assessing an individual pupil's education program and the appropriateness of the special education services.

(i) In accordance with the requirements of federal law, adopt regulations for all educational programs for individuals with exceptional needs, including programs administered by other state or local agencies.

(j) Adopt uniform rules and regulations relating to parental due process rights in the area of special education.

(k) Adopt rules and regulations regarding the ownership and transfer of materials and equipment, including facilities, related to transfer of programs, reorganization, or restructuring of special education local plan areas.

SEC. 11. Section 56346 of the Education Code is amended to read:

56346. (a) No pupil shall be required to participate in all or part of any special education program unless the parent is first informed, in writing, of the facts that make participation in the program necessary or desirable, and of the contents of the individualized education program, and after this notice, consents, in writing, to all or part of the individualized education program. If the parent does not consent to all the components of the individualized education program, then those components of the program to which the parent has consented shall be implemented so as not to delay providing instruction and services to the pupil.

(b) If the district, special education local plan area, or county office determines that the part of the proposed special education program to which the parent does not consent is necessary to provide a free and appropriate public education to the pupil, a due process

hearing shall be initiated pursuant to Chapter 5 (commencing with Section 56500), unless a prehearing mediation conference is held. During the pendency of the due process hearing, the district, special education local plan area, or county office may reconsider the proposed individualized education program, may choose to meet informally with the parent pursuant to subdivision (b) of Section 56502, or may hold a mediation conference pursuant to Section 56503. As an alternative to holding a due process hearing, the parties may hold a prehearing mediation conference pursuant to Section 56500.3 to resolve any issue or dispute. If a due process hearing is held, the hearing decision shall be the final administrative determination and shall be binding upon the parties. While a prehearing mediation conference or due process hearing is pending, the pupil shall remain in his or her then-current placement unless the parent and the district, special education local plan area, or county office agree otherwise.

SEC. 12. Section 56363.1 is added to the Education Code, to read:

56363.1. A district, special education local plan area, or county office is not required to purchase medical equipment for an individual pupil. However, the school district, special education local plan area, or county office is responsible for providing other specialized equipment for use at school that is needed to implement the individualized education program. For purposes of this section, "medical equipment" does not include an assistive technology device, as defined in paragraph (25) of subsection (a) of Section 1401 of Title 20 of the United States Code.

SEC. 13. Section 56426.7 of the Education Code is amended to read:

56426.7. Medically necessary occupational therapy and physical therapy shall be provided to the infant when warranted by medical diagnosis and contained in the individualized family service plan, as specified under Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code.

SEC. 14. Section 56426.8 of the Education Code is amended to read:

56426.8. (a) Early education and related services shall be based on the needs of the infant and the family as determined by the individualized family service plan team, and shall be specified in the individualized family service plan, including the frequency and duration of each type of service. Any early education or related service may be provided only upon written parental consent.

(b) The individualized family service plan for any infant shall be developed in consultation with the infant's physician in order to ensure that the services specified in the plan do not conflict with the infant's medical needs.

SEC. 15. Section 56426.9 of the Education Code is amended to read:

56426.9. Any infant who becomes three years of age while participating in an early education program under this chapter may

continue in the program until June 30 of the current program year, if determined appropriate by the individualized family service plan team. No later than June 30 of that year, an individualized family service plan team shall meet to review the infant's progress, determine eligibility for preschool special education services, and develop the individualized family service plan accordingly. That individualized family service plan team meeting shall be conducted by the local educational agency responsible for the provision of preschool special education services. Representatives of the early education program shall be invited to that meeting.

SEC. 16. Section 56429 of the Education Code is amended to read: 56429. In order to assure the maximum utilization and coordination of local early education services, eligibility for the receipt of funds pursuant to Section 56425, 56427, 56428, or 56728.8 is conditioned upon the approval by the Superintendent of Public Instruction of a local plan for early education services, which approval shall apply for not less than one, nor more than four, years. The local plan shall identify existing public and private early education services, and shall include an interagency plan for the delivery of early education services in accordance with the California Early Intervention Services Act, Title 14 (commencing with Section 95000) of the Government Code.

SEC. 17. Section 56440 of the Education Code is amended to read: 56440. (a) Each special education local plan area shall submit a plan to the superintendent by September 1, 1987, for providing special education and services to individuals with exceptional needs, as defined by the State Board of Education, who are between the ages of three and five years, inclusive, who do not require intensive special education and services but who would be eligible for special education and services under Title II of the Education of the Handicapped Act Amendments of 1986, Public Law 99-457 (20 U.S.C. Secs. 1411, 1412, 1413, and 1419).

(b) The superintendent shall provide for a five-year phase-in of the individuals with exceptional needs qualifying for special education and services under Public Law 99-457, who do not require intensive special education and services, through an application process to be developed by the superintendent.

(c) All individuals with exceptional needs between the ages of three and five years, inclusive, identified in subdivision (a) shall be served by the districts and county offices within each special education local plan area by June 30, 1992, to the extent required under federal law and pursuant to the local plan and application approved by the superintendent.

(d) Individuals with exceptional needs between the ages of three and five years, inclusive, who are identified by the district, special education local plan area, or county office as requiring special education and services, as defined by the State Board of Education, shall be eligible for special education and services pursuant to this part and shall not be subject to any phase-in plan.

(e) In special education local plan areas where individuals with exceptional needs between the ages of three and five, inclusive, who do not require intensive special education and services, are expected to have an increased demand on school facilities as a result of projected growth, pursuant to this chapter, the special education local plan area director shall submit a written report on the impacted local educational agencies to the State Allocation Board by December 1, 1987. The State Allocation Board shall assess the situation and explore ways of resolving the school facilities impaction situation.

(f) The superintendent shall provide technical assistance to local educational agencies in order to help identify suitable alternative instructional settings to alleviate the school facilities impact situation. Alternative instructional settings may include, but are not limited to, state preschool programs, or the child's home. Nothing in this chapter shall cause the displacement of children currently enrolled in these settings.

(g) Special education facilities operated by local educational agencies serving children under this chapter and Chapter 4.4 (commencing with Section 56425) shall meet all applicable standards relating to fire, health, sanitation, and building safety, but are not subject to Chapter 3.4 (commencing with Section 1596.80), Chapter 3.5 (commencing with Section 1596.90), and Chapter 3.6 (commencing with Section 1597.30) of Division 2 of the Health and Safety Code.

(h) This chapter applies to all individuals with exceptional needs between the ages of three and five years, inclusive.

SEC. 18. Section 56441.11 of the Education Code is amended to read:

56441.11. (a) Notwithstanding any other provision of law or regulation, the special education eligibility criteria in subdivision (b) shall apply to preschool children, between the ages of three and five years.

(b) A preschool child, between the ages of three and five years, qualifies as a child who needs early childhood special education services if the child meets the following criteria:

(1) Is identified as having one of the following disabling conditions, as defined in Section 300.7 of Title 34 of the Code of Federal Regulations, or an established medical disability, as defined in subdivision (d):

- (A) Autism.
- (B) Deaf-blindness.
- (C) Deafness.
- (D) Hearing impairment.
- (E) Mental retardation.
- (F) Multiple disabilities.
- (G) Orthopedic impairment.
- (H) Other health impairment.
- (I) Serious emotional disturbance.

- (J) Specific learning disability.
 - (K) Speech or language impairment in one or more of voice, fluency, language and articulation.
 - (L) Traumatic brain injury.
 - (M) Visual impairment.
 - (N) Established medical disability.
 - (2) Needs specially designed instruction or services as defined in Sections 56441.2 and 56441.3.
 - (3) Has needs that cannot be met with modification of a regular environment in the home or school, or both, without ongoing monitoring or support as determined by an individualized education program team pursuant to Section 56431.
 - (4) Meets eligibility criteria specified in Section 3030 of Title 5 of the California Code of Regulations.
 - (c) A child is not eligible for special education and services if the child does not otherwise meet the eligibility criteria and his or her educational needs are due primarily to:
 - (A) Unfamiliarity with the English language.
 - (B) Temporary physical disabilities.
 - (C) Social maladjustment.
 - (D) Environmental, cultural, or economic factors.
 - (d) For purposes of this section, "established medical disability" is defined as a disabling medical condition or congenital syndrome that the individualized education program team determines has a high predictability of requiring special education and services.
 - (e) When standardized tests are considered invalid for children between the ages of three and five years, alternative means, for example, scales, instruments, observations, and interviews shall be used as specified in the assessment plan.
 - (f) In order to implement the eligibility criteria in subdivision (b), the superintendent shall:
 - (1) Provide for training in developmentally appropriate practices, alternative assessment and placement options.
 - (2) Provide a research-based review for developmentally appropriate application criteria for young children.
 - (3) Provide program monitoring for appropriate use of the eligibility criteria.
 - (g) If legislation is enacted mandating early intervention services to infants and toddlers with disabilities pursuant to the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), the superintendent shall reconsider the eligibility criteria for preschool children, between the ages of three and five years, and recommend appropriate changes to the Legislature.
- SEC. 19. Section 56505 of the Education Code is amended to read: 56505. (a) The state hearing shall be conducted in accordance with regulations adopted by the board.
- (b) The hearing shall be held at a time and place reasonably convenient to the parent and the pupil.
 - (c) The hearing shall be conducted by a person knowledgeable in

the laws governing special education and administrative hearings pursuant to Section 56504.5. The hearing officer shall encourage the parties to a hearing to consider the option of mediation as an alternative to a hearing.

(d) During the pendency of the hearing proceedings, including the actual state level hearing, the pupil shall remain in his or her present placement unless the public agency and the parent agree otherwise.

(e) Any party to the hearing held pursuant to this section shall be afforded the following rights consistent with state and federal statutes and regulations:

(1) The right to be accompanied and advised by counsel and by individuals with special knowledge or training relating to the problems of children and youth with disabilities.

(2) The right to present evidence, written arguments, and oral arguments.

(3) The right to confront, cross-examine, and compel the attendance of witnesses.

(4) The right to a written or electronic verbatim record of the hearing.

(5) The right to written findings of fact and decisions. The findings and decisions shall be made available to the public consistent with the requirements of subsection (c) of Section 1417 of Title 20 of the United States Code and shall also be transmitted to the Advisory Commission on Special Education pursuant to subsection (d) of Section 1415 of Title 20 of the United States Code.

(6) The right to be informed by the other parties to the hearing, at least 10 days prior to the hearing, as to what those parties believe are the issues to be decided at the hearing and their proposed resolution of those issues. Upon the request of a parent who is not represented by an attorney, the agency responsible for conducting hearings shall provide a mediator to assist the parent in identifying the issues and the proposed resolution of the issues.

(7) The right to prohibit the introduction of any evidence at the hearing that has not been disclosed to the party at least five days before the hearing.

(f) The hearing conducted pursuant to this section shall be completed and a written, reasoned decision mailed to all parties to the hearing within 45 days from the receipt by the superintendent of the request for a hearing. Either party to the hearing may request the hearing officer to grant an extension. The extension shall be granted upon a showing of good cause. Any extension shall extend the time for rendering a final administrative decision for a period only equal to the length of the extension.

(g) The hearing conducted pursuant to this section shall be the final administrative determination and binding on all parties.

(h) In decisions relating to the placement of individuals with exceptional needs, the person conducting the state hearing shall consider cost, in addition to all other factors that are considered.

(i) Nothing in this chapter shall preclude a party from exercising the right to appeal the decision to a court of competent jurisdiction. An appeal shall be made within 90 days of receipt of the hearing decision. During the pendency of any administrative or judicial proceeding conducted pursuant to Chapter 5 (commencing with Section 56500), unless the public education agency and the parents of the child agree otherwise, the child involved in the hearing shall remain in his or her present educational placement.

SEC. 20. Section 56822 of the Education Code is amended to read:
56822. Sound recordings, large print, braille, and other specialized technology, media, or materials purchased, instructional materials transcribed from regular print into special media, and special supplies and equipment purchased for individuals with exceptional needs for which state or federal funds were allowed are property of the state and shall be available for use by individuals with exceptional needs throughout the state as the board shall provide.

SEC. 21. Section 60241 of the Education Code is amended to read:
60241. The fund shall be administered by the State Department of Education under policies established by the state board. The state board shall encumber part of the fund to:

(a) Pay for the costs of braille and large print textbooks to be furnished for pupils with visual impairments pursuant to Sections 60312 and 60313.

(b) Pay for the costs of warehousing and transporting textbooks acquired for the purposes of Sections 60281 and 60310. These costs shall not exceed 10 percent of the cost of each textbook printed by the Department of General Services.

(c) Establish, commencing with the 1974-75 fiscal year, a reserve account, not to exceed two hundred thousand dollars (\$200,000), to pay for the cost of:

(1) Acquisition of instructional materials, including those ordered for purchase by persons and entities pursuant to subdivisions (a) and (b) of Section 60310.

(2) Replacement of instructional materials, obtained by a school district with its credit or allowance, that are lost or destroyed by reason of fire, theft, natural disaster, or vandalism.

SEC. 22. Section 60281 of the Education Code is amended to read:
60281. The state board may acquire instructional materials included in any list adopted by the board for use in the elementary schools, by any one or more of the following means determined by the board to be in the best interests of the state:

(a) Purchase them directly from the publisher or manufacturer.
(b) Compile them, or cause them to be compiled, and manufacture them.

(c) Lease films, dies, maps, engravings, or copyright or patented matter for use in manufacturing them.

(d) Contract for, or lease copyrights for use in compiling, printing, or publishing them.

(e) Provide for either the payment of royalties or for the leasing

of films or both, or for making the whole or any part of the material and do any or all things that may be necessary for the purpose of procuring materials for use in the elementary schools.

(f) Arrange for the printing of textbooks by the Department of General Services.

(g) Produce or contract for the production of textbooks in braille, large print, recordings, or other media for the use of pupils with disabilities, including the visually impaired.

For the purposes of acquiring the various parts of any instructional materials system adopted pursuant to Section 60200, the state board may use any one or a combination of the foregoing means in order to acquire all or any part of the instructional materials system.

SEC. 23. Section 60282 of the Education Code is amended to read: 60282. Each contract executed for the procurement of instructional materials shall include the right of the state to transcribe and reproduce the material in braille, large print, recordings or other media for use by pupils with disabilities, including the visually impaired, who are unable to use the book in conventional print and form. This right shall include those corrections, revisions and other modifications as may be necessary.

SEC. 24. Section 60283 of the Education Code is amended to read: 60283. Each contract executed pursuant to Section 60282 shall specify that the royalty, if required, for the materials to be procured shall be that specified in the contract for the regular materials designed for pupils who are not disabled. Any contract for the purchase of instructional materials shall establish a royalty, if required, for permission to transcribe or reproduce in braille, large print, recordings or other media for use by pupils with disabilities, including the visually impaired.

SEC. 25. Section 60294 of the Education Code is amended to read: 60294. The Superintendent of Public Instruction shall arrange for the warehousing and shipping of all instructional materials for pupils with disabilities acquired pursuant to Section 60281 in the most economical and timely manner.

SEC. 26. Section 60312 of the Education Code is amended to read: 60312. The state board shall make available copies of adopted textbooks and other state adopted print materials in large print and other accessible media for pupils enrolled in the elementary schools whose visual acuity is 20/70 or less or who have other visual impairments making the use of these textbooks and alternate formats necessary. The state board shall make available adopted textbooks in braille characters for pupils enrolled in elementary schools whose corrected visual acuity is 20/200 or less.

SEC. 27. Section 60313 of the Education Code is amended to read: 60313. The Superintendent of Public Instruction shall establish and maintain a central clearinghouse-depository and duplication center for specialized textbooks, reference books, recordings, study materials, tangible apparatus, equipment, and other similar items for use by pupils with visual impairments enrolled in the public schools

of California who may require their use as shall be determined by the state board.

The instructional materials in specialized media shall be available to other pupils with disabilities enrolled in the public schools of California who are unable to benefit from the use of conventional print copies of textbooks, reference books, and other study materials in a manner determined by the state board.

The specialized textbooks, reference books, recordings, study materials, tangible apparatus, equipment, and other similar items shall be available for use by students with visual impairments enrolled in the public community colleges, the California State University, and the University of California.

CHAPTER 1289

An act to add and repeal Section 97.23 of the Revenue and Taxation Code, relating to special districts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. Section 97.23 is added to the Revenue and Taxation Code, to read:

97.23. (a) Notwithstanding Section 97.03 as amended by Chapter 155 of the Statutes of 1994, or any successor to that section, the Chino Basin Municipal Water District may maintain any existing commitment of a stream of property tax revenues to service revenue bonds that were issued, in accordance with Chapter 1279 of the Statutes of 1993, on or after the effective date of that act and prior to the effective date of Chapter 155 of the Statutes of 1994.

(b) This section shall remain in effect only until the date upon which those revenue bonds described in subdivision (a) have been fully amortized, and as of that date is repealed.

SEC. 2. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the critically severe fiscal difficulties being suffered with respect to revenue bond obligations by the Chino Basin Municipal Water District.

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

In order to timely and appropriately safeguard those necessary revenue streams that have been committed by the Chino Basin

Municipal Water District to the servicing of those debt instruments issued between the effective dates of Chapter 1279 of the Statutes of 1993 and Chapter 155 of the Statutes of 1994, it is necessary that this act take effect immediately.

CHAPTER 1290

An act to amend Section 230.8 of the Labor Code, relating to employees.

[Approved by Governor September 30, 1994. Filed with
Secretary of State September 30, 1994.]

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

SECTION 1. This act shall be known and may be cited as the "Family School Partnership Act."

SEC. 2. The Legislature finds and declares the following:

(a) It is crucial for parents to be involved in their children's education, both in the school and in the home.

(b) The evidence is beyond dispute that parent involvement improves pupil achievement.

(c) Pupils whose parents are involved in their formal education have better grades, test scores, long-term academic achievement, attitudes, and behavior.

(d) Pupils' reading scores and study habits in particular improve when parental help is provided.

(e) Parents represent the single most important citizen group in terms of school support.

(f) The building of a network of parent volunteers to support children in public schools is central to the well-being of the entire community.

(g) More than 60 percent of the women of childbearing age in the United States are in the work force.

(h) Because of the changing roles of men and women in the work force and the family, and the need to promote stability and economic security in families, both men and women should have the option of taking leave for purposes relating to their children's education.

SEC. 3. Section 230.8 of the Labor Code is amended to read:

230.8. (a) (1) No employer who employs 25 or more employees working at the same location shall discharge or in any way discriminate against an employee who is a parent, guardian, or grandparent having custody, of one or more children in kindergarten or grades 1 to 12, inclusive, for taking off up to 40 hours each school year, not exceeding eight hours in any calendar month of the school year, to participate in activities of the school of any child, if the employee, prior to taking the time off, gives reasonable notice to the employer of the planned absence of the employee.

(2) If both parents of a child are employed by the same employer at the same work site, the entitlement under paragraph (1) of a planned absence as to that child applies, at any one time, only to the parent who first gives notice to the employer, such that the other parent may take a planned absence simultaneously as to that same child under the conditions described in paragraph (1) only if he or she obtains the employer's approval for the requested time off.

(b) (1) The employee shall utilize existing vacation, personal leave, or compensatory time off for purposes of the planned absence authorized by this section, unless otherwise provided by a collective bargaining agreement entered into before January 1, 1995, and in effect on that date. An employee also may utilize time off without pay for this purpose, to the extent made available by his or her employer. The entitlement of any employee under this section shall not be diminished by any collective bargaining agreement term or condition that is agreed to on or after January 1, 1995.

(2) Notwithstanding paragraph (1), in the event that all permanent, full-time employees of an employer are accorded vacation during the same period of time in the calendar year, an employee of that employer may not utilize that accrued vacation benefit at any other time for purposes of the planned absence authorized by this section.

(c) The employee, if requested by the employer, shall provide documentation from the school as proof that he or she participated in school activities on a specific date and at a particular time. For purposes of this subdivision, "documentation" means whatever written verification of parental participation the school deems appropriate and reasonable.

(d) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against in terms and conditions of employment by his or her employer because the employee has taken time off to participate in school activities as described in this section shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law shall be subject to a civil penalty in an amount equal to three times the amount of the employee's lost wages and work benefits.

CHAPTER 1291

An act to amend Sections 25123.3, 25200.3, 25201, and 25201.5 of, and to add Section 25201.13 to, the Health and Safety Code, relating to hazardous waste.

[Became law without Governor's signature. Filed with Secretary of State October 4, 1994.]

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

SECTION 1. Section 25123.3 of the Health and Safety Code is amended to read:

25123.3. (a) For purposes of this section, the following terms have the following meaning:

(1) "Liquid hazardous waste" means a hazardous waste that meets the definition of free liquids, as specified in Section 66260.10 of Title 22 of the California Code of Regulations, as that section read on January 1, 1994.

(2) "Transfer facility" means any offsite facility which is related to the transportation of hazardous waste, including, but not limited to, loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

(b) "Storage facility" means a hazardous waste facility at which the hazardous waste meets any of the following requirements:

(1) The hazardous waste is held in containers or tanks for greater than 90 days at an onsite facility.

(2) (A) Liquid hazardous waste is held at an onsite facility in tanks for any period of time and the quantity of the liquid hazardous waste in any individual tank exceeds 5,000 gallons or the aggregate amount of liquid hazardous waste stored in tanks at the facility exceeds 50,000 gallons.

(B) The quantities of liquid hazardous waste specified in subparagraph (A) shall not include any of the following:

(i) Liquid hazardous waste stored in a portable tank used for a period of not more than 60 calendar days at an onsite facility.

(ii) Liquid hazardous waste accumulated onsite which has been generated from onsite maintenance operations which occur less frequently than annually.

(iii) Liquid hazardous waste which is held, as part of the ongoing treatment of that waste, in a tank which is authorized by the department to perform that treatment for that waste.

(iv) Liquid hazardous waste held in a tank pursuant to subdivision (o) of Section 25200.3 or subdivision (i) of Section 25201.5 if the liquid hazardous waste is held in a tank for not more than 90 days or an additional 90 days upon approval of the department.

(3) The hazardous waste is held in containers or tanks for any

period of time at an offsite facility which is not a transfer facility.

(4) (A) Except as provided in subparagraph (B), the hazardous waste is held in containers or tanks at a transfer facility for periods greater than 144 hours.

(B) The department may extend the period of time specified in subparagraph (A) for hazardous waste which is generated as a result of an emergency release and which is collected and temporarily stored by emergency rescue personnel, as defined in Section 25501, or by a response action contractor, as defined in Section 25364.6, upon the request of emergency rescue personnel or the response action contractor. Notwithstanding any other provision of law, a transfer facility which holds hazardous waste for periods greater than 144 hours pursuant to this subparagraph shall not be classified as a storage facility.

(5) The liquid hazardous waste is held at an onsite facility in any individual container of less than 5,000 gallons for any period of time, and the aggregate amount of liquid hazardous waste stored in those containers, exclusive of tanks, at the facility exceeds 50,000 gallons. For purposes of this paragraph, this quantity does not include liquid hazardous waste being accumulated at an initial accumulation point pursuant to subdivision (d).

(6) The hazardous waste is held at any facility for any period of time in a manner other than in a container or tank.

(7) (A) Except as provided in subparagraph (B), the hazardous waste is held at a transfer facility for any period of time and handling occurs.

(B) Notwithstanding subparagraph (A), a transfer facility is not a storage facility if the hazardous waste is held in containers or tanks at a transfer facility for a period of 144 hours or less and no handling occurs, other than the transfer of packed or containerized hazardous waste from one vehicle to another.

(c) The time period for calculating the 90-day period for purposes of paragraph (1) of subdivision (b) begins when the facility has accumulated 100 kilograms of hazardous waste or one kilogram of extremely hazardous waste or acutely hazardous waste. However, if the facility generates more than 100 kilograms of hazardous waste or one kilogram of extremely hazardous waste or acutely hazardous waste during any calendar month, the time period begins when any amount of hazardous waste first begins to accumulate in that month.

(d) Notwithstanding paragraph (1) of subdivision (b), a generator of hazardous waste that accumulates waste onsite is not a storage facility if all of the following requirements are met:

(1) The generator accumulates a maximum of 55 gallons of hazardous waste, one quart of acutely hazardous waste, or one quart of extremely hazardous waste at an initial accumulation point which is at or near the area where the waste is generated and which is under the control of the operator of the process generating the waste.

(2) The generator accumulates the waste in (2) containers other than

tanks.

(3) The generator does not hold the hazardous waste onsite for more than one year from the initial date of accumulation, or 90 days from the date the quantity limitation specified in paragraph (1) of this subdivision is reached, whichever occurs first.

(4) The generator labels any container used for the accumulation of hazardous waste with the initial date of accumulation and with the words "hazardous waste" or other words that identify the contents of the container.

(5) Within three days of reaching any applicable quantity limitation specified in paragraph (1), the generator labels the container holding the accumulated hazardous waste with the date the quantity limitation was reached and either transports the waste offsite or holds the waste onsite and complies with the regulations adopted by the department establishing requirements for personnel training, preparedness and prevention, and contingency plans and emergency procedures applicable to storage facilities.

(6) The generator complies with regulations adopted by the department pertaining to the use and management of containers and any other regulations adopted by the department to implement this subdivision.

(7) The generator does not otherwise meet the definition of a storage facility.

SEC. 2. Section 25200.3 of the Health and Safety Code is amended to read:

25200.3. (a) Notwithstanding Section 25201, a generator who uses the following methods for treating RCRA or non-RCRA hazardous waste in tanks or containers, which is generated onsite, and which do not require a hazardous waste facility permit under the federal act, shall, for those activities, be deemed to be operating pursuant to a grant of conditional authorization without obtaining a hazardous waste facility permit or other grant of authorization and a generator is deemed to be granted conditional authorization upon notification to the department, as specified in subdivision (f) if the treatment complies with the applicable requirements of this section:

(1) The treatment of aqueous wastes which are hazardous solely due to the presence of inorganic constituents, except asbestos, listed in subparagraph (B) of paragraph (1) and subparagraph (A) of paragraph (2) of subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations, and which contain not more than 1400 ppm total of these constituents, using the following treatment technologies:

(A) Phase separation, including precipitation, by filtration, centrifugation, or gravity settling, including the use of demulsifiers and flocculants in those processes.

(B) Ion exchange, including metallic replacement.

(C) Reverse osmosis.

(D) Adsorption.

(E) pH adjustment of aqueous waste with a pH of between 2.0 and

12.5.

(F) Electrowinning of solutions, if those solutions do not contain hydrochloric acid.

(G) Reduction of solutions which are hazardous solely due to the presence of hexavalent chromium, to trivalent chromium with sodium bisulfite, sodium metabisulfite, sodium thiosulfite, ferrous chloride, ferrous sulfate, ferrous sulfide, or sulfur dioxide, provided that the solution contains less than 750 ppm of hexavalent chromium.

(2) Treatment of aqueous wastes which are hazardous solely due to the presence of organic constituents listed in subparagraph (B) of paragraph (1), or subparagraph (B) of paragraph (2), of subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations and which contain not more than 750 ppm total of those constituents, using either of the following treatment technologies:

(A) Phase separation by filtration, centrifugation, or gravity settling, but excluding super critical fluid extraction.

(B) Adsorption.

(3) Treatment of wastes which are sludges resulting from wastewater treatment, solid metal objects, and metal workings which contain or are contaminated with, and are hazardous solely due to the presence of, constituents, except asbestos, listed in subparagraph (B) of paragraph (1) of, and subparagraph (A) of paragraph (2) of, subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations, or treatment of wastes which are dusts which contain, or are contaminated with, and are hazardous solely due to the presence of, not more than 750 ppm total of those constituents, except asbestos, listed in subparagraph (B) of paragraph (1) of, and subparagraph (A) of paragraph (2) of, subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations, using any of the following treatment technologies:

(A) Physical processes which constitute treatment only because they change the physical properties of the waste, such as filtration, centrifugation, gravity settling, grinding, shredding, crushing, or compacting.

(B) Drying to remove water.

(C) Separation based on differences in physical properties, such as size, magnetism, or density.

(4) Treatment of alum, gypsum, lime, sulfur, or phosphate sludges, using either of the following treatment technologies:

(A) Drying to remove water.

(B) Phase separation by filtration, centrifugation, or gravity settling.

(5) Treatment of wastes listed in Section 66261.120 of Title 22 of the California Code of Regulations, which meet the criteria and requirements for special waste classification in Section 66261.122 of Title 22 of the California Code of Regulations, using any of the following treatment technologies, if the waste is hazardous solely due to the presence of constituents, except asbestos, listed in subparagraph (B) of paragraph (1) of, and subparagraph (A) of

paragraph (2) of, subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations and the waste contains not more than 750 ppm total of those constituents:

(A) Drying to remove water.

(B) Phase separation by filtration, centrifugation, or gravity settling.

(C) Screening to separate components based on size.

(D) Separation based on differences in physical properties, such as size, magnetism, or density.

(6) Treatment of wastes, except asbestos, which have been classified by the department as special wastes pursuant to Section 66261.24 of Title 22 of the California Code of Regulations, using any of the following treatment technologies, if the waste is hazardous solely due to the presence of constituents, except asbestos, listed in subparagraph (B) of paragraph (1) of, and subparagraph (A) of paragraph (2) of, subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations and the waste contains not more than 750 ppm of those constituents:

(A) Drying to remove water.

(B) Phase separation by filtration, centrifugation, or gravity settling.

(C) Magnetic separation.

(7) Treatment of soils which are hazardous solely due to the presence of metals listed in subparagraph (A) of paragraph (2) of subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations, using either of the following treatment technologies:

(A) Screening to separate components based on size.

(B) Magnetic separation.

(8) Except as provided in Section 25201.5, treatment of oil mixed with water and oil/water separation sludges, using any of the following treatment technologies:

(A) Phase separation by filtration, centrifugation, or gravity settling, but excluding supercritical fluid extraction. This phase separation may include the use of demulsifiers and flocculants in those processes, even if the processes involve the application of heat, if the heat is applied in totally enclosed tanks and containers, and if it does not exceed 160 degrees Fahrenheit, or any lower temperature which may be set by the department.

(B) Separation based on differences in physical properties, such as size, magnetism, or density.

(C) Reverse osmosis.

(9) Neutralization of acidic or alkaline wastes that are hazardous only due to corrosivity or toxicity that results only from the acidic or alkaline material, in elementary neutralization units, as defined in Section 66260.10 of Title 22 of the California Code of Regulations, if the wastes contain less than 10 percent acid or base constituents by weight, and are treated in tanks or containers and piping, constructed of materials compatible with the range of temperatures and pH levels, and subject to appropriate pH and temperature

controls. If the waste contains more than 10 percent acid or base constituents by weight, the volume treated in a single batch at any one time shall not exceed 500 gallons.

(10) Processing of more than 500 gallons per month for disposal of effluent hazardous waste from the processing of silver halide-based imaging products, if the treatment also complies with the requirements of paragraph (6) of subdivision (c) of Section 25201.5, with the exception of the volume limit in subparagraph (D) of paragraph (6) of subdivision (c) of Section 25201.5.

(11) Treatment of spent cleaners and conditioners which are hazardous solely due to the presence of copper or copper compounds, subject to the following:

(A) The following requirements are met, in addition to all other requirements of this section:

(i) The waste stream does not contain more than 5000 ppm total copper.

(ii) The generator does not generate for treatment any more than 1000 gallons of the waste stream per month.

(iii) The treatment technologies employed are limited to those set forth in paragraph (1) for metallic wastes.

(iv) The generator keeps records documenting compliance with this subdivision, including records indicating the volume and concentration of wastes treated, and the management of related solutions which are not cleaners or conditioners.

(B) Cleaners and conditioners, for purposes of this paragraph, are solutions containing surfactants and detergents to remove dirt and foreign objects. Cleaners and conditioners do not include microetch, etchant, plating, or metal stripping solutions or solutions containing oxidizers, or any cleaner based on organic solvents.

(C) A grant of conditional authorization under this paragraph shall expire on January 1, 1995, unless extended by the department pursuant to this section.

(D) The department shall evaluate the treatment activities described in this paragraph and shall designate, by regulation, not later than January 1, 1995, those activities eligible for conditional authorization and those activities subject to permit-by-rule. In adopting regulations under this subparagraph, the department shall consider all of the following:

(i) The volume of waste being treated.

(ii) The concentration of the hazardous waste constituents.

(iii) The characteristics of the hazardous waste being treated.

(iv) The risks of the operation, and breakdown, of the treatment process.

(12) Any wastestream technology combination certified by the department, pursuant to Section 25200.1.5, as suitable for authorization pursuant to this section, that operates pursuant to the conditions imposed on that certification.

(b) Any treatment performed pursuant to this section shall comply with all of the following, except as to generators, who are

treating hazardous waste pursuant to paragraph (12) of subdivision (a), who shall also comply with any additional conditions of the specified certification if those conditions are different from those set forth in this subdivision:

(1) The total volume of hazardous waste treated in the unit in any calendar month shall not exceed 5,000 gallons or 45,000 pounds, whichever is less, unless the waste is a dilute aqueous waste described in paragraph (1), (2), or (9) of subdivision (a) or oily wastes as described in paragraph (8) of subdivision (a). The department may by regulation impose volume limitations on wastes which have no limitations under this section, as may be necessary to protect human health and the environment.

(2) The treatment is conducted in tanks or containers.

(3) The treatment does not consist of the use of any of the following:

(A) Chemical additives, except for pH adjustment, chrome reduction, oil/water separation, and precipitation with the use of flocculants, as allowed by this section.

(B) Radiation.

(C) Electrical current except in the use of electrowinning, as allowed by this section, or in the processing of silver halide effluent pursuant to paragraph (10) of subdivision (a).

(D) Pressure, except for reverse osmosis, filtration, and crushing, as allowed by this section.

(E) Application of heat, except for drying to remove water or demulsification, as allowed by this section.

(4) All treatment residuals and effluents are managed and disposed of in accordance with applicable federal, state, and local requirements.

(5) The treatment process does not do either of the following:

(A) Result in the release of hazardous waste into the environment as a means of treatment or disposal.

(B) Result in the emission of volatile hazardous waste constituents or toxic air contaminants, unless the emission is in compliance with the rules and regulations of the local air pollution control or air quality management district.

(6) The generator unit complies with any additional requirements set forth in regulations adopted pursuant to this section.

(c) A generator or person owning or operating pursuant to subdivision (a) shall comply with all of the following requirements:

(1) Except as provided in paragraph (4), the generator shall comply with the standards applicable to generators specified in Chapter 12 (commencing with Section 66262.10) of Division 4.5 of Title 22 of the California Code of Regulations and with the applicable requirements in Sections 66265.12, 66265.14, and 66265.17 of Title 22 of the California Code of Regulations.

(2) The generator shall comply with Section 25202.9 by making an annual waste minimization certification.

(3) The generator shall comply with the environmental assessments procedures required pursuant to subdivisions (a) to (e), inclusive, of Section 25200.14. If that assessment reveals that there is contamination resulting from the release of hazardous waste or constituents from a solid waste management unit or a hazardous waste management unit at the generator's facility, regardless of the time at which waste was released, the generator shall take every action necessary to expeditiously remediate that contamination, unless the generator provides documentation to the department and the local agency which demonstrates, to a degree of certainty which conforms to generally accepted professional standards, that the contamination does not present a substantial hazard to human health or the environment. If a facility is remediating the contamination pursuant to, and in compliance with the provisions of, an order issued by a California regional water quality control board or other state or federal environmental enforcement agency, that remediation shall be adequate for the purposes of complying with this section, as the remediation pertains to the jurisdiction of the ordering agency. This paragraph does not limit the department's authority pursuant to Section 25187 as may be necessary to protect human health or the environment.

(4) The generator unit shall comply with container and tank standards applicable to non-RCRA wastes, unless otherwise required by federal law, specified in subdivisions (a) and (b) of Section 66264.175 of Title 22 of the California Code of Regulations, as the standards apply to container storage and transfer activities, and to Article 9 (commencing with Section 66265.170) and Article 10 (commencing with Section 66265.190) of Chapter 15 of Division 4.5 of Title 22 of the California Code of Regulations, except for Section 66265.197 of Title 22 of the California Code of Regulations.

(A) Unless otherwise required by federal law, ancillary equipment for a tank or container treating hazardous wastes solely pursuant to this section, is not subject to Section 66265.193 of Title 22 of the California Code of Regulations, if the ancillary equipment's integrity is attested to, pursuant to Section 66265.191 of Title 22 of the California Code of Regulations, every two years from the date that retrofitting requirements would otherwise apply.

(B) The Legislature hereby finds and declares that in the case of underground, gravity-pressured sewer systems, integrity testing is often not feasible. Therefore, on or before June 30, 1994, the department shall, by regulation, determine the best feasible leak detection measures which are sufficient to assure that underground gravity-pressured sewer systems, for which it is not feasible to conduct integrity testing, do not leak. After July 1, 1994, if it is not feasible for an operator's ancillary equipment, or a portion thereof, to undergo integrity testing, the operator is not subject to Section 66265.193 of Title 22 of the California Code of Regulations, if the operator implements the best feasible leak detection measures which are determined to be sufficient by the department in those

regulations, and those leak detection measures do not reveal any leaks emanating from the operator's ancillary equipment. Any ancillary equipment found to leak shall be retrofitted by the operator to meet the secondary containment standards of Section 66265.196 of Title 22 of the California Code of Regulations.

(5) The generator shall prepare and maintain a written inspection schedule and a log of inspections conducted.

(6) The generator shall prepare and maintain written operating instructions and a record of the dates, concentrations, amounts, and types of waste treated. Records maintained to comply with the state, federal, or local programs may be used to satisfy this requirement, to the extent that those documents substantially comply with the requirements of this section. The operating instructions shall include, but not be limited to, directions regarding all of the following:

(A) How to operate the treatment unit and carry out waste treatment.

(B) How to recognize potential and actual process upsets and respond to them.

(C) When to implement the contingency plan.

(D) How to determine if the treatment has been efficacious.

(E) How to address the residuals of waste treatment.

(7) The generator shall maintain adequate records to demonstrate to the department that the requirements and conditions of this section are met, including compliance with all applicable pretreatment standards and with all applicable industrial waste discharge requirements issued by the agency operating the publicly owned treatment works into which the wastes are discharged. The records shall be maintained onsite for a period of five years.

(8) The generator shall treat only waste which is generated onsite. For purposes of this chapter, a residual material from the treatment of a hazardous waste generated offsite is not a waste that has been generated onsite.

(9) The generator shall submit a fee to the State Board of Equalization in the amount required by Section 25205.14. The generator shall submit that fee within 30 days of the date that the fee is assessed by the State Board of Equalization.

(10) Notwithstanding any other provision of law, the generator shall submit the fee required by Section 25205.14 for the 1993 reporting period to the department as part of, and at the same time as, the notification required pursuant to subdivision (f) that is due on April 1, 1993. Any notification not accompanied by payment of the fee is invalid and shall not result in a grant of conditional authorization.

(d) Notwithstanding any other provision of law, the following activities are ineligible for conditional authorization:

(1) Treatment in any of the following units:

(A) Landfills.

- (B) Surface impoundments.
- (C) Injection wells.
- (D) Waste piles.
- (E) Land treatment units.

(2) Commingling of hazardous waste with any hazardous waste that exceeds the concentration limits or pH limits specified in subdivision (a), or diluting hazardous waste in order to meet the concentration limits or pH limits specified in subdivision (a).

(3) Treatment using a treatment process not specified in subdivision (a).

(4) Pretreatment or posttreatment activities not specified in subdivision (a).

(5) Treatment of any waste which is reactive or extremely hazardous.

(e) The department may, upon a petition being presented, adopt regulations which are not emergency regulations to consider granting a conditional authorization to a new treatment technology. An operator of a new technology which is granted a conditional authorization is subject to subdivisions (f), (g), (h), (i), (j), (k), and (l) pursuant to the requirements of paragraph (3) of subdivision (c). For the purposes of this subdivision, "new technology" means a hazardous waste treatment technology which, as it is applied to a specific waste stream, is not identified in this section or Section 25201.5 or in the department's regulations relating to permit-by-rule or hazardous waste facility permits. In order to conditionally authorize a new technology, the department shall find all of the following:

(1) The hazardous waste to be treated is defined by paragraph (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), or (11) of subdivision (a).

(2) The new treatment technology complies with all of the conditions of subdivision (b).

(3) The generator complies with subdivision (c).

(4) The treatment technology does not violate paragraph (1), (2), or (5) of subdivision (d).

(5) The new treatment technology poses no greater risk to the public health and the environment than those technologies specifically made eligible for conditional authorization by this section.

(f) Any generator operating pursuant to a grant of conditional authorization under this section shall notify by certified mail, with return receipt requested, the department and the local health officer or other local public officer designated by the director pursuant to Section 25180 on or before April 1, 1993, or for a generator commencing the first treatment of hazardous waste pursuant to this section, not less than 60 days prior to commencing the first treatment of that waste pursuant to this section, whichever date is later. Each notification shall be completed, dated, and signed according to the requirements of Section 66270.11 of Title 22 of the California Code

of Regulations, as those requirements that were in effect on January 1, 1992, and apply to hazardous waste facilities permit applications, shall be on a form prescribed by the department, and shall include, but not be limited to, all of the following information:

(1) The name, identification number, site address, mailing address, and telephone number of the generator to whom the conditional authorization is granted.

(2) A description of the physical characteristics and chemical composition of the hazardous waste to which the conditional authorization applies.

(3) A description of the hazardous waste treatment activity to which the conditional authorization applies, including the basis for determining that a hazardous waste facility permit is not required under the federal act.

(4) A description of the characteristics and management of any treatment residuals.

(5) Documentation of any convictions, judgments, settlements, or orders resulting from an action by any local, state, or federal environmental or public health enforcement agency concerning the operation of the facility within the last three years, as the documents would be available under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) or the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of the Civil Code). For purposes of this paragraph, a notice of violation for any local, state, or federal agency does not constitute an order and a generator is not required to report the notice unless the violation is not corrected and the notice becomes a final order.

(6) A description of the hazardous waste storage tanks as described in subdivision (o). A generator shall have until May 1, 1995, to make an amended notification containing this information for existing storage tanks.

(g) Any generator operating pursuant to a grant of conditional authorization shall comply with all regulations adopted by the department relating to generators of hazardous waste.

(h) Upon terminating operation of any treatment process or unit conditionally authorized pursuant to this section, the generator conducting treatment pursuant to this section shall remove or decontaminate all waste residues, containment system components, soils, and other structures or equipment contaminated with hazardous waste from the unit. The removal of the unit from service shall be conducted in a manner that does both of the following:

(i) Minimizes the need for further maintenance.

(ii) Eliminates the escape of hazardous waste, hazardous constituents, leachate, contaminated runoff, or waste decomposition products to the environment after the treatment process is no longer in operation.

Any generator conducting treatment pursuant to this section who permanently ceases operation of a treatment process or unit that is

conditionally authorized pursuant to this section shall provide written notification to the department and to the local health officer or other local public officer designated by the director pursuant to Section 25180 upon completion of all activities required under this subdivision.

(i) In adopting regulations pursuant to this section, the department may impose any further restrictions or limitations consistent with the conditionally authorized status conferred by this section which are necessary to protect human health and the environment.

(j) The department may revoke any conditional authorization granted pursuant to this section. The department shall base a revocation on any one of the causes set forth in subdivision (a) of Section 66270.43 of Title 22 of the California Code of Regulations or in Section 25186, or upon a finding that operation of the facility in question will endanger human health, domestic livestock, wildlife, or the environment. The department shall conduct the revocation of a conditional authorization granted pursuant to this section in accordance with Chapter 21 (commencing with Section 66271.1) of Division 4.5 of Title 22 of the California Code of Regulations and as specified in Section 25186.7.

(k) A generator who would otherwise be subject to this section may contract with the operator of a transportable treatment unit who is operating pursuant to a permit by rule, a standardized permit, or a full state hazardous waste facilities permit to treat the generator's waste. If treatment of the generator's waste takes place under such a contract, the generator is not otherwise subject to the requirements of this section, but shall comply with all other requirements of this chapter that apply to generators. The operator of the transportable treatment unit that performs onsite treatment pursuant to this subdivision shall comply with all requirements applicable to transportable treatment units operating pursuant to a permit-by-rule, as set forth in the regulations adopted by the department.

(l) A generator shall submit an amended notification to the department and the local health officer or other local public officer designated by the director pursuant to Section 25180, in person, or by certified mail, with return receipt requested, on or before April 1, 1993, and within 30 days of any change in operation which necessitates modifying any of the information submitted in the notification required pursuant to subdivision (f). Each amended notification shall be completed, dated, and signed in accordance with the requirements of Section 66270.11 of Title 22 of the California Code of Regulations, as those requirements apply to hazardous waste facilities permit applications.

(m) A person who has submitted a notification to the department pursuant to subdivision (f) shall be deemed to be operating pursuant to this section, and shall be subject to the fee set forth in subdivision (a) of Section 25205.14 until that person submits to the department

in person, or by certified mail, with return receipt requested, a certification that the generator has ceased all treatment activities of hazardous waste streams authorized pursuant to this section in accordance with the requirements of subdivision (h).

(n) The development and publication of the notification form specified in subdivision (f) is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The department shall hold at least one public workshop concerning the development of the notification form.

(o) Notwithstanding paragraph (2) of subdivision (b) of Section 25123.3, a tank used for the purpose of storing hazardous waste which is treated onsite in accordance with this section is not a storage facility for purposes of Section 25123.3, but the hazardous waste shall be subject to all of the applicable requirements of this section.

SEC. 3. Section 25201 of the Health and Safety Code is amended to read:

25201. (a) Except as provided in subdivisions (c) and (d) and in Section 25201.5 or 25201.13, no owner or operator of a storage facility, treatment facility, transfer facility, resource recovery facility, or disposal site shall accept, treat, store, or dispose of a hazardous waste at the facility, area, or site, unless the owner or operator holds a hazardous waste facilities permit or other grant of authorization from the department to use and operate the facility, area, or site.

(b) Except as necessary to comply with Section 25159.18, any person planning to construct a new hazardous waste facility or a new hazardous waste management unit, which would manage RCRA hazardous waste, shall obtain a hazardous waste facilities permit or a permit amendment from the department prior to commencing construction.

(c) A hazardous waste facilities permit is not required for a recycle-only household hazardous waste collection facility operated in accordance with subdivision (b) of Section 25218.8.

(d) A hazardous waste facilities permit is not required for a facility that meets the requirements of Section 13263.2 of the Water Code.

SEC. 4. Section 25201.5 of the Health and Safety Code is amended to read:

25201.5. (a) Notwithstanding any other provision of law, a hazardous waste facility permit is not required for a generator who treats hazardous waste of a total weight of not more than 500 pounds, or a total volume of not more than 55 gallons, in any calendar month, if both of the following conditions are met:

(1) The hazardous waste is not an extremely hazardous waste and is listed in Section 67450.11 of Title 22 of the California Code of Regulations, as in effect on January 1, 1992, as eligible for treatment pursuant to the regulations adopted by the department for operation under a permit-by-rule and the treatment technology used is approved for that waste stream in Section 67450.11 of Title 22 of the California Code of Regulations for treatment under a permit-by-rule.

(2) The generator is not otherwise required to obtain a hazardous waste facility permit or other grant of authorization for any other hazardous waste management activity at the facility.

(b) Notwithstanding any other provision of law, treatment in the following units is ineligible for exemption pursuant to subdivision (a) or (c):

- (1) Landfills.
- (2) Surface impoundments.
- (3) Injection wells.
- (4) Waste piles.
- (5) Land treatment units.
- (6) Thermal destruction units.

(c) Notwithstanding any other provision of law, a hazardous waste facility permit or other grant of authorization is not required to conduct the following treatment activities, if the generator treats the following hazardous waste streams using the treatment technology required by this subdivision:

(1) The generator treats resins mixed in accordance with the manufacturer's instructions.

(2) The generator treats a container of 110 gallons or less capacity, which is not constructed of wood, paper, cardboard, fabric, or any other similar absorptive material, for the purposes of emptying the container as specified by Section 66261.7 of Title 22 of the California Code of Regulations, as revised July 1, 1990, or treats the inner liners removed from empty containers that once held hazardous waste or hazardous material. The generator shall treat the container or inner liner by using the following technologies, if the treated containers and rinseate are managed in compliance with the applicable requirements of this chapter:

(A) The generator rinses the container or inner liner with a suitable liquid capable of dissolving or removing the hazardous constituents which the container held.

(B) The generator uses physical processes, such as crushing, shredding, grinding, or puncturing, that change only the physical properties of the container or inner liner, if the container or inner liner is first rinsed as provided in subparagraph (A) and the rinseate is removed from the container or inner liner.

(3) The generator conducts drying by pressing or by passive or heat-aided evaporation to remove water from wastes classified as special wastes by the department pursuant to Section 66261.124 of Title 22 of the California Code of Regulations.

(4) The generator conducts magnetic separation or screening to remove components from wastes classified as special wastes by the department pursuant to Section 66261.124 of Title 22 of the California Code of Regulations.

(5) The generator neutralizes acidic wastes which are hazardous solely due to corrosivity resulting from the presence of food or food by-products, and alkaline or acidic waste, other than wastes containing nitric acid, at SIC Code Group 20, food and kindred

product facilities, as defined in subdivision (p) of Section 25501, if both of the following conditions are met:

(A) The neutralization process does not result in the emission of volatile hazardous waste constituents or toxic air contaminants.

(B) The neutralization process is required in order to meet discharge or other regulatory requirements.

(6) The generator processes effluent hazardous waste for disposal from the processing of silver halide-based imaging products, if all of the following conditions are met:

(A) The effluent is a hazardous waste solely due to its silver content.

(B) The effluent is treated within 90 days of its generation.

(C) The effluent is treated in a tank or container.

(D) The total influent hazardous waste stream treated does not exceed 500 gallons in any calendar month.

(E) The effluent is treated with a technology or combination of technologies which recover the silver to a level less than 5 mg/l total silver in the final wastewater discharge, or a lower level as may be set by the local publicly owned treatment works.

(7) Except as provided for specific waste streams in Section 25200.3, the generator conducts the separation by gravity of the following, if the activity is conducted in impervious tanks or containers constructed of noncorrosive materials, the activity does not involve the addition of heat or other form of treatment, or the addition of chemicals other than flocculants and demulsifiers, and the activity is managed in compliance with applicable requirements of federal, state, or local agency or treatment works:

(A) The settling of solids from waste where the resulting aqueous stream is not hazardous.

(B) The separation of oil/water mixtures and separation sludges, if the average oil recovered per month is less than 25 barrels.

(8) The generator is a laboratory which is certified by the State Department of Health Services or operated by an educational institution, and treats wastewater generated onsite solely as a result of analytical testing, or is a laboratory which treats less than one gallon of hazardous waste, which is generated onsite, in any single batch, subject to the following:

(A) The wastewater treated is hazardous solely due to corrosivity or toxicity that results only from the acidic or alkaline material, as defined in Section 66260.10 of Title 22 of the California Code of Regulations, or is excluded from the definition of hazardous waste by subparagraph (E) of paragraph (2) of subsection (a) of Section 66261.3 of Title 22 of the California Code of Regulations, or both.

(B) The treatment meets all of the following requirements, in addition to all other requirements of this section:

(i) The treatment complies with all applicable pretreatment requirements.

(ii) Neutralization occurs in elementary neutralization units, as defined in Section 66260.10 of Title 22 of the California Code of

Regulations; wastes to be neutralized do not contain any more than 10 percent acid or base concentration by weight, or any other concentration limit which may be imposed by the department; and vessels and piping for neutralization are constructed of materials that are compatible with the range of temperatures and pH levels, and subject to appropriate pH temperature controls.

(iii) Treatment does not result in the emission of volatile hazardous waste constituents or toxic air contaminants.

(9) The hazardous waste treatment is carried out in a quality control or quality assurance laboratory at a facility that is not an offsite hazardous waste facility and the treatment activity otherwise meet the requirements of paragraph (1) of subdivision (a).

(10) Any wastestream technology combination certified by the department, pursuant to Section 25200.1.5, as suitable for authorization pursuant to this section, that operates pursuant to the conditions imposed on that certification.

(11) The generator uses any technology that is certified by the department pursuant to Section 25200.1.5. as effective for the treatment of formaldehyde or glutaraldehyde solutions used in health care facilities that are operated pursuant to the conditions imposed on the certification and which makes the operation appropriate to this tier. The technology may be certified using a pilot certification process until the department adopts regulations pursuant to Section 25200.1.5. This paragraph shall be operative only until April 11, 1996.

(d) A generator conducting treatment pursuant to subdivision (a) or (c) shall meet all of the following conditions:

(1) The waste being treated is generated onsite, and a residual material from the treatment of a hazardous waste generated offsite is not a waste that has been generated onsite.

(2) The treatment does not require a hazardous waste facilities permit pursuant to the federal act.

(3) The generator prepares and maintains written operating instructions and a record of the dates, amounts, and types of waste treated.

(4) The generator prepares and maintains a written inspection schedule and log of inspections conducted.

(5) The records specified in paragraphs (3) and (4) are maintained onsite for a period of three years.

(6) The generator maintains adequate records to demonstrate that it is in compliance with all applicable pretreatment standards and with all applicable industrial waste discharge requirements issued by the agency operating the publicly owned treatment works into which the wastes are discharged.

(7) (A) The generator submits a notification to the department and to the local health officer or other local public officer authorized to implement this chapter pursuant to Section 25180 on or before April 1, 1993, or if the generator is commencing the first treatment of waste pursuant to this section, not more than 60 days before

commencing treatment of that waste pursuant to this section. The notification shall be completed, dated, and signed in accordance with the requirements of Section 66270.11 of Title 22 of the California Code of Regulations, as those requirements apply to permit applications, shall be on a form prescribed by the department, and shall include, but not be limited to, all of the following information:

(i) The name, identification number, site address, mailing address, and telephone number of the generator to whom the conditional exemption applies.

(ii) A description of the physical characteristics and chemical composition of the hazardous waste to which the conditional exemption applies.

(iii) A description of the hazardous waste treatment activity to which the conditional exemption applies, including, but not limited to, the basis for determining that a hazardous waste permit is not required under the federal act.

(iv) A description of the characteristics and management of any treatment residuals.

(v) A description of the hazardous waste storage tanks as described in subdivision (i). A generator shall have until May 1, 1995, to make an amended notification containing this information for existing storage tanks.

(B) The development and publication of the notification form specified in subparagraph (A) is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The department shall hold at least one public workshop concerning the development of the notification form.

(C) Any notification submitted pursuant to this paragraph shall supersede any prior notice of intent submitted by the same generator in order to obtain a permit-by-rule under the regulations adopted by the department. This subparagraph does not require the department to refund any fees paid for any application in conjunction with the submission of a notice of intent for a permit-by-rule.

(8) (A) Upon terminating operation of any treatment process or unit exempted pursuant to this section, the generator who conducted the treatment shall remove or decontaminate all waste residues, containment system components, soils, and other structures or equipment contaminated with hazardous waste from the unit. The removal of the unit from services shall be conducted in a manner that does both of the following:

(i) Minimizes the need for further maintenance.

(ii) Eliminates the escape of hazardous waste, hazardous constituents, leachate, contaminated runoff, or waste decomposition products to the environment after treatment process is no longer in operation.

(B) Any owner or operator who permanently ceases operation of a treatment process or unit that is conditionally exempted pursuant

to this section shall provide written notification to the department and to the local health officer or other local public officer designated by the director pursuant to Section 25180 upon completion of all activities required under this subdivision.

(9) The waste is managed in accordance with all applicable requirements for generators of hazardous waste under this chapter and the regulations adopted by the department pursuant to this chapter.

(10) The generator submits a fee in the amount required by Section 25205.14. The generator shall submit that fee within 30 days of the date that the fee is assessed by the State Board of Equalization, in the manner specified by Section 43152.10 of the Revenue and Taxation Code.

(11) Notwithstanding any other provision of law, the generator shall submit the fee required by Section 25205.14 for the 1993 reporting period to the department as part of, and at the same time as, the notification required pursuant to paragraph (7) that is due on April 1, 1993. Any notification not accompanied by payment of the fee is invalid and shall not result in a grant of conditional exemption.

(e) (1) Unless otherwise required by federal law, ancillary equipment for a tank or container treating hazardous wastes solely pursuant to this section, is not subject to Section 66265.193 of Title 22 of the California Code of Regulations, if the ancillary equipment's integrity is attested pursuant to Section 62265.191 of Title 22 of the California Code of Regulations every two years from the date that retrofitting requirements would otherwise apply.

(2) The Legislature hereby finds and declares that, in the case of underground, gravity-pressured sewer systems, integrity testing is often not feasible. Therefore, on or before June 30, 1994, the department shall, by regulation, determine the best feasible leak detection measures which are sufficient to ensure that underground gravity-pressured sewer systems, for which it is not feasible to conduct integrity testing, do not leak. On and after July 1, 1994, if it is not feasible for an operator's ancillary equipment, or a portion thereof, to undergo integrity testing, the operator is not subject to Section 66265.193 of Title 22 of the California Code of Regulations, if the operator implements the best feasible leak detection measures that are determined to be sufficient by the department in those regulations, and those leak detection measures do not reveal any leaks emanating from the operator's ancillary equipment. Any ancillary equipment found to leak shall be retrofitted by the operator to meet the full secondary containment standards of Section 66265.196 of Title 22 of the California Code of Regulations.

(f) Nothing in this section shall abridge any authority granted to the department by any other provision of law to impose any further restrictions or limitations upon facilities subject to this section, that the department determines to be necessary to protect human health or the environment.

(g) A generator who would otherwise be subject to this section

may contract with the operator of a transportable treatment unit who is operating pursuant to this section to treat the generator's waste. If treatment of the generator's waste takes place under such a contract, the generator is not otherwise subject to the requirements of this section, but shall comply with all other requirements of this chapter that apply to generators. The operator of the transportable treatment unit shall comply with all of the applicable requirements of this section and, for purposes of this section, the operator of the transportable treatment unit shall be deemed to be the generator.

(h) A generator conducting activities which are exempt from this chapter pursuant to Section 66261.7 of Title 22 of the California Code of Regulations, as that section read on January 1, 1993, is not required to comply with this section.

(i) Notwithstanding paragraph (2) of subdivision (b) of Section 25123.3, a tank used for the purpose of storing hazardous waste which is treated onsite in accordance with this section is not a storage facility for purposes of Section 25123.3, but the hazardous waste shall be subject to all of the applicable requirements of this section.

SEC. 5. Section 25201.13 is added to the Health and Safety Code, to read:

25201.13. (a) The Legislature hereby finds and declares that demineralization of water is a standard industrial water purification process used by utilities and industry. The regeneration and recycling of ion exchange media used to demineralize water is a continuous, onsite, totally enclosed, automated process, which is exempt from federal permitting requirements. The conditions set forth in subdivision (d) of Section 25201.5 are important to protect the environment by ensuring notification before treatment begins, written operating instructions, inspections, compliance with pretreatment standards, cleanup of terminated units, and recordkeeping to demonstrate compliance. However, those conditions are inapplicable to demineralization units because of the enclosed, automated, continuous technology involved, the very brief period in which treatment occurs, and the lack of any waste residue. An exemption from Section 25201.5 is therefore appropriate.

(b) An owner or operator of an elementary neutralization unit, as defined in Section 66260.10 of Title 22 of the California Code of Regulations, and any storage tank not regulated under the federal act which is an integral part of the demineralizer operation, that neutralizes wastes which are hazardous solely due to corrosivity or toxicity that results only from the acidic or alkaline material, is exempt from this article, including the requirement of obtaining a hazardous waste facilities permit or other grant of authorization from the department, if the wastes result solely from the regeneration of ion exchange media used to demineralize water, do not contain more than 10 percent acid or base concentration by weight, and are treated in vessels and piping constructed of materials that are compatible with the range of temperatures and pH levels, and subject to appropriate pH and temperature controls.

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

CHAPTER 1292

An act to amend the heading of Chapter 4 (commencing with Section 13220) of Part 2 of Division 12 of, to amend Section 13220 of, and to repeal Section 13222 of, the Health and Safety Code, relating to fire protection.

[Became law without Governor's signature. Filed with
Secretary of State October 4, 1994.]

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

SECTION 1. The heading of Chapter 4 (commencing with Section 13220) of Part 2 of Division 12 of the Health and Safety Code is amended to read:

CHAPTER 4. EMERGENCY PROCEDURE INFORMATION

SEC. 2. Section 13220 of the Health and Safety Code is amended to read:

13220. (a) The owner or operator of any of the following buildings shall provide to persons entering those buildings specific emergency procedures to be followed in the event of fire, including procedures for handicapped and nonambulatory persons:

(1) A privately owned high-rise structure, as defined in Section 13210.

(2) An office building two stories or more in height.

(3) An apartment house two stories or more in height that contains three or more dwelling units, and where the front door opens into an interior hallway or an interior lobby area.

(4) A hotel or motel.

(b) In the case of apartment houses, if more than 25 percent of the occupants do not read English, the owner or operator shall provide the emergency procedure information in any language, or languages other than English, understood by at least 25 percent of the occupants.

(c) In the case of hotels motels, and apartment houses,, the emergency procedure information shall be posted in a conspicuous place in every room or apartment house available for rental in the hotel or motel, or apartment house, or, at the option of the hotel or motel operator, or apartment house owner, it shall be provided through the use of brochures, pamphlets, videotapes, or other means pursuant to regulations adopted by the State Fire Marshal.

(d) In the case of high-rise structures and office buildings, the emergency procedure information shall be made available in an area of the structure that is easily accessible to all persons entering the structure, designated pursuant to the regulations of the State Fire Marshal.

(e) In the case of apartment houses as described in paragraph (3) of subdivision (a), this section shall become operative on July 1, 1995.

(f) An owner, operator, translator, or transcriber who provides emergency procedure information pursuant to this section in good faith and without gross negligence shall be held harmless for any errors in the translation or transcription of that emergency information. This limited immunity shall apply only to errors in the translation or transcription and not to the providing of the information required to be provided pursuant to this section.

SEC. 3. Section 13222 of the Health and Safety Code is repealed.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1293

An act to add Chapter 6 (commencing with Section 13240) to Part 2 of Division 12 of the Health and Safety Code, relating to fire safety.

[Became law without Governor's signature. Filed with
Secretary of State October 4, 1994.]

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

SECTION 1. Chapter 6 (commencing with Section 13240) is added to Part 2 of Division 12 of the Health and Safety Code, to read:

CHAPTER 6. PROPANE STORAGE AND HANDLING

Article 1. General and Definitions

13240. This chapter shall be known, and may be cited, as the Propane Storage and Handling Safety Act.

13240.1. For the purposes of this chapter, the following terms have the following meanings:

(a) "Propane storage system" or "system" means any tank or collection of tanks or other vessels that are intended or used for the commercial purpose of storing more than 18,000 gallons of propane.

(b) "Odorized propane" means propane to which ethyl mercaptan or any other odorizing substance is added.

13241. Prior to January 1, 1996, the State Fire Marshal in conjunction with the Occupational Safety and Health Standards Board shall, after public hearings, adopt by reference the 1992 edition of the NFPA 58 Standard for the Storage and Handling of Liquefied Petroleum Gases, or as this 1992 edition may be subsequently amended or supplemented. It is the intent of the Legislature that the NFPA 58 Standard supersede any inconsistent state standards, including, but not limited to, Sections 470 to 494, inclusive, of Chapter 4 of Title 8 of the California Code of Regulations, except where Sections 470 to 494, inclusive, of Chapter 4 of Title 8 of the California Code of Regulations contain a more stringent safety standard than that contained in the NFPA 58 Standard. Nothing in this section prohibits the board from adopting more stringent standards than those contained in the NFPA 58 Standard.

13242. The State Fire Marshal, in cooperation with the Department of Industrial Relations as appropriate, shall do all of the following:

(a) Prior to January 1, 1997, inspect and certify the safety of all propane storage systems existing on January 1, 1995.

(b) Adopt regulations setting forth safety standards for the siting and construction of fixed propane storage systems. These standards shall be prepared, adopted, and submitted for approval as building standards pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13.

(c) Adopt propane storage system fire safety compliance requirements setting forth propane fire safety handling standards relating to propane storage systems.

(d) Adopt regulations setting forth minimum training and other qualifications for personnel handling propane storage systems, including, but not limited to, continuing education requirements.

(e) Issue operator certificates to persons that comply with minimum training and other qualifications for personnel handling propane storage systems.

(f) Adopt standards setting forth minimum training and other qualifications for firefighting personnel responding to a fire

involving a propane storage system.

(g) Upon completion of inspection of propane storage systems as required by subdivision (b), the Division of Occupational Safety and Health and the State Fire Marshal shall report to the Legislature on the condition of propane storage systems statewide. The report shall include identification and location of the propane storage systems inspected; identification of fire safety violations, if any, at each system inspected, and a determination of whether the fire safety violation was significant or minor. The report shall also include what remedial actions were taken, or were proposed to be taken, to correct the violations, and whether the propane storage system is in compliance with current fire safety requirements.

The Division of Occupational Safety and Health and the State Fire Marshal shall also recommend in the report, after consulting with representatives of the propane industry, any corrective or remedial legislation necessary to ensure future compliance with fire safety requirements, including, but not limited to, future fire safety inspection requirements, including the recommended frequency of these inspections.

13243. The Department of Industrial Relations shall on or before January 1, 1996, develop a propane storage system inspection training curriculum and certification program for inspectors who are authorized to inspect propane storage system pressure vessels. The training curriculum shall include, but is not limited to, training and enforcement procedures for the NFPA 58 Standard, Article 82 of the Uniform Fire Code Standards, and the propane storage system fire safety compliance requirements adopted pursuant to subdivision (d) of Section 13242.

13243.3. Any requirements adopted as provisions of the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) shall supersede this measure.

13243.6. Any costs incurred by state agencies or departments pursuant to this article, that are not funded through fees pursuant to Section 13244.5, shall be funded from existing resources.

Article 2. Liability Insurance Coverage

13244. (a) All of the following persons or entities shall carry liability insurance set forth in subdivision (b):

(1) Any person or entity that owns or operates a business engaged in whole or in part, in the wholesale or retail sale of any energy product, liquid or vapor, which is transported or dispensed.

(2) Any person or entity engaged in the wholesale or retail sale of propane, if the activities are subject to Part 387 of Title 49 of the Code of Federal Regulations and if the activities are within the scope of the National Fire Protection Association (NFPA) Standard 58, "Standard for the Storage and Handling of Liquefied Petroleum Gases."

(3) Any person or entity engaged in the wholesale or retail sale of any energy product, liquid or vapor, which is transported or

dispensed, if required by law to obtain any California hazardous materials permit based upon that activity.

(b) Persons or entities set forth in subdivision (a) shall carry liability insurance for any liability arising from that activity in an amount of no less than five hundred thousand dollars (\$500,000).

(c) The liability insurance requirement of this section is a minimum and does not control over other provisions of law, if any, that may require a greater insurance coverage.

(d) The liability insurance requirement of this section does not apply to any of the following:

(1) An operation for the exchange of propane cylinders.

(2) The retail sale of propane in small propane canisters of 20 pounds or less.

13244.1. Notwithstanding any provision of law, any person or entity that owns or operates a business engaged, in whole or in part, in the wholesale or retail sale of any energy product, liquid or vapor, which is transported or dispensed, may combine to form an insurance risk pool, or pools, for the purpose of purchasing insurance in compliance with this article.

13244.2. If any provision of this article or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

Article 3. Fees

13244.5. The State Fire Marshal, in conjunction with local fire departments, shall determine a fee, not to exceed two hundred fifty dollars (\$250) per propane storage system, to pay for the cost of the inspection and regulation of propane storage systems required by this chapter. The fees shall not exceed the cost of this inspection and regulation.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1294

An act to amend Section 66474.01 of the Government Code, to amend Sections 21081, 21081.5, 21081.6, 21087, 21094, 21100, 21100.1, 21100.2, 21151.5, 21152, 21157, 21157.1, 21157.6, 21158, 21167, 21167.1, 21167.4, 21167.6, and 21167.8, of, to repeal Sections 21157.7 and 21159.4 of, and to repeal the heading of Article 4.1 (commencing with Section 21159.1) of Chapter 4.5 of Division 13 of, the Public Resources Code, and to amend Section 13264 of the Water Code, relating to environmental quality, and declaring the urgency thereof, to take effect immediately.

[Became law without Governor's signature. Filed with Secretary of State October 4, 1994.]

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

SECTION 1. Section 66474.01 of the Government Code is amended to read:

66474.01. Notwithstanding subdivision (e) of Section 66474, a local government may approve a tentative map, or a parcel map for which a tentative map was not required, if an environmental impact report was prepared with respect to the project and a finding was made pursuant to paragraph (3) of subdivision (a) of Section 21081 of the Public Resources Code that specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.

SEC. 2. Section 21081 of the Public Resources Code is amended to read:

21081. Pursuant to the policy stated in Sections 21002 and 21002.1, no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur:

(a) The public agency makes one or more of the following findings with respect to each significant effect:

(1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.

(2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.

(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

(b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.

SEC. 3. Section 21081.5 of the Public Resources Code is amended to read:

21081.5. In making the findings required by paragraph (3) of subdivision (a) of Section 21081, the public agency shall base its findings on substantial evidence in the record.

SEC. 4. Section 21081.6 of the Public Resources Code is amended to read:

21081.6. When making the findings required by paragraph (1) of subdivision (a) of Section 21081 or when adopting a negative declaration pursuant to paragraph (2) of subdivision (c) of Section 21080, the following requirements shall apply:

(a) The public agency shall adopt a reporting or monitoring program for the changes to the project which it has adopted or made a condition of project approval in order to mitigate or avoid significant effects on the environment. The reporting or monitoring program shall be designed to ensure compliance during project implementation. For those changes which have been required or incorporated into the project at the request of an agency having jurisdiction by law over natural resources affected by the project, that agency shall, if so requested by the lead or responsible agency, prepare and submit a proposed reporting or monitoring program.

(b) A public agency shall provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures. Conditions of project approval may be set forth in referenced documents which address required mitigation measures.

(c) Prior to the close of the public review period for a draft environmental impact report or mitigated negative declaration, a responsible agency, or a public agency having jurisdiction over natural resources affected by the project, shall either submit to the lead agency complete and detailed performance objectives for mitigation measures which would address the significant effects on the environment identified by the responsible agency or agency having jurisdiction over natural resources affected by the project, or refer the lead agency to appropriate, readily available guidelines or reference documents. Any mitigation measures submitted to a lead agency by a responsible agency or an agency having jurisdiction over natural resources affected by the project shall be limited to measures which mitigate impacts to resources which are subject to the statutory authority of, and definitions applicable to, that agency. Compliance or noncompliance by a responsible agency or agency having jurisdiction over natural resources affected by a project with that requirement shall not limit the authority of the responsible agency or agency having jurisdiction over natural resources affected

by a project, or the authority of the lead agency, to approve, condition, or deny projects as provided by this division or any other provision of law.

(d) The lead agency shall specify the location and custodian of the documents or other material which constitute the record of proceedings upon which its decision is based.

SEC. 4.5. Section 21081.6 of the Public Resources Code is amended to read:

21081.6. (a) When making the findings required by paragraph (1) of subdivision (a) of Section 21081 or when adopting a mitigated negative declaration pursuant to paragraph (2) of subdivision (c) of Section 21080, the following requirements shall apply:

(1) The public agency shall adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment. The reporting or monitoring program shall be designed to ensure compliance during project implementation. For those changes which have been required or incorporated into the project at the request of a responsible agency or a public agency having jurisdiction by law over natural resources affected by the project, that agency shall, if so requested by the lead agency or a responsible agency, prepare and submit a proposed reporting or monitoring program.

(2) The lead agency shall specify the location and custodian of the documents or other material which constitute the record of proceedings upon which its decision is based.

(b) A public agency shall provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures. Conditions of project approval may be set forth in referenced documents which address required mitigation measures or, in the case of the adoption of a plan, policy, regulation, or other public project, by incorporating the mitigation measures into the plan, policy, regulation, or project design.

(c) Prior to the close of the public review period for a draft environmental impact report or mitigated negative declaration, a responsible agency, or a public agency having jurisdiction over natural resources affected by the project, shall either submit to the lead agency complete and detailed performance objectives for mitigation measures which would address the significant effects on the environment identified by the responsible agency or agency having jurisdiction over natural resources affected by the project, or refer the lead agency to appropriate, readily available guidelines or reference documents. Any mitigation measures submitted to a lead agency by a responsible agency or an agency having jurisdiction over natural resources affected by the project shall be limited to measures which mitigate impacts to resources which are subject to the statutory authority of, and definitions applicable to, that agency. Compliance or noncompliance by a responsible agency or agency

having jurisdiction over natural resources affected by a project with that requirement shall not limit the authority of the responsible agency or agency having jurisdiction over natural resources affected by a project, or the authority of the lead agency, to approve, condition, or deny projects as provided by this division or any other provision of law.

SEC. 5. Section 21087 of the Public Resources Code is amended to read:

21087. (a) The Office of Planning and Research shall, at least once every two years, review the guidelines adopted pursuant to Section 21083 and shall recommend proposed changes or amendments to the Secretary of the Resources Agency. The Secretary of the Resources Agency shall certify and adopt guidelines, and any amendments thereto, at least once every two years, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, which shall become effective upon the filing thereof. However, guidelines shall not be adopted or amended without compliance with Sections 11346.4, 11346.5, and 11346.8 of the Government Code.

(b) Within six months of the enactment of AB 314 of the 1993-94 Regular Session of the Legislature, the Office of Planning and Research shall recommend proposed changes and the Secretary of the Resources Agency shall certify and adopt revisions to the guidelines pursuant to Section 21083 to reflect the changes to this division enacted during the 1993-94 Regular Session of the Legislature.

SEC. 6. Section 21094 of the Public Resources Code is amended to read:

21094. (a) Where a prior environmental impact report has been prepared and certified for a program, plan, policy, or ordinance, the lead agency for a later project that meets the requirements of this section shall examine significant effects of the later project upon the environment by using a tiered environmental impact report, except that the report on the later project need not examine those effects which the lead agency determines were either (1) mitigated or avoided pursuant to paragraph (1) of subdivision (a) of Section 21081 as a result of the prior environmental impact report, or (2) examined at a sufficient level of detail in the prior environmental impact report to enable those effects to be mitigated or avoided by site specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project.

(b) This section applies only to a later project which the lead agency determines (1) is consistent with the program, plan, policy, or ordinance for which an environmental impact report has been prepared and certified, (2) is consistent with applicable local land use plans and zoning of the city, county, or city and county in which the later project would be located, and (3) is not subject to Section 21166.

(c) For purposes of compliance with this section, an initial study

shall be prepared to assist the lead agency in making the determinations required by this section. The initial study shall analyze whether the later project may cause significant effects on the environment that were not examined in the prior environmental impact report.

(d) All public agencies which propose to carry out or approve the later project may utilize the prior environmental impact report and the environmental impact report on the later project to fulfill the requirements of Section 21081.

(e) When tiering is used pursuant to this section, an environmental impact report prepared for a later project shall refer to the prior environmental impact report and state where a copy of the prior environmental impact report may be examined.

SEC. 7. Section 21100 of the Public Resources Code is amended to read:

21100. (a) All state agencies, boards, and commissions shall prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on any project which they propose to carry out or approve that may have a significant effect on the environment. Whenever feasible, a standard format shall be used for environmental impact reports.

(b) The environmental impact report shall include a detailed statement setting forth all of the following:

(1) The significant effects on the environment of the proposed project.

(2) Any significant effect on the environment that cannot be avoided if the project is implemented.

(3) Any significant effect on the environment that would be irreversible if the project is implemented.

(4) Any growth-inducing impact of the project.

(5) Mitigation measures proposed to minimize the significant effects on the environment, including, but not limited to, measures to reduce the wasteful, inefficient, and unnecessary consumption of energy.

(6) Alternatives to the proposed project.

(7) The relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity.

(c) The report shall also contain a statement briefly indicating the reasons for determining that various effects on the environment of a project are not significant and consequently have not been discussed in detail in the environmental impact report.

(d) For purposes of this section, any significant effect on the environment shall be limited to substantial, or potentially substantial, adverse changes in physical conditions that exist within the area as defined in Section 21060.5.

(e) Previously approved land use documents, including, but not limited to, general plans, specific plans, and local coastal plans, may be used in cumulative impact analysis.

SEC. 8. Section 21100.1 of the Public Resources Code is amended to read:

21100.1. The information described in paragraphs (3) and (7) of subdivision (b) of Section 21100 shall be required only in environmental impact reports prepared in connection with the following:

(a) The adoption, amendment, or enactment of a plan, policy, or ordinance of a public agency.

(b) The adoption by a local agency formation commission of a resolution making determinations.

(c) A project which will be subject to the requirement for the preparation of an environmental impact statement pursuant to the requirements of the National Environmental Policy Act of 1969.

SEC. 9. Section 21100.2 of the Public Resources Code is amended to read:

21100.2. (a) Each state agency shall establish, by resolution or order, time limits, not to exceed one year for completing and certifying environmental impact reports, and 105 days for completing and approving negative declarations, for projects described in subdivision (c) of Section 21065. These time limits shall apply only to those circumstances in which the state agency is the lead agency for a project. These resolutions or orders may establish different time limits for different types or classes of projects, but all limits shall be measured from the date on which an application requesting approval of the project is received and accepted as complete by the state agency. No application for a project may be deemed incomplete for lack of a waiver of time periods prescribed in state regulations. The resolutions or orders required by this section may provide for a reasonable extension of the time period in the event that compelling circumstances justify additional time and the project applicant consents thereto.

(b) If a draft environmental impact report, environmental impact report, focused environmental impact report, or negative declaration is prepared under a contract to a state agency, the contract shall be executed within 45 days from the date on which the state agency determines that a negative declaration or an environmental impact report is required. The state agency may take longer to execute the contract in the event that compelling circumstances justify additional time and the project applicant consents thereto.

SEC. 10. Section 21151.5 of the Public Resources Code is amended to read:

21151.5. (a) Each local agency shall establish, by ordinance or resolution, time limits, not to exceed one year for completing and certifying environmental impact reports, and 105 days for completing negative declarations, for projects described in subdivision (c) of Section 21065. These time limits shall apply only to those circumstances in which the local agency is the lead agency for a project. These ordinances or resolutions may establish different

time limits for different types or classes of projects and different types of environmental impact reports, but all limits shall be measured from the date on which an application requesting approval of the project is received and accepted as complete by the local agency. No application for a project may be deemed incomplete for lack of a waiver of time periods prescribed by local ordinance or resolution. The ordinances or resolutions required by this section may provide for a reasonable extension of the time period in the event that compelling circumstances justify additional time and the project applicant consents thereto.

(b) If a draft environmental impact report, environmental impact report, focused environmental impact report, or negative declaration is prepared under a contract to a local agency, the contract shall be executed within 45 days from the date on which the local agency determines that a negative declaration or an environmental impact report is required. The local agency may take longer to execute the contract in the event that compelling circumstances justify additional time and the project applicant consents thereto.

SEC. 11. Section 21152 of the Public Resources Code is amended to read:

21152. (a) Whenever a local agency approves or determines to carry out a project which is subject to this division, it shall file notice of the approval or the determination within five working days after the approval or determination becomes final, with the county clerk of each county in which the project will be located. The notice shall indicate the determination of the local agency whether the project will, or will not, have a significant effect on the environment and shall indicate whether an environmental impact report has been prepared pursuant to this division. The notice shall also include certification that the final environmental impact report, if one was prepared, together with comments and responses, is available to the general public.

(b) Whenever a local agency determines that a project is not subject to this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21085 or 21172, and it approves or determines to carry out the project, it, or the person specified in subdivision (b) or (c) of Section 21065, may file a notice of the determination with the county clerk of each county in which the project will be located. Any notice filed pursuant to this subdivision by a person specified in subdivision (b) or (c) of Section 21065 shall have a certificate of determination attached to it issued by the local agency responsible for making the determination that the project is not subject to this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21085 or 21172. The certificate of determination may be in the form of a certified copy of an existing document or record of the local agency.

(c) All notices filed pursuant to this section shall be available for public inspection, and shall be posted within 24 hours of receipt in

the office of the county clerk. Each notice shall remain posted for a period of 30 days. Thereafter, the clerk shall return the notice to the local agency with a notation of the period it was posted. The local agency shall retain the notice for not less than nine months.

SEC. 12. Section 21157 of the Public Resources Code is amended to read:

21157. (a) A master environmental impact report may be prepared for any one of the following projects:

(1) A general plan, element, general plan amendment, or specific plan.

(2) A project that consists of smaller individual projects which will be carried out in phases.

(3) A rule or regulation which will be implemented by subsequent projects.

(4) Projects to be carried out pursuant to a development agreement.

(5) Public and private projects pursuant to, or in furtherance of, a redevelopment plan.

(6) A state highway project or mass transit project which will be subject to multiple stages of review or approval.

(7) A regional transportation plan or congestion management plan.

(b) When a lead agency prepares a master environmental impact report, the document shall include all of the following:

(1) A detailed statement as required by Section 21100.

(2) A description of anticipated subsequent projects that would be within the scope of the master environmental impact report, that contains sufficient information with regard to the kind, size, intensity, and location of the subsequent projects, including, but not limited to, all of the following:

(A) The specific type of project anticipated to be undertaken.

(B) The maximum and minimum intensity of any anticipated subsequent project, such as the number of residences in a residential development, and, with regard to a public works facility, its anticipated capacity and service area.

(C) The anticipated location and alternative locations for any development projects.

(D) A capital outlay or capital improvement program, or other scheduling or implementing device that governs the submission and approval of subsequent projects.

(3) A description of potential impacts of anticipated subsequent projects for which there is not sufficient information reasonably available to support a full assessment of potential impacts in the master environmental impact report. This description shall not be construed as a limitation on the impacts which may be considered in a focused environmental impact report.

(c) Lead agencies may develop and implement a fee program in accordance with applicable provisions of law to generate the revenue necessary to prepare a master environmental impact

report.

SEC. 12.5. Section 21157 of the Public Resources Code is amended to read:

21157. (a) A master environmental impact report may be prepared for any one of the following projects:

(1) A general plan, element, general plan amendment, or specific plan.

(2) A project that consists of smaller individual projects which will be carried out in phases.

(3) A rule or regulation which will be implemented by subsequent projects.

(4) Projects which will be carried out or approved pursuant to a development agreement.

(5) Public or private projects which will be carried out or approved pursuant to, or in furtherance of, a redevelopment plan.

(6) A state highway project or mass transit project which will be subject to multiple stages of review or approval.

(7) A regional transportation plan or congestion management plan.

(8) A plan proposed by a local agency for the reuse of a federal military base or reservation that has been closed or that is proposed for closure.

(b) When a lead agency prepares a master environmental impact report, the document shall include all of the following:

(1) A detailed statement as required by Section 21100.

(2) A description of anticipated subsequent projects that would be within the scope of the master environmental impact report, that contains sufficient information with regard to the kind, size, intensity, and location of the subsequent projects, including, but not limited to, all of the following:

(A) The specific type of project anticipated to be undertaken.

(B) The maximum and minimum intensity of any anticipated subsequent project, such as the number of residences in a residential development, and, with regard to a public works facility, its anticipated capacity and service area.

(C) The anticipated location and alternative locations for any development projects.

(D) A capital outlay or capital improvement program, or other scheduling or implementing device that governs the submission and approval of subsequent projects.

(3) A description of potential impacts of anticipated subsequent projects for which there is not sufficient information reasonably available to support a full assessment of potential impacts in the master environmental impact report. This description shall not be construed as a limitation on the impacts which may be considered in a focused environmental impact report.

(c) Lead agencies may develop and implement a fee program in accordance with applicable provisions of law to generate the revenue necessary to prepare a master environmental impact

report.

SEC. 13. Section 21157.1 of the Public Resources Code is amended to read:

21157.1. The preparation and certification of a master environmental impact report, if prepared and certified consistent with this division, may allow for the limited review of subsequent projects that were described in the master environmental impact report as being within the scope of the report, in accordance with the following requirements:

(a) The lead agency for a subsequent project shall be the lead agency or any responsible agency identified in the master environmental impact report.

(b) The lead agency shall prepare an initial study on any proposed subsequent project. This initial study shall analyze whether the subsequent project may cause any significant effect on the environment that was not examined in the master environmental impact report and whether the subsequent project was described in the master environmental impact report as being within the scope of the report.

(c) If the lead agency, based on the initial study, determines that a proposed subsequent project will have no additional significant effect on the environment, as defined in subdivision (d) of Section 21158, that was not identified in the master environmental impact report and that no new or additional mitigation measures or alternatives may be required, the lead agency shall make a written finding based upon the information contained in the initial study that the subsequent project is within the scope of the project covered by the master environmental impact report. No new environmental document nor findings pursuant to Section 21081 shall be required by this division. Prior to approving or carrying out the proposed subsequent project, the lead agency shall provide notice of this fact pursuant to Section 21092 and incorporate all feasible mitigation measures or feasible alternatives set forth in the master environmental impact report which are appropriate to the project. Whenever a lead agency approves or determines to carry out any subsequent project pursuant to this section, it shall file a notice pursuant to Section 21108 or 21152.

(d) Where a lead agency cannot make the findings required in subdivision (c), the lead agency shall prepare, pursuant to Section 21157.7, either a mitigated negative declaration or environmental impact report.

SEC. 14. Section 21157.6 of the Public Resources Code is amended to read:

21157.6. The master environmental impact report shall not be used for the purposes of this chapter if (1) the certification of the report occurred more than five years prior to the filing of an application for the subsequent project, or (2) if the approval of a project that was not described in the report may affect the adequacy of the environmental review in the report for any subsequent

project, unless the lead agency reviews the adequacy of the master environmental impact report and does either of the following:

(a) Finds that no substantial changes have occurred with respect to the circumstances under which the master environmental impact report was certified or that no new information, which was not known and could not have been known at the time that the master environmental impact report was certified as complete, has become available.

(b) Certifies a subsequent or supplemental environmental impact report which has been either incorporated into the previously certified master environmental impact report or references any deletions, additions, or any other modifications to the previously certified master environmental impact report.

SEC. 15. Section 21157.7 of the Public Resources Code is repealed.

SEC. 16. Section 21158 of the Public Resources Code is amended to read:

21158. (a) A focused environmental impact report is an environmental impact report on a subsequent project identified in a master environmental impact report. A focused environmental impact report may be utilized only if the lead agency finds that the analysis in the master environmental impact report of cumulative impacts, growth inducing impacts, and irreversible significant effects on the environment is adequate for the subsequent project. The focused environmental impact report shall incorporate, by reference, the master environmental impact report and analyze only the subsequent project's additional significant effects on the environment, as defined in subdivision (d), and any new or additional mitigation measures or alternatives that were not identified and analyzed by the master environmental impact report.

(b) The focused environmental impact report need not examine those effects which the lead agency finds were one of the following:

(1) Mitigated or avoided pursuant to paragraph (1) of subdivision (a) of Section 21081 as a result of mitigation measures identified in the master environmental impact report which will be required as part of the approval of the subsequent project.

(2) Examined at a sufficient level of detail in the master environmental impact report to enable those significant environmental effects to be mitigated or avoided by specific revisions to the project, the imposition of conditions, or by other means in connection with the approval of the subsequent project.

(3) Subject to a finding pursuant to paragraph (2) of subdivision (a) of Section 21081.

(c) A focused environmental impact report on any subsequent project shall analyze any significant effects on the environment where substantial new or additional information shows that the adverse environmental impact may be more significant than was described in the master environmental impact report. The substantial new or additional information may also show that

mitigation measures or alternatives identified in the master environmental impact report, which were previously determined to be infeasible, are feasible and will avoid or reduce the significant effects on the environment of the subsequent project to a level of insignificance.

(d) For purposes of this chapter, "additional significant effects on the environment" are those project specific effects on the environment which were not addressed as significant effects on the environment in the master environmental impact report.

(e) Nothing in this chapter is intended to limit or abridge the ability of a lead agency to focus upon the issues that are ripe for decision at each level of environmental review, or to exclude duplicative analysis of environmental effects examined in previous environmental impact reports pursuant to Section 21093.

SEC. 17. The heading of Article 4.1 (commencing with Section 21159.1) of Chapter 4.5 of Division 13 of the Public Resources Code is repealed.

SEC. 18. Section 21159.4 of the Public Resources Code, as added by Chapter 1130 of the Statutes of 1993, is repealed.

SEC. 19. Section 21167 of the Public Resources Code is amended to read:

21167. Any action or proceeding to attack, review, set aside, void, or annul the following acts or decisions of a public agency on the grounds of noncompliance with this division shall be commenced as follows:

(a) An action or proceeding alleging that a public agency is carrying out or has approved a project which may have a significant effect on the environment without having determined whether the project may have a significant effect on the environment shall be commenced within 180 days of the public agency's decision to carry out or approve the project, or, if a project is undertaken without a formal decision by the public agency, within 180 days after commencement of the project.

(b) Any action or proceeding alleging that a public agency has improperly determined whether a project may have a significant effect on the environment shall be commenced within 30 days after the filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152.

(c) Any action or proceeding alleging that an environmental impact report does not comply with the provisions of this division shall be commenced within 30 days after the filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152 by the lead agency.

(d) Any action or proceeding alleging that a public agency has improperly determined that a project is not subject to the provisions of this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21085 or 21172 shall be commenced within 35 days after the filing by the public agency, or person specified in subdivision (b) or (c) of Section 21065, of the notice authorized by

subdivision (b) of Section 21108 or subdivision (b) of Section 21152. If the notice has not been filed, the action or proceeding shall be commenced within 180 days of the public agency's decision to carry out or approve the project, or, if a project is undertaken without a formal decision by the public agency, within 180 days after commencement of the project.

(e) Any action or proceeding alleging that any other act or omission of a public agency does not comply with the provisions of this division shall be commenced within 30 days after the filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152.

(f) If a person has made a written request to the public agency for a copy of the notice specified in Section 21108 or 21152 within the posting periods specified in Sections 21108 and 21152, the time periods specified in subdivisions (b), (c), (d), and (e) shall commence from the date that the public agency deposits a written copy of the notice in the United States mail, first-class postage prepaid.

SEC. 20. Section 21167.1 of the Public Resources Code is amended to read:

21167.1. (a) In all actions or proceedings brought pursuant to Sections 21167, 21168, and 21168.5, including the hearing of an action or proceeding on appeal from a decision of a lower court, all courts in which the action or proceeding is pending shall give the action or proceeding preference over all other civil actions, in the matter of setting the action or proceeding for hearing or trial, and in hearing or trying the action or proceeding, so that the action or proceeding shall be quickly heard and determined. The court shall regulate the briefing schedule so that, to the extent feasible, the court shall commence hearings on an appeal within one year of the date of the filing of the appeal.

(b) To ensure that actions or proceedings brought pursuant to Sections 21167, 21168, and 21168.5 may be quickly heard and determined in the lower courts, the superior courts in all counties with a population of more than 200,000 shall designate one or more judges to develop expertise in this division and related land use and environmental laws, so that those judges will be available to hear, and quickly resolve, actions or proceedings brought pursuant to Sections 21167, 21168, and 21168.5.

(c) In any action or proceeding filed pursuant to this chapter that is joined with any other cause of action, the court, upon a motion by any party, may grant severance of the actions. In determining whether to grant severance, the court shall consider such as matters judicial economy, administrative economy, and prejudice to any party.

SEC. 21. Section 21167.4 of the Public Resources Code is amended to read:

21167.4. (a) In any action or proceeding alleging noncompliance with this division, the petitioner shall request a hearing within 90

days from the date of filing the petition or shall be subject to dismissal on the court's own motion or on the motion of any party interested in the action or proceeding.

(b) The petitioner shall serve a notice of the request for a hearing on all parties at the time that the petitioner files the request for a hearing.

(c) Upon the filing of a request by the petitioner for a hearing and upon application by any party, the court shall establish a briefing schedule and a hearing date. In the absence of good cause, briefing shall be completed within 90 days from the date that the request for a hearing is filed, and the hearing, to the extent feasible, shall be held within 30 days thereafter. Good cause may include, but shall not be limited to, the conduct of discovery, determination of the completeness of the record of proceedings, the complexity of the issues, and the length of the record of proceedings and the timeliness of its production. The parties may stipulate to a briefing schedule or hearing date that differs from the schedule set forth in this subdivision if the stipulation is approved by the court.

SEC. 22. Section 21167.6 of the Public Resources Code is amended to read:

21167.6. Notwithstanding any other provision of law, in all actions or proceedings brought pursuant to Section 21167, except those involving the Public Utilities Commission, all of the following procedures shall apply:

(a) At the time that the action is filed, the petitioner shall file a request that the respondent public agency prepare the record of proceedings relating to the subject of the action or proceeding. The request, together with the petition, shall be served upon the public agency not later than 10 business days from the date upon which the action or proceeding is filed.

(b) (1) The public agency shall prepare and certify the record of proceedings not later than 60 days from the date upon which the request specified in subdivision (a) is served upon the public agency. Upon certification, the public agency shall lodge with the court a copy of the record and shall serve on all parties notice that the record of proceedings has been certified and lodged. The parties shall pay any costs or fees imposed for the preparation of the record of proceedings in conformance with any law or rule of court.

(2) The petitioner may elect to prepare the record of proceedings or the parties may agree to an alternative method of preparation of the record of proceedings, subject to certification of its accuracy by the public agency, within the time limit specified in this subdivision.

(c) The time limit prescribed by subdivision (b) may be extended only upon stipulation of all parties who have been properly served in the action or proceeding or upon order of the court. Extensions shall be liberally granted by the court when the size of the record of proceedings renders infeasible compliance with that time limit. There is no limit on the number of extensions which may be granted by the court, but no single extension shall exceed 60 days unless the

court determines that a longer extension is in the public interest.

(d) If the public agency fails to prepare and certify the record within the time limit prescribed in subdivision (b), or any continuances of that time limit, the petitioner may move for sanctions, and the court may, upon that motion, grant appropriate sanctions.

(e) The clerk of the superior court shall prepare and certify the clerk's transcript on appeal not later than 60 days from the date upon which the notice designating the papers or records to be included in the clerk's transcript is filed with the superior court, if the party or parties pay any costs or fees for preparation of the clerk's transcript imposed in conformance with any law or rules of court. Nothing in this subdivision precludes an election to proceed pursuant to Rule 5.1 of the California Rules of Court.

(f) Extensions of the period for the filing of any brief on appeal may be allowed only by stipulation of the parties or by order of the court for good cause shown. Extensions on appeal shall be limited to one 30-day extension for the preparation of an opening brief, and one 30-day extension for the preparation of a responding brief, except that the court may grant a longer extension or additional extensions if it determines that there is a substantial likelihood of settlement that would avoid the necessity of completing the appeal.

(g) At the completion of the filing of briefs on appeal, the appellant shall notify the court of completion of the filing of briefs, whereupon the clerk of the reviewing court shall set the appeal for hearing on the first available calendar date.

SEC. 23. Section 21167.8 of the Public Resources Code is amended to read:

21167.8. (a) Not later than 20 days from the date of service upon a public agency of a petition or complaint brought pursuant to Section 21167, the public agency shall file with the court a notice setting forth the time and place at which all parties shall meet and attempt to settle the litigation. The meeting shall be scheduled and held not later than 45 days from the date of service of the petition or complaint upon the public agency. The notice of the settlement meeting shall be served by mail upon the counsel for each party. If the public agency does not know the identity of counsel for any party, the notice shall be served by mail upon the party for whom counsel is not known.

(b) At the time and place specified in the notice filed with the court, the parties shall meet and confer regarding anticipated issues to be raised in the litigation and shall attempt in good faith to settle the litigation and the dispute which forms the basis of the litigation. The settlement meeting discussions shall be comprehensive in nature and shall focus on the legal issues raised by the parties concerning the project that is the subject of the litigation.

(c) The settlement meeting may be continued from time to time without postponing or otherwise delaying other applicable time limits in the litigation. The settlement meeting is intended to be

conducted concurrently with any judicial proceedings.

(d) If the litigation is not settled, the court, in its discretion, may, or at the request of any party, shall, schedule a further settlement conference before a judge of the superior court. If the petition or complaint is later heard on its merits, the judge hearing the matter shall not be the same judge conducting the settlement conference, except in counties that have only one judge of the superior court.

(e) The failure of any party, who was notified pursuant to subdivision (a), to participate in the litigation settlement process, without good cause, may result in an imposition of sanctions by the court.

(f) Not later than 30 days from the date that notice of certification of the record of proceedings was filed and served in accordance with Section 21167.6, each party shall file and serve on all other parties a statement of issues which that party intends to raise in any brief or at any hearing or trial.

SEC. 24. Section 13264 of the Water Code is amended to read:

13264. (a) No person shall initiate any new discharge of waste or make any material changes in any discharge, or initiate a discharge to, make any material changes in a discharge to, or construct, an injection well, prior to the filing of the report required by Section 13260 and no person shall take any of these actions after filing the report but before whichever of the following occurs first:

(1) The issuance of waste discharge requirements pursuant to Section 13263.

(2) The expiration of 120 days after compliance with Section 13260 if any of the following applies:

(A) The project is not subject to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(B) The regional board is the lead agency for purposes of the California Environmental Quality Act, a negative declaration is required, and at least 105 days have expired since the regional board assumed lead agency responsibility.

(C) The regional board is the lead agency for the purposes of the California Environmental Quality Act, and environmental impact report or written documentation prepared to meet the requirements of Section 21080.5 of the Public Resources Code is required, and at least one year has expired since the regional board assumed lead agency responsibility.

(D) The regional board is a responsible agency for purposes of the California Environmental Quality Act, and at least 90 days have expired since certification or approval of environmental documentation by the lead agency.

(3) The regional board's waiver pursuant to Section 13269.

(b) The Attorney General, at the request of a regional board, shall petition the superior court for the issuance of a temporary restraining order, preliminary injunction, or permanent injunction, or combination thereof, as may be appropriate, prohibiting any

person who is violating or threatening to violate this section from doing any of the following, whichever is applicable:

- (1) Discharging the waste or fluid.
- (2) Making any material change in the discharge.
- (3) Constructing the injection well.

SEC. 25. The changes to subdivision (e) of Section 21100 of the Public Resources Code made by this act shall not become operative until January 1, 1995.

SEC. 26. If this bill and SB 749 are both chaptered, the provisions of SB 749 that amend Sections 21100, 21100.1, and 21167.6 of the Public Resources Code shall become operative, and the provisions of this bill that amend those sections shall not become operative, regardless of which bill is chaptered last.

SEC. 27. Section 4.5 of this bill incorporates amendments to Section 21080.6 of the Public Resources Code proposed by this bill and SB 749. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1995, (2) each bill amends Section 21080.6 of the Public Resources Code, and (3) this bill is enacted after SB 749, in which case Section 21080.6 of the Public Resources Code, as amended by SB 749, shall remain operative only until the operative date of this bill, at which time Section 4.5 of this bill shall become operative, and Section 4 of this bill shall not become operative.

SEC. 28. Section 12.5 of this bill incorporates amendments to Section 21157 of the Public Resources Code proposed by this bill and SB 1971. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1995, (2) each bill amends Section 21157 of the Public Resources Code, and (3) this bill is enacted after SB 1971, in which case Section 21157 of the Public Resources Code, as amended by SB 1971, shall remain operative only until the operative date of this bill, at which time Section 12.5 of this bill shall become operative, and Section 12 of this bill shall not become operative.

SEC. 29. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 30. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that technical corrections, to ensure proper implementation of Chapter 1130 of the Statutes of 1993 are made in a timely manner, it is necessary that this act take effect immediately.

CHAPTER 1295

An act to add Chapter 3.1 (commencing with Section 5600) to Division 5 of Part 4 of the Public Resources Code, relating to open space.

[Became law without Governor's signature. Filed with Secretary of State October 4, 1994.]

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

SECTION 1. Chapter 3.1 (commencing with Section 5600) is added to Division 5 of Part 4 of the Public Resources Code, to read:

CHAPTER 3.5. PUENTE HILLS LANDFILL OPEN-SPACE
DEDICATION

5600. (a) The owner of the disposal site known as the Puente Hills Landfill, located in an unincorporated portion of the County of Los Angeles, shall dedicate as open-space property within the disposal site, pursuant to the terms of condition 14 (a) of Los Angeles County Conditional Use Permit 92-250 (4). This dedication shall include the buffer zone, and "Canyon 6," "Canyon 7," and "Canyon 8" as specified in the conditional use permit.

(b) The owner of the disposal site referred to in subdivision (a) of this act shall enter into an agreement with the Los Angeles County Department of Parks and Recreation for use of the disposal area as a public park when solid waste disposal activities are complete, as referenced in and modified by condition 14 (b) of Los Angeles County Conditional Use Permit 92-250 (4). This agreement shall include the funding for the preparation of a park master plan, and for the full development, operation, and maintenance of the park, in an amount appropriate to the level of development shown on the master plan.

(c) The consultation specified in Part VIII of the monitoring program of Los Angeles Conditional Use Permit 92-250 (4), relating to the Puente Hills Landfill Citizens Advisory Committee, shall include the subject of landscaping of the mitigation berm specified in condition 10 (b), and shall also include any other planning matters that would affect the physical development or future use of the landfill site. The committee shall include members of the Hacienda Heights Improvement Association.

(d) The Joint Powers Authority established pursuant to condition 15 of Los Angeles County Conditional Use Permit 92-250 (4) shall give due consideration to purchasing parcels near the landfill property, specifically those parcels near the Hacienda Heights area.

SEC. 2. The Legislature finds and declares that, because of the unique circumstances applicable to Hacienda Heights and the

Puente Hills Landfill, as regards the ability of the citizens of this unincorporated area of Los Angeles County to be properly represented with respect to issues surrounding landfill expansion, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1296

An act to amend, repeal, and add Section 25135 of, to add and repeal Sections 17091 and 24272.3 of, and to add and repeal Sections 17053.66 and 23666 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Became law without Governor's signature. Filed with Secretary of State October 4, 1994.]

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

SECTION 1. Section 17053.66 is added to the Revenue and Taxation Code, to read:

17053.66. (a) For each taxable year beginning on or after January 1, 1995, and before January 1, 2000, there shall be allowed as a credit against the "net tax," as defined in Section 17039, an amount equal to 10 percent of the qualified costs paid or incurred by the taxpayer or partnership for salmon and steelhead trout habitat restoration and improvement projects. The credit allowed by this section shall be claimed on the return for the taxable year in which the expense for the habitat restoration or improvement project was paid or incurred.

(b) An individual or partnership shall qualify for the credit after application to and certification by the Department of Fish and Game that all of the following conditions are met:

(1) The salmon or steelhead trout habitat restoration or improvement project meets the objectives of the Salmon, Steelhead Trout, and Anadromous Fisheries Program Act (Chapter 8 (commencing with Section 6900) of Part 1 of Division 6 of the Fish and Game Code) and would aid in increasing the natural production of salmon and steelhead trout through improvement of stream and streambank conditions, improvement of land use practices, or

changes in streamflow operations.

(2) The project provides employment to persons previously employed in the commercial fishing or forest products industry within a county with a rate of unemployment, as reported by the Employment Development Department, that is higher than the mean annual unemployment rate of "rate adjustment counties" as defined pursuant to the Timber Yield Tax Law (Part 18.5 (commencing with Section 38101)).

(3) The work to be undertaken is not otherwise required to be carried out pursuant to the Z'berg-Nejedly Forest Practice Act of 1973 (Chapter 8 (commencing with Section 4511) of Part 2 of Division 4 of the Public Resources Code), for mitigation of negative impacts to the environment caused by timber operations or required for mitigation of negative impacts on fish and wildlife habitat caused by a project pursuant to an approved environmental impact report or mitigated negative declaration required pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(4) The work to be undertaken does not involve any of the following:

(A) Construction of office, storage, garage, or maintenance buildings.

(B) Drilling wells or installation of pumping equipment.

(C) Construction of permanent hatchery facilities, including raceways, water systems, or bird enclosures.

(D) Construction of permanent surface roadways or bridges.

(E) Any project requiring engineered design or certification by a registered engineer.

(c) For purposes of computing the credit provided by this section, the cost of any salmon or steelhead trout habitat restoration or improvement project eligible for the credit shall be reduced by the amount of any grant or cost-share payment provided by a public entity for that project.

(d) The taxpayer shall do all of the following:

(1) (A) Apply to the Department of Fish and Game for credit allocation and certification.

(B) The application for credit allocation shall include all information that is required by the Department of Fish and Game, including, but not limited to, all of the following:

(i) A project description of the habitat restoration or improvement work to be accomplished, including the location of the project.

(ii) If other than the project applicant, the name of the owner of the land where the work is to be carried out.

(iii) The landowner's or project applicant's actual cost to accomplish the work.

(iv) The portion of the project expenses that would be incurred by the payment of wages to unemployed persons previously employed in the commercial fishing or forest products industry.